MUNICIPAL CODE
OF THE
TOWN OF FOXFIELD, COLORADO

2012

A Codification of the General Ordinances

of the Town of Foxfield, Colorado

Beginning with Supp. No. 5,
Supplemented by Municipal Code Corporation

_____

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P.O. Box 2235 Tallahassee, FL 32316

OFFICIALS

of the

TOWN OF FOXFIELD

Mayor
Lisa Jones

Board of Trustees
Josie Cockrell
Debra Farreau
Lori Finch
Scott Freas

Amy Snell-Johnson
Pam Thompson

Town Administrator
Karen Proctor

Town Clerk
Randi Gallivan

Town Attorney
Corey Hoffman

SUPPLEMENTATION

The Foxfield, Colorado Municipal Code, originally published by Colorado Code Publishing Company, will be kept current by regular supplementation by Municipal Code Corporation, its successor in interest.

Supplements to this Code provide periodic updating through the removal and replacement of pages. This inter-leaf supplementation system requires that each page which is to be removed and replaced is identified so that the updating may be accurately accomplished and historically maintained.

Instructions for supplementation are provided for each supplement, identified by Supplement number, date and inclusive ordinance numbers. The Instructions for posting the removal and replacement of pages must be followed and accomplished in sequence, with the most recent supplementation posted **last.**

When supplementation is completed and the removal and replacement of all pages are accomplished, the Instructions should be placed under the Supplementation tab, behind this page, with the most recent Instruction sheet on top. Previous Instructions should not be removed, so that the user may refer to this tab section to verify whether the code book is fully updated with all supplements included.

The maintenance of a Municipal Code with all supplementation is an important activity which deserves close attention so that the value of the code is maintained as a fully comprehensive compilation of the legislative ordinances of the municipality.

AMENDMENTS

Amendments may be made to the Code by additions, revisions or deletions therefrom. Those changes may be made as follows:

Additions: Additions may be made by ordinance to the Code as follows:

> The Foxfield Municipal Code is amended by the addition thereto of a new Section 2-2-90, which is to read as follows:
>
> (Set out full section number, title and contents)

or if the location of the new section number or numbers is undetermined, the Code may be amended as follows:

> The Foxfield Municipal Code is amended by the addition of the following:
>
> (Set out section title and contents)

Revisions: A revision of the Code may be accomplished as follows:

> Section 2-2-90 of the Foxfield Municipal Code is repealed in its entirety and readopted to read as follows:
>
> (Set out section number, title and entire contents of the readopted code section)

or as follows:

Section 2-2-90 of the Foxfield Municipal Code is amended to read as follows:

(Set out section number, title and entire contents of the amended code section)

Repeal: Sections, articles and chapters may be repealed as follows:

Section 2-2-90 of the Foxfield Municipal Code is repealed in its entirety.

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PREFACE

The Town of Foxfield, a statutory Town, has published its Municipal Code in a format which features the following:

The *Table of Contents* is the table containing each chapter and article title, with reference to page location. Preceding each chapter is a chapter table of contents, also identifying each article by the subject name provided.

The *three-place section numbering system* places the chapter number first, followed by the article number and section number, separated by hyphens. Each section may be cited by the chapter, article and section number which are in sequence within each chapter.

The*open chapter and page numbering system* creates reserved chapter and page numbers for expansion or revision of the code without undue complication when changes are made to the code by supplementation.

The *Code Comparison Table* and*Disposition of Ordinances Table* identify the sources for the contents of the code. The Code Comparison Table identifies prior code sections and their location in the new code. The Disposition of Ordinances Table provides ordinance numbers in chronological order and location by section number for the present code contents. Thus, if there is interest in determining whether a prior code section, an ordinance or a portion thereof, is contained within the code, the Code Comparison Table and Disposition of Ordinances Table will provide that information. The *Table of Up-to-Date Pages* lists all of the current pages through the most recent supplementation.

The *Index* provides references by common and legal terminology to the appropriate code sections. Cross references are provided with the Index when appropriate.

Supplements to the code provide regular updating of the code to maintain it as a current compilation of all the legislation which has general and continuing effect. Without regular supplementation, the code would soon lose its usefulness as a complete source of the general law of the municipality. Supplementation is accomplished by the periodic publication of additions and amendments to the code.

STATE OF COLORADO

TOWN OF FOXFIELD, COLORADO

ORDINANCE NO. 01, 2012

A BILL FOR AN ORDINANCE OF THE TOWN OF FOXFIELD, COLORADO, ADOPTING BY REFERENCE AND ENACTING A NEW MUNICIPAL CODE FOR THE TOWN OF FOXFIELD; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED THEREIN; PROVIDING FOR THE ADOPTION OF SECONDARY CODES BY REFERENCE; PROVIDING A PENALTY FOR THE VIOLATION THEREOF; PROVIDING FOR THE MANNER OF AMENDING SUCH CODE; AND PROVIDING WHEN SUCH CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.

Be It Ordained by the Board of Trustees of Foxfield, Colorado:

Section 1. The Code entitled the Foxfield Municipal Code published by Colorado Code Publishing Company, consisting of Chapters 1 through 18, with Tables and Index, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before the adoption date of this Ordinance, which are inconsistent with the provisions of the Foxfield Municipal Code, to the extent of such inconsistency, are hereby repealed. The repeal established in this Section 2 shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

Section 3. The following codes were previously adopted by reference and incorporated in the Foxfield Municipal Code. One (1) copy of each is on file in the Town Clerk's office:

(1) The *International Building Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-1-10, et seq.;

(2) The *International Residential Code,* 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-2-10, et seq.;

(3) The *National Electrical Code*, 2008 edition, published by the National Fire Protection Association, as adopted in Section 18-3-10;

(4) The *International Mechanical Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-4-10, et seq.;

(4) The *International Plumbing Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-5-10, et seq.;

(6) The *International Fire Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-6-10, et seq.;

(7) The *International Fuel Gas Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-7-10, et seq.;

(8) The *International Energy Conservation Code*, 2006 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-8-10, et seq.;

(9) The *ANSI Manual, A117.1*, 2003 edition, published by the International Code Council, Inc., as adopted and amended in Section 18-9-10, et seq.;

(10) The *ASME A17.1 Elevator/Escalator Code,* 2004 edition*,* published by ASME International, as adopted and amended in Section 18-10-10, et seq.; and

(11) The *Uniform Code for the Abatement of Dangerous Buildings*, 1997 edition, published by the International Conference of Building Officials, as adopted and amended in Section 18-11-10, et seq.

Section 4. The following codes are hereby adopted by reference and incorporated in the Foxfield Municipal Code. One (1) copy of each is on file in the Town Clerk's office:

(1) The *Model Traffic Code for Colorado*, 2010 edition, published by the Colorado Department of Transportation, as adopted and amended in Section 8-1-10, et seq.

Section 5. The penalties provided by the Municipal Code of the Town of Foxfield are hereby adopted as follows:

(1) **Sec. 1-4-20. General penalty for violation. (Chapter 1, General Provisions; Article 4, General Penalty)**

Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding three hundred dollars ($300.00) or by imprisonment not exceeding ninety (90) days, or by both such fine and imprisonment, except as hereinafter provided in Section 1-4-40. In addition, such person shall pay all costs and expenses in the case, including attorney fees. Each day such violation continues shall be considered a separate offense.

(2) **Sec. 1-4-30. Altering or tampering with Code; penalty. (Chapter 1, General Provisions; Article 4, General Penalty)**

Any person who alters, changes or amends this Code, except in the manner prescribed in this Chapter, or who alters or tampers with this Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby, shall, upon conviction thereof, be punished as provided by Section 1-4-20 hereof.

(3) **Sec. 1-4-40. Penalty for violations of ordinances adopted after adoption of Code. (Chapter 1, General Provisions; Article 4, General Penalty)**

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in this Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 unless another penalty is specifically provided for the violation.

(4) **Sec. 2-4-70. Court costs. (Chapter 2, Administration and Personnel; Article 4, Mayor and Board of Trustees)**

(a) Whenever the presiding judge imposes any fine for any violation of a municipal ordinance, in addition to any such fine or any other sentence, the Municipal Judge may also impose the following costs:

(1) Twenty-five dollars ($25.00) upon the entry of a plea of guilty or no contest, or the finding of guilt by the Municipal Court.

(2) Twenty-five dollars ($25.00) upon the issuance of a bench warrant for failing to appear in Court, failing to pay fines and costs, or failing to comply with any order of the Court.

(3) Five dollars ($5.00) for each subpoenaed Town witness who appears at a trial upon a finding of guilty by the Court or by the jury, or upon the entry of a plea of guilty or no contest on the date of trial.

(b) For all appeals from decisions in the Municipal Court to the Arapahoe County District Court, the Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall require a transcript deposit according to the following schedule:

(1) One hundred fifty dollars ($150.00) transcript deposit for a trial to the Court; and

(2) Two hundred dollars ($200.00) transcript deposit for a trial to a jury.

(c) The Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall charge the transcript preparation fee and photocopy cost prescribed by the Supreme Court of Colorado. The transcript deposit shall be applied against the preparation cost of a transcript. If the preparation cost of a transcript is less than the transcript deposit, then the balance will be refunded to the requesting party by the Municipal Court Clerk. If the preparation cost of the transcript is more than the transcript deposit, the Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall require the requesting party to pay the additional cost to prepare the transcript. The Municipal Judge may waive the transcript deposit and transcript preparation cost in all instances of proven indigence.

(5) **Sec. 4-4-110. Neglect or refusal to make return or to pay. (Chapter 4, Revenue and Finance; Article 4, Use Tax)**

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-4-150, plus one-half of one percent (.5%) per month from the date when due.

(6) **Sec. 6-1-160. Penalty. (Chapter 6, Business Licenses and Regulations; Article 1, Business Licenses)**

Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person who is found guilty of, or pleads guilty or nolo contendere to the violation of any section of this Code shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

(7) **Sec. 6-2-50. Suspension or revocation; fine. (Chapter 6, Business Licenses and Regulations; Article 2, Liquor Licensing Regulations)**

(a) Whenever a decision of the Board of Trustees, acting as the Local Licensing Authority (hereinafter "Authority"), suspending a retail license for fourteen (14) days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the retail licensee may, before the operative date of the suspension, petition the Authority for permission to pay a fine in lieu of having his retail license suspended for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the retail licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) That the books and records of the retail licensee are kept in such a manner that the loss of sales of alcoholic beverages which the retail licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(3) That the retail licensee has not had his license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the retail license.

(b) The fine accepted shall be equivalent to twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars ($200.00) nor more than five thousand dollars ($5,000.00).

(c) Payment of any fine pursuant to the provisions of this Section shall be in the form of cash, certified check or cashier's check made payable to the Town Clerk and shall be deposited in the general fund of the Town.

(d) Upon payment of the fine pursuant to this Section, the Authority shall enter its further order permanently staying the imposition of the suspension.

(e) In connection with any petition pursuant to this Section, the authority of the Authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(f) If the Authority does not make the findings required in Subsection (a) above and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Authority.

(8) **Sec. 6-2-270. Penalty for violation. (Chapter 6, Business Licenses and Regulations; Article 2, Liquor Licensing Regulations)**

(a) Any licensee who violates the terms of this Article may be subject to suspension or revocation of his license pursuant to Section 12-47-601, C.R.S.

(b) Whenever the Board of Trustees' decision to suspend a license for fourteen (14) or fewer days becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the Board of Trustees may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The Board of Trustees may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation, that it deems desirable that:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purpose;

(2) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy; and

(3) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.

(c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the Town. Such fine shall be paid into the general fund of the Town.

(d) The Board of Trustees may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in Subsection (b) of this Section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the Board of Trustees.

(9) **Sec. 7-1-90. Notice of abatement. (Chapter 7, Rural Residential Property Standards; Article 1, Administration and Abatement of Nuisances)**

. . .

(f) Penalty.

(1) Violations of this Chapter shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense. In addition, the Town may seek restitution of all costs associated with any search warrant and enforcement actions in the event a violation is found, abatement and/or prosecution of a nuisance, including but not limited to the actual costs of said search warrant and enforcement actions and any other actual costs incurred by the Town.

(2) The Town may elect to file a summons and complaint without first seeking to abate an alleged nuisance condition for any violations of this Chapter.

(10) **Sec. 7-1-100. Judicial enforcement. (Chapter 7, Rural Residential Property Standards; Article 1, Administration and Abatement of Nuisances)**

. . .

(c) Upon a finding of a nuisance and violation of any provision of this Article by any defendant, if the proceeding is brought in the Municipal Court, the Court shall impose the following minimum penalty unless the Town, through the Town Attorney, requests or consents to a lesser or different penalty:

(1) Enjoin or otherwise order the defendant to fully abate and remedy the nuisance within a specified and reasonable period of time not to exceed seven (7) days following the entry of the court's order;

(2) Fine the defendant for each violation an amount not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(3) Order the defendant to forthwith pay restitution to the Town for the actual costs or loss caused to the Town by the violation, including but not limited to administrative expenses, costs to protect the public from the nuisance, court costs and attorney fees; and

(4) Authorize the Town to assess any unpaid costs and expenses for abatement imposed by the Court in Paragraph (3) above as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

(d) In addition to the minimum penalty required by this Section, the Court shall be authorized to:

(1) Imprison the defendant for a term not more one (1) year for each violation;

(2) Permanently enjoin the defendant from further engaging in the use of the property in a manner that would constitute a nuisance;

(3) Find the defendant in contempt of court and assess a penalty as specified by the Court, including a fine and/or imprisonment for failure to abide by, comply with or conform to any court order or injunction; and/or

(4) Impose any other penalty authorized by law.

(11) **Sec. 7-1-180. Violations and penalties. (Chapter 7, Rural Residential Property Standards; Article 1, Administration and Abatement of Nuisances)**

Any person who violates any of the provisions of this Chapter shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

(12) **Sec. 7-2-20. Licensing of dogs required. (Chapter 7, Rural Residential Property Standards; Article 2, Animals)**

(a) Any owner, keeper or possessor of a dog commits a class 2 petty offense if such dog is more than one hundred eighty (180) days old and a current license issued by the Director has not been acquired for such dog.

(b) It is the responsibility of any owner, keeper or possessor of a dog to cause such dog to wear at all times a metal tag bearing the legible number of a current dog license issued to such dog, as provided for in Section 7-2-30 of this Article. At a trial concerning a violation charged under this Section, the absence of such tag upon a dog shall be prima facie evidence that such dog was not properly licensed.

(c) No person charged with violating this Section shall be convicted if he produces to the Court or produces to the Director or an Animal Control Officer, where such person has been issued a penalty assessment summons and complaint, a license for the dog which was current and in effect on the date of the alleged violation concerning such dog.

(13) **Sec. 7-2-140. Penalties. (Chapter 7, Rural Residential Property Standards; Article 2, Animals)**

(a) Each violation of any provision of this Article which constitutes a class 2 petty offense, notwithstanding the provisions of Section 18-1.3-503, C.R.S., shall be punishable upon conviction by a fine not to exceed one thousand dollars ($1,000.00) or by imprisonment in the County Jail for not more than ninety (90) days, or by both such fine and imprisonment for each separate offense.

(b) Any offense and repeated offenses of Section 7-2-70 of this Article shall require a mandatory court appearance. Each violation of Section 7-2-70 shall be punishable, upon conviction, by a fine not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or by imprisonment in the County jail for not more than ninety (90) days, or by both such fine and imprisonment for each separate offense.

(c) By the authority granted in Section 30-15-102, C.R.S., and in addition to Subsection (a) above, the penalty assessment procedures as provided for in Title 16, Article 2, Part 2, C.R.S., are herein adopted by reference. If, in the discretion of the Director, such penalty assessment procedures are utilized in relation to class 2 petty offense violations of this Article, except for violations of Section 7-2-70 of this Article, the following graduated penalty assessment schedule shall be applicable:

(1) First offense: fifty dollars ($50.00).

(2) Second repeated offense: one hundred dollars ($100.00).

(3) Third repeated offense: three hundred dollars ($300.00).

(4) Fourth repeated offense: five hundred dollars ($500.00).

(5) Fifth and above repeated offenses: mandatory court appearance.

(6) Repeated offenses shall be cumulative only within a three-hundred-sixty-five-day period counting from and including the day of the first violation.

(7) Repeated offense means a conviction of a person for an additional repeated violation of the same provisions of this Article, for which violation of said same provision of such person has been previously convicted.

(d) Each violation of any provision of this Article which constitutes a class 2 misdemeanor by involving bodily injury to any person by a dog shall be punished upon conviction as provided for in Section 18.1.3-501, C.R.S.

(14) **Sec. 8-1-30. Amendments. (Chapter 8, Model Traffic Code; Article 1, Model Traffic Code)**

. . .

(16) Subsection 614(1)(a) is modified to read as follows:

"If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a state highway, the department of transportation may designate such portion of the highway as a highway maintenance, repair, or construction zone. Any person who commits the equivalent to certain State violations listed in section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701(4)(c), C.R.S."

(17) Subsection 614(1)(b) is modified to read as follows:

"If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a roadway that is not a state highway, the public entity conducting the activities may designate such portion of the roadway as a maintenance, repair, or construction zone. A person who commits the equivalent to certain State violations listed in section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701(4)(c), C.R.S."

. . .

(30) Section 1208 shall be modified by deleting therefrom the existing Section 1208 and substituting in its place the following:

"1208. Parking for persons with mobility handicaps.

. . .

"e. It shall be unlawful for any motor vehicle without distinguishing license plates or any identifying placard obtained by a person with mobility handicap as prescribed by law to be parked in a parking space identified as being reserved for use by the handicapped. Notwithstanding any other provision of the Model Traffic Code, the penalty resulting from conviction of a violation of this section 1208 or any subpart thereof shall be a fine of not less than fifty dollars ($50.00) nor more than four hundred ninety-nine dollars ($499.00). In enforcing this section 1208, the municipal court shall not have the authority to suspend all or any part of any fine or violation hereof so as to result in a fine of less than fifty dollars

($50.00), it being the intent of the Board of Trustees of the Town of Foxfield that section 1208 of this Code be strictly and diligently enforced so as to provide adequate parking of persons with mobility handicaps free from the interference of those not so handicapped."

(15) **Sec. 8-1-60. Penalties. (Chapter 8, Model Traffic Code; Article 1, Model Traffic Code)**

It shall be unlawful for any person to violate any of the provisions stated or adopted in this Article.

(1) Except as provided in Paragraph (2) below, failure to comply with the terms of this Article shall constitute a civil traffic infraction punishable by a civil penalty of not more than four hundred ninety-nine dollars ($499.00) to be determined and assessed at the discretion of the Municipal Judge, which discretion may be based upon a fine schedule adopted by Resolution of the Board of Trustees.

(2) Any violations of Section 1105, Speed Contests - Speed Exhibitions; Section 1401, Reckless Driving; and Section 1413, Eluding or Attempting to Elude Police Officer, of the Model Traffic Code shall constitute a misdemeanor traffic violation, punishable by a fine of not more than nine hundred ninety-nine dollars ($999.00) per violation or per count, or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment; provided, however, that nothing contained herein shall empower the court to subject any person under the age of eighteen (18) to any imprisonment as a portion of a penalty for violation of the provisions of this Article.

(3) Except for persons who are charged with one of the offenses specified in Paragraph (2) above regarding penalties, if a person fails to appear at a hearing before the Court at the date and time specified in the summons and complaint, or at such other time as the court may order, the Municipal Court shall enter a default judgment, assess an appropriate civil penalty and assess applicable court costs. A default judgment shall have the same legal effect as a plea of guilty or a conviction at trial. The Municipal Court shall report its entry of a default judgment, a plea of guilty or no contest, a conviction or a forfeiture of bail against every person concerning any charge specified in this Section, to the Colorado Department of Revenue, Motor Vehicles Division, and the Motor Vehicles Division may thereafter assess penalty points against such person's driving privileges. Following such a report by the Municipal Court, the provisions of Section 42-4-1709(7), C.R.S., shall control any outstanding obligations to the Municipal Court.

. . . .

(16) **Sec. 8-1-80. Weight limitations. (Chapter 8, Model Traffic Code; Article 1, Model Traffic Code)**

(a) Excess weight; weight limitation. Notwithstanding the specific weight limits set forth in Part 5 of the adopted code, no truck shall be moved or operated or be permitted to be moved or operate on any street, bridge or highway within the Town when the empty weight thereof exceeds seven thousand (7,000) pounds.

(b) Exceptions. The terms of this Section shall not apply to the following:

(1) Vehicles which are traveling within the Town to make a delivery within the corporate limits of the Town;

(2) Authorized emergency vehicles;

(3) Public transportation vehicles operated by municipalities or other political subdivisions of the State;

(4) County road maintenance and construction equipment;

(5) Town road maintenance and construction equipment;

(6) Vehicles registered at an address within the corporate limits of the Town; and

(7) Colorado State Highway 83 or Arapahoe Road.

(c) Penalties. Any violations of this Section shall be traffic infractions punishable by civil penalties of not more than four hundred ninety-nine dollars ($499.00) per violation or count to be determined and assessed at the discretion of the Court. Excess weight violations shall be considered traffic infractions and shall constitute civil matters.

(17) **Sec. 11-2-40. Penalty. (Chapter 11, Streets, Sidewalks and Public Property; Article 2, Newly Paved and Constructed Street)**

Violations of this Article shall be punishable by a fine not to exceed one thousand dollars ($1,000.00). The Town further reserves the right to seek restitution for any actual pecuniary damages arising from a violation of this Article. However, nothing in this Article shall be construed to impair any common law or statutory cause of action, or legal or equitable remedy therefrom, including injunctive relief, or any person for injury or damage arising from any violation of this Article from other law.

(18) **Sec. 11-3-20. Penalties. (Chapter 11, Streets, Sidewalks and Public Property; Article 3, Excavations)**

Any person convicted of violating the provisions of this Article shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

(19) **Sec. 11-4-20. Permit required. (Chapter 11, Streets, Sidewalks and Public Property; Article 4, Access, Approaches, Driveways, Mailboxes and Right-of-Way Permits)**

(a) A right-of-way use permit shall be required for the construction, installation and maintenance of any street, sidewalk, driveway, curb cut, bore or trench. A permit is also required for any substantial modification of existing features or uses of any street or Town right-of-way. Depending upon the type of work to be done, one (1) or more of the following permits may be required:

(1) Public right-of-way license, in accordance with Section 11-4-30 below; or

(2) Public right-of-way use permit, in accordance with Article 5 of this Chapter; or

(3) Overlot grading permit. Application for such permits shall be submitted to the office of the Town Clerk.

(b) It shall be unlawful and deemed a violation of this Chapter to commence construction in or alteration of streets or Town rights-of-way without an approved permit, and any such violation shall be subject to the penalties set forth in Section 11-2-40 of this Chapter.

(20) **Sec. 11-5-260. Penalties. (Chapter 11, Streets, Sidewalks and Public Property; Article 5, Work Permits in the Public Right-of-Way)**

(a) If any person is found guilty of or pleads guilty to a violation of any of the provisions of this Article, he shall be punished as provided in Section 1-4-20. Each and every day or portion thereof during which a violation is committed, continues or is permitted shall be deemed a separate offense.

(b) In addition to or in lieu of the penalties set forth in Subsection (a), the Town may impose the following monetary penalties:

(1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the Town:

a. During the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: fifty dollars ($50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand dollars ($1,000.00) per day.

b. At any time other than the times specified in Subsection (a): twenty-five dollars ($25.00) for each fifteen (15) minutes, or portion thereof, for a maximum of five hundred dollars ($500.00) per day.

(2) For commencing work without a valid permit: two hundred fifty dollars ($250.00), plus twice the applicable permit fee.

(3) For any other violation of a permit: one hundred twenty-five dollars ($125.00) per violation, with no maximum amount.

(c) The penalties set forth in this Section shall not be the Town's exclusive remedy for violations of this Article and shall not preclude the Town from bringing a civil action to enforce any provision of a public right-of-way permit or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one (1) penalty shall not preclude the Town from exercising any other penalty.

(21) **Sec. 16-1-90. Enforcement. (Chapter 16, Zoning; Article 1, General Provisions)**

(a) Issuance of Permits. All officials, employees and consultants of the Town vested with the duty or authority to issue permits shall not issue any permit, certificate or license in conflict with the provisions of this Chapter. Any such permit, certificate or license issued in conflict with the provisions of this Chapter shall be null and void.

(b) Enforcement Responsibilities.

. . . .

(5) Any person engaging in development, change of use, modification or enlargement of use of any land, building or structure that is subject to this Chapter who does not obtain any necessary permits, approvals or variances as prescribed by this Chapter, who does not comply with permit, approval or variance requirements, who acts outside the authority of the permit, approval or variance or who otherwise violates any of the provisions of this Chapter, may be enjoined by the Town from engaging in such activity and may be subject to the procedures and penalties described below.

a. No building or structure shall be erected, moved or structurally altered unless a building permit has been issued by the Building Official or his authorized representative. All building permits shall be issued in conformance with the provisions of this Zoning Ordinance, and all other applicable regulations and shall be valid for a period of time not exceeding one (1) year from the date of issue.

b. No land or building shall hereafter be changed in use, nor shall any new structure, building or land be occupied or used, unless the owner shall have obtained a certificate of occupancy from the Building Official. After inspection by the Building Official and provided that the use shall be in conformance with the provisions of this Chapter and all other applicable regulations, a certificate of occupancy shall be issued. A copy of all certificates of occupancy shall be

filed by the Building Official and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

c. The Town is empowered, pursuant to Article 5 of this Chapter, to order in writing the remedy of any violation of any provision of this Chapter. After any such order has been served, no work on or use of any building, other structure or tract of land covered by such order shall proceed, except to correct such violation or comply with said order.

d. Building permits for new nonresidential construction may be referred to the Town Planner and Town Engineer for review of necessary public improvements.

e. The Town shall not accept any land use application for property currently being used or occupied in violation of this Chapter unless said application seeks to obtain an approval by the Town that would cause the property to be in compliance with the regulations of the Town.

(22) **Sec. 16-1-100. Penalties. (Chapter 16, Zoning; Article 1, General Provisions)**

Any person, firm or corporation, whether as principal agent, employee or otherwise, who violates any of the provisions of this Chapter shall be fined an amount not to exceed four hundred ninety-nine dollars ($499.00) for each such violation, such fine to inure to the Town. Each day of the documented existence of any situation held to be a violation shall be deemed an equal and separate offense.

(23) **Sec. 16-3-100. Sign standards. (Chapter 16, Zoning; Article 3, General Regulations and Development Standards)**

. . .

(l) Enforcement. Any sign not expressly allowed by this Section is prohibited. The Town shall be vested with the duty of enforcing this Section and, in performance of such duty, shall be empowered and directed to:

. . .

(3) Legal action. In addition to those penalties set forth in Section 16-1-100 of this Chapter, the Town is hereby authorized to take appropriate action in a court of competent jurisdiction, including the Municipal Court, to: (a) abate or remove unsafe or dangerous signs pursuant to the provisions of applicable Town nuisance regulations or any other applicable regulations; and (b) seek removal of illegal signs as a remedy in the Municipal Court. The Town is specifically authorized to impose fines not to exceed four hundred ninety-nine dollars ($499.00) per day per violation and, in addition, to seek restitution for any costs associated with the abatement of illegal signs and the enforcement of these sign regulations. The Town is further authorized to immediately remove any signs placed on Town property not in compliance with these regulations.

(24) **Sec. 16-4-50. Grading, erosion and sediment control requirements. (Chapter 16, Zoning; Article 4, Special Requirements)**

. . .

(f) Penalty. it shall be unlawful for any person to violate the provisions of this Section. Any person convicted of violating any provision of this Section shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars ($499.00) per day for each separate offence. Each day a violation of this Section continues shall constitute a separate offense. The Town may

also seek upon a finding of a violation of this Section an injunction, abatement, restitution or any other remedy to prevent, enjoin, abate or remove the violation. A person convicted of violating the provisions of this Section shall also be liable for the actual cost of rehabilitating the property.

(25) **Sec. 16-5-70. Variances. (Chapter 16, Zoning; Article 5, Administration and Procedure)**

(a) Variances.

(1) The Board of Adjustment may authorize variances from the requirements of this Chapter subject to terms and conditions fixed by the Board of Adjustment. A variance from the terms of this Chapter shall be considered an extraordinary remedy and the conditions set forth below are intended as limitations on the Board of Adjustment's power to authorize variances.

(2) The endorsement of the variance by adjacent landowners does not relieve the applicant of the burden of meeting all of the requirements set forth in this Section. No variance shall be authorized unless the Board of Adjustment finds all of the following:

. . .

i. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Chapter and the Comprehensive Plan and particularly the standards set forth in this Section. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation and punishable under Section 16-1-100 of this Chapter.

. . .

(26) **Sec. 18-1-40. Violation, penalty. (Chapter 18, Building Regulations; Article 1, Building Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(27) **Sec. 18-2-40. Violation, penalty. (Chapter 18, Building Regulations; Article 2, Residential Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(28) **Sec. 18-3-40. Violation, penalty. (Chapter 18, Building Regulations; Article 1, Electrical Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(30) **Sec. 18-4-40. Violation, penalty. (Chapter 18, Building Regulations; Article 4, Mechanical Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(27) **Sec. 18-5-40. Violation, penalty. (Chapter 18, Building Regulations; Article 5, Plumbing Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(31) **Sec. 18-6-30. Amendments. (Chapter 18, Building Regulations; Article 6, Fire Code)**

(a) The code adopted herein is hereby modified by the following amendments:

. . .

(3) Section 109.3 shall read as follows:

"**109.3 Violation, penalties.** Persons who shall violate a provision of this code shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official or of a permit or certificate used under provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than nine hundred ninety-nine dollars ($999.00) or by imprisonment not exceeding one (1) year or by both such fine and imprisonment. Each day that a violation continues after due notice has been served shall be deemed a separate offense."

(4) Section 111.4 shall read as follows:

"**111.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a misdemeanor, punishable by a fine of not more than nine hundred ninety nine dollars ($999.00) or by imprisonment not exceeding one (1) year or by both such fine and imprisonment. Each say that a violation continues after due notice has been served shall be deemed a separate offense."

(32) **Sec. 18-6-40. Violation, penalty. (Chapter 18, Building Regulations; Article 6, Fire Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(33) **Sec. 18-7-40. Violation, penalty. (Chapter 18, Building Regulations; Article 7, Fuel Gas Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(34) **Sec. 18-8-40. Violation, penalty. (Chapter 18, Building Regulations; Article 8, Energy Conservation Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(35) **Sec. 18-9-40. Violation, penalty. (Chapter 18, Building Regulations; Article 6, ANSI Manual)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(36) **Sec. 18-10-40. Violation, penalty. (Chapter 18, Building Regulations; Article 10, Elevator and Escalator Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(37) **Sec. 18-11-40. Violation, penalty. (Chapter 18, Building Regulations; Article 11, Dangerous Buildings Code)**

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Violations of this Article shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

Section6. Additions or amendments to the Code, when passed in the form as to indicate the intention of the Town to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section7. Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to those provisions of the Code.

Section8. This Ordinance shall become effective thirty (30) days after publication thereof.

INTRODUCED this 16th day of February, 2012.

ATTEST: Randi Gallivan, Town Clerk

(SEAL)

TOWN OF FOXFIELD , COLORADO Douglass W. Headley, Mayor

ADOPTED AND ORDERED PUBLISHED on this 15th day of March, 2012.

ATTEST: Randi Gallivan, Town Clerk

(SEAL)

APPROVED AS TO FORM: Corey Y. Hoffmann, Town Attorney

TOWN OF FOXFIELD , COLORADO Douglass W. Headley, Mayor

SUPPLEMENT HISTORY TABLE

The table below allows users of this Code to quickly and accurately determine what ordinances have been considered for codification in each supplement. Ordinances that are of a general and permanent nature are codified in the Code and are considered "Included." Ordinances that are not of a general and permanent nature are not codified in the Code and are considered "Omitted."

In addition, by adding to this table with each supplement, users of this Code of Ordinances will be able to gain a more complete picture of the Code's historical evolution.

Ord. No.	Year	Included/Omitted
Supp. No. 5		
01	2015	Included
02	2015	Included
03	2015	Included
04	2015	Included
Supp. No. 6		
06	2015	Included
07	2015	Included
08	2015	Included
01	2016	Omitted
02	2016	Included
03	2016	Included
04	2016	Included
Supp. No. 7		
01	2017	Included
02	2017	Included
Supp. No. 8		
07	2016	Included
01	2018	Included
03	2017	Included
04	2017	Included
05	2017	Included
07	2017	Included
08	2017	Included
09	2017	Included
Supp. No. 9		
02	2018	Included
Supp. No. 10		
01	2019	Included

02	2019	Included
01	2020	Included
Supp. No. 11		
02	2020	Omitted
03	2020	Included
04	2020	Included
01	2021	Included
02	2021	Included
03	2021	Included
04	2021	Included
05	2021	Included
06	2021	Included

CHAPTER 1
General Provisions

ARTICLE 1 Code

Sec. 1-1-10. Adoption of Code.

The *Foxfield Municipal Code*, of which one (1) copy is now on file in the office of the Town Clerk and may be inspected by appointment, is enacted and adopted by reference through Ordinance No. ___1, 2012.

Sec. 1-1-20. Title and scope.

This Code constitutes a compilation, revision and codification of all the ordinances of the Town of Foxfield, Colorado, of a general and permanent nature, and shall be known as the *Foxfield Municipal Code.*

Sec. 1-1-30. Repeal of ordinances not contained in Code.

All existing ordinances and portions of ordinances of a general and permanent nature which are inconsistent with any provision of this Code are hereby repealed to the extent of any inconsistency therein as of the effective date of the ordinance adopting this Code, except as hereinafter provided.

Sec. 1-1-40. Matters not affected by repeal.

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-1-50 of this Code shall not affect any offense committed or act done, any penalty or forfeiture incurred or any contract, right or obligation established prior to the time said ordinances and parts of ordinances are repealed.

Sec. 1-1-50. Ordinances saved from repeal.

The continuance in effect of ordinances and parts of ordinances, not included in this Code, shall not be affected by the adoption of this Code, and this Code shall not repeal or amend any such ordinance or part of any such ordinance. Among the ordinances not repealed or amended by the adoption of this Code are ordinances:

(1) Authorizing the issuance of general obligation or specific local improvement district bonds.

(2) Appropriating money.

(3) Levying a temporary tax or fixing a temporary tax rate.

(4) Relating to salaries.

(5) Calling or providing for a specific election.

(6) Creating, opening, dedicating, naming, renaming, vacating or closing specific streets, alleys and other public ways.

(7) Establishing the grades or lines of specific streets, sidewalks and other public ways.

(8) Creating specific sewer and paving districts and other local improvement districts.

(9) Making special assessments for local improvement districts and authorizing refunds from specific local improvement district bond proceeds.

(10) Annexing territory to or excluding territory from the Town.

(11) Dedicating or accepting any specific plat or subdivision.

(12) Authorizing specific contracts for purchase of beneficial use of water by the Town.

(13) Approving or authorizing specific contracts with the State, with other governmental bodies or with others.

(14) Authorizing a specific lease, sale or purchase of property.

(15) Granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers.

(16) Granting a specific gas company or other public utility the right or privilege of constructing lines in the streets and alleys or of otherwise using the streets and alleys.

(17) Granting a franchise to a specific public utility company or establishing rights for or otherwise regulating a specific public utility company.

(18) Amending the Official Zoning Map.

Sec. 1-1-60. Changes in previously adopted ordinances.

In compiling and preparing the ordinances of the Town for adoption and revision as part of this Code, certain grammatical changes and other changes were made in one (1) or more of said ordinances. It is the intention of the Board of Trustees that all such changes be adopted as part of this Code as if the ordinances so changed had been previously formally amended to read as such.

ARTICLE 2 Definitions and Usage

Sec. 1-2-10. Definitions.

The following words and phrases, whenever used in the ordinances of the Town of Foxfield and/or any codification of the same, shall be construed as defined in this Section, unless a different meaning is intended from the context or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

Board of Trustees means the Board of Trustees of the Town of Foxfield.

Code means the Foxfield Municipal Code as published and subsequently amended, unless the context requires otherwise.

County means the County of Arapahoe, Colorado.

C.R.S. means the Colorado Revised Statutes, including all amendments thereto.

Law denotes applicable federal law, the Constitution and statutes of the State of Colorado, the ordinances of the Town and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

May is permissive.

Misdemeanor means and is to be construed as meaning violation and is not intended to mean crime or criminal conduct.

Month means a calendar month.

Oath shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words swear and sworn shall be equivalent to the words affirm and affirmed.

Ordinance means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.

Owner, applied to a building, land, motorized vehicle, animal or other real or personal property, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety or any other person with a possessory interest in the whole or a part of said building, land, motor vehicle, animal or other real or personal property.

Person means natural person, joint venture, joint stock company, partnership, association, club, company, firm, corporation, business, trust or organization, or the manager, lessee, agent, servant, officer or employee of any of them.

Personal property includes money, goods, chattels, things in action and evidences of debt.

Preceding and *following* mean next before and next after, respectively.

Property includes real and personal property.

Real property includes lands, tenements and hereditaments.

Shall and *must* are both mandatory.

Sidewalk means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

State means the State of Colorado.

Street includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in the Town which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

Tenant and *occupant*, applied to a building or land, includes any person who occupies all or a part of such building or land, whether alone or with others.

Town means the Town of Foxfield, Colorado, or the area within the territorial limits of the Town of Foxfield, Colorado, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.

Written or *in writing* includes printed, typewritten, electronic, mimeographed, multigraphed, any representation of words, letters, symbols or figures, or otherwise reproduced in visible form.

Year means a calendar year.

Sec. 1-2-20. Computation of time.

Except as provided by applicable state law, the time within which an act is to be done shall be computed by excluding the first day and including the last day; but if the time for an act to be done shall fall on Saturday, Sunday or a legal holiday, the act shall be done upon the next regular business day following such Saturday, Sunday or legal holiday.

Sec. 1-2-30. Title of office.

Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the Town, or his designated representative.

Sec. 1-2-40. Usage of terms.

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such peculiar and appropriate meaning.

Sec. 1-2-50. Grammatical interpretation.

The following grammatical rules shall apply to this Code and to Town ordinances:

(1) Any gender includes the other genders.

(2) The singular number includes the plural and the plural includes the singular.

(3) Words used in the present tense include the past and future tenses and vice versa, unless manifestly inapplicable.

(4) Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.

ARTICLE 3 General

Sec. 1-3-10. Titles and headings not part of Code.

Chapter and Article titles, headings, numbers and titles of sections and other divisions in this Code or in supplements made to this Code, may be inserted for the convenience of persons using this Code, and are not part of this Code.

Sec. 1-3-20. Authorized acts.

When this Code requires an act to be done which may be done as well by an agent, designee or representative as by the principal, such requirement shall be construed to include all such acts performed when done by an authorized agent, designee or representative.

Sec. 1-3-30. Prohibited acts.

Whenever in this Code or any Town ordinance any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

Sec. 1-3-40. Severability.

The provisions of this Code are declared to be severable, and, if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this Code shall continue in full force and effect, it being the legislative intent that this Code would have been adopted even if such unconstitutional matter had not been included therein. It is further declared that, if any provision or part of this Code, or the application thereof to any person or circumstances, is held invalid, the remainder of this Code and the application thereof to other persons shall not be affected thereby.

ARTICLE 4 General Penalty

Sec. 1-4-10. Violations.

It is a violation of this Code for any person to do any act which is forbidden or declared to be unlawful or to fail to do or perform any act required in this Code.

Sec. 1-4-20. General penalty for violation.

(a) Any person who violates or fails to comply with any provision of this Code for which a different penalty is not specifically provided shall, upon conviction thereof, be punished by a fine not exceeding two thousand six hundred fifty dollars ($2,650.00), as shall be adjusted for inflation on January 1, 2014, and on January 1 of each year thereafter based on the annual percentage change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder, All Items, All Urban Consumers, or its successor index, or by imprisonment for a period of not more than three hundred sixty-four (364) days, or by both such fine and imprisonment, except as hereinafter provided in Section 1-4-30 below. In addition, such person shall pay all costs and expenses in the case, including attorney fees. Each day such violation continues shall be considered a separate offense.

(b) A separate offense shall be deemed committed each day that a violation of this Code occurs or continues.

(Ord. 1 §1, 2012; Ord. 01 §1, 2014; Ord. 01 §1, 2019)

Sec. 1-4-30. Altering or tampering with Code; penalty.

Any person who alters, changes or amends this Code, except in the manner prescribed in this Chapter, or who alters or tampers with this Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby, shall, upon conviction thereof, be punished as provided by Section 1-4-20 hereof.

Sec. 1-4-40. Penalty for violations of ordinances adopted after adoption of Code.

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in this Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-4-20 unless another penalty is specifically provided for the violation.

Sec. 1-4-50. Interpretation of unlawful acts.

Whenever in this Code any act or omission is made unlawful, it is also unlawful to cause, allow, permit, aid, abet or suffer such unlawful act or omission. Concealing or in any manner aiding in the concealing of any unlawful act or omission is similarly unlawful.

ARTICLE 5 Inspections

Sec. 1-5-10. Entry.

Whenever necessary to make an inspection to enforce any provision of this Code or any ordinance, or whenever there is probable cause to believe that there exists an ordinance violation in any building or upon any premises within the jurisdiction of the Town, any public inspector of the Town may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by

ordinance. In the event the occupant, or if unoccupied, the owner, refuses entry to such building or premises, or the public inspector is unable to obtain permission of such occupant or owner to enter such building or premises, the public inspector is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

Sec. 1-5-20. Authority to enter premises under emergency.

Law enforcement officers certified with the State, fire departments operating under a mutual assistance agreement or automatic aid agreement with the Town, certified emergency medical technicians and paramedics during the course of employment with a governmental agency are hereby granted the authority to enter private residences within the Town without invitation from the occupant of the residence at any time such persons have reasonable grounds to believe a medical emergency is in progress within the subject premises and the occupant of such premises is incapable of consenting to the entry because of such medical emergency.

Sec. 1-5-30. Announcement of purpose and authority to enter premises.

Unauthorized entry pursuant to Section 1-5-20 shall be permissible only after the individuals seeking entry have announced both their purpose and authority in a loud and conspicuous voice and have waited a reasonable period of time for the occupant to respond before making entry.

ARTICLE 6 Seal

Sec. 1-6-10. Corporate seal.

A seal, the impression of which is as follows:

(1) In the center the words "Incorporated 1994" and "12-15-94."

(2) Around the outer band the words "The Town of Foxfield" (top) and "Colorado" (bottom) shall be and is hereby declared and adopted to be the Corporate Seal of the Town of Foxfield, Colorado.

ARTICLE 7 Bids for Public Improvement Projects

Sec. 1-7-10. Bidding requirements for public improvement projects.

(a) Unless otherwise provided by subsection (b) of this Section 1-7-10, all work done by the Town in the construction of works of public improvement of five thousand dollars ($5,000.00) or more shall be done by contract to the lowest responsible bidder on open bids after ample advertisement.

(b) The Town may, on an annual basis, contract for works of public improvements by combining, in one (1) single open bidding process, multiple projects. Any single project in excess of thirty thousand dollars ($30,000.00) shall be done by contract to the lowest responsible bidder on open bids after ample advertisement.

(c) The Town is not required to advertise for or receive bids for such technical, professional, or incidental assistance it requires in guarding the interests of the Town against the neglect of contractors in the performance of such work.

(d) If the Town has conducted either of the competitive bidding processes described in subsection (a) or (b) above and the Town has determined that all responses received, if any, are not satisfactory or responsive to the request for bids, the Board of Trustees may determine it is in the best interests of the Town to negotiate and contract for the same services and/or goods without conducting another competitive bidding process.

(Ord. 04 §1, 2015; Ord. 02 §1, 2019)

CHAPTER 2
Administration

ARTICLE 1 Elections

Sec. 2-1-10. Conduct of elections.

All elections shall be held and conducted in accordance with the Colorado Municipal Election Code of 1965. The Town may by ordinance or Intergovernmental Agreement determine to follow all or part of the provisions of the Uniform Election Code of 1992 for any election.

Sec. 2-1-20. Write-in candidate affidavit.

No write-in vote for any municipal office shall be counted unless an affidavit of intent has been filed with the Town Clerk by the person whose name is written in not later than sixty-four (64) days before the election indicating that such person desires the office and is qualified to assume the duties of that office if elected.

Editor's note(s)—Ord. No. 01, § 1, adopted Jan. 18, 2018, repealed the former § 2-1-20 and enacted a new section as set out herein. The former § 2-1-20 pertained to similar subject matter and derived from Ord. 1, § 1, adopted in 2012.

Sec. 2-1-30. Cancellation of election.

(a) If the only matter before the voters is the election of persons to office and if, at the close of business on the sixty-third day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent as set forth in Section 2-1-20, the Town Clerk, if instructed by resolution of the Board of Trustees either before or after such date, shall cancel the election and candidate, by resolution of the Board of Trustees, shall be declared to be elected.

(b) Notice of such cancellation shall be published, if possible, and notice of such cancellation shall be posted at each polling place and in not less than one (1) other public place.

(Ord. 01 §2, 2018)

Editor's note(s)—Ord. No. 01, § 2, adopted Jan. 18, 2018, repealed the former § 2-1-30 and enacted a new section as set out herein. The former § 2-1-30 pertained to similar subject matter and derived from Ord. 1, § 1, adopted in 2012.

ARTICLE 2 Mayor and Board of Trustees

Sec. 2-2-10. Board of Trustees; terms, authority, qualifications and vacancies.

(a) Terms.

(1) At the April 2008 regular election, Town voters shall select three (3) at-large representatives.

(2) At the next regular election in April 2010, voters shall select one (1) representative from each Ward.

(3) At regular municipal elections held after April 2010, each candidate elected for an expired Board of Trustee or Mayoral seat shall serve for a term of four (4) years.

(b) Authority. The Board of Trustees shall constitute the legislative body of the Town, shall have the power and authority, except as otherwise provided by statute, to exercise all power conferred upon or possessed by the Town, and shall have the power and authority to adopt such laws, ordinances and resolutions as it shall deem proper in the exercise thereof.

(c) Authority to establish fees.

(1) The Board of Trustees shall have the authority to impose and to modify from time to time, by resolution, all fees or charges for applications, petitions or requests for services, actions, permits, reviews or approvals which the Town is authorized under any statute, ordinance, regulation or other law to impose.

(2) In establishing appropriate fees or charges, the Board of Trustees is authorized to provide that a fee shall be a minimum fee plus the actual, reasonable costs, fees and expenses incurred in the specific action.

(3) The Board of Trustees is authorized to delegate by resolution the authority to estimate the actual, reasonable costs, fees and expenses which will be incurred by the Town in reviewing or processing any application, petition, request or permit and to require a deposit of this amount or any portion thereof as a condition of acceptance of such application, petition, request or permit by the Town.

(4) This Section shall not repeal, amend or affect any fine or penalty existing on this date of enactment of this Code or established elsewhere in the Code.

(d) Qualifications. Each Trustee shall be a resident of the Town and a registered elector who has resided within the Town limits for a period of at least twelve (12) consecutive months immediately preceding the date of the election. However, in case of annexation of property, any person who has resided within the annexed territory for the time prescribed in this Subsection shall be deemed to have met the residence requirements for the Town.

(e) Removal from office. By a majority vote of all members of the Board of Trustees, the Mayor or any Trustee may be removed from office. No such removal shall be made without a charge in writing and an opportunity of hearing being given unless the officer against whom the charge is made has moved out of the Town limits. When any officer ceases to reside within the Town limits, he may be removed from office pursuant to this Subsection.

(f) Vacancies. In case of the death, resignation, vacation or removal of any of the Trustees during his term of office, the Board of Trustees, by a majority vote of all remaining members thereof, may select and appoint, from among the duly qualified electors of the Town, a suitable person to fill the vacancy. The person so appointed shall hold office until the next regular election and until his successor is elected and qualified. If the term of the person creating the vacancy was to extend beyond the next regular election, the person elected to fill the vacancy shall be elected for the unexpired term. Where vacancies exist in the offices of Trustee and successors are to be elected at the next election to fill the unexpired terms, the three (3) candidates for Trustee receiving the highest number of votes shall be elected to four-year terms, and the candidates receiving the next highest number of votes, in descending order, shall be elected to fill the unexpired terms.

(Ord. 1 §1, 2000; Ord. 7 §§1—3, 2003; Ord. 1 §1, 2012; Ord. 02 §1, 2014; Ord. 08 §1, 2014)

Sec. 2-2-20. Mayor.

(a) The Mayor shall be elected to serve a term of four (4) years. The Mayor shall meet the same qualifications as a Trustee and, in the event of a vacancy in the office of Mayor, such vacancy shall be filled in the same manner as a vacancy in the office of Trustee, as set forth in Section 2-2-10 above.

(b) The Mayor shall preside over all meetings of the Board of Trustees and shall perform such duties as may be required of him by statute or ordinance. Insofar as is required by statute and for all ceremonial purposes, the Mayor shall be the executive head of the Town.

(c) The Mayor shall execute and authenticate by his signature all bonds, warrants, contracts and instruments of and concerning the business of the Town, as the Trustees or any statutes or ordinances may require.

(d) Except as may be required by statute, the Mayor shall exercise only such powers as the Trustees shall specifically confer upon him.

(Ord. 1 §1, 2012)

Sec. 2-2-30. Mayor Pro Tem.

At its first meeting following each biennial election, the Board of Trustees shall choose one (1) of the Trustees as Mayor Pro Tem. In the absence of the Mayor from any meeting of the Board of Trustees, during the absence of the Mayor from the Town or during the inability of the Mayor to act, the Mayor Pro Tem shall perform the duties of the Mayor.

Sec. 2-2-40. Acting Mayor.

In the event of the absence or disability of both the Mayor and the Mayor Pro Tem, the Trustees may designate another Trustee to serve as acting Mayor during such absence or disability.

Sec. 2-2-50. Compensation.

Effective for those individuals elected to the offices of Mayor and Board of Trustees on April 4, 2000, and at subsequent elections, the Mayor and Board of Trustees shall receive compensation at the rate of one hundred dollars ($100.00) per month.

Sec. 2-2-60. Meetings.

(a) The Board of Trustees may meet in regular session on the first and/or third Thursday of each month at 6:30 p.m. at South Metro Fire Protection District Station #42, 7320 South Parker Road, Foxfield, Colorado 80016, unless another time and/or location is provided by a resolution of the Board of Trustees.

(b) Nothing in this Chapter shall be construed to prevent the Board of Trustees from determining to conduct special meetings or workshops and/or study sessions on any other day, as determined by the Board of Trustees.

(Ord. 2 §1, 2002; Ord. 1 §1, 2012; Ord. 05, §1, 2021)

Sec. 2-2-70. Posting of meeting notice.

The time, place and agenda of regular monthly meetings of the Board of Trustees shall be posted at a location within the Town, to be designated annually by the Board of Trustees. Notice of all meetings shall be posted at least twenty-four (24) hours prior to such meeting.

Sec. 2-2-80. Rules of procedure.

The rules contained in *Robert's Rules of Order* shall serve as a guide to all Board of Trustees meetings, to the extent they are applicable, and consistent with the rules of order adopted by ordinance.

Sec. 2-2-90. Undesirable Plant Management Advisory Commission designated.

The Board of Trustees is appointed to act as the Undesirable Plant Management Advisory Commission for the Town and shall have the duties and responsibilities as provided by state statutes.

ARTICLE 3 Officers and Employees

Sec. 2-3-10. Appointed officers.

(a) The following officers of the Town shall be appointed by a majority vote of all the members of the Board of Trustees:

  (1) Town Attorney;

  (2) Town Clerk; and

  (3) Town Treasurer.

(b) Said officers shall hold their respective offices until their successors are duly appointed and qualified. Vacancies shall be filled by appointment of the Board of Trustees.

(Ord. 1 §1, 2012)

Sec. 2-3-20. Powers and duties of officers.

Appointed officers of the Town shall have such powers and perform such duties as are now or hereafter may be prescribed by state law and the ordinances of the Town, shall further perform any additional duties required by the Board of Trustees, and shall be subject to the control and orders of the Board of Trustees.

Sec. 2-3-30. Code Enforcement Officer; powers; certification not required.

(a) The Town determines that it is necessary to hire a Code Enforcement Officer to enforce the ordinances of the Town pursuant to Sections 31-4-304 and 31-15-401, C.R.S.

(b) The Code Enforcement Officer shall be empowered as a designee and representative of the Mayor pursuant to the ordinances of the Town to issue citations or summonses and complaints enforcing Town ordinances.

(c) It shall not be a requirement by the Town that the Code Enforcement Officer be certified pursuant to the requirements of Part 3 of Article 31 of Title 24, C.R.S.

(Ord. 6 §§1—3, 1996; Ord. 1 §1, 2012)

Sec. 2-3-40. Town Clerk; appointment.

(a) The Town Clerk shall be appointed by the Board of Trustees not later than the second regular meeting of the Board of Trustees after each regular municipal election.

(b) Unless the Town Clerk shall sooner resign or be removed from office, the Town Clerk shall hold office until his successor is duly appointed and has complied with Section 31-4-401, C.R.S., but in no event beyond thirty (30) days after compliance with Section 31-4-401, C.R.S., by members of the succeeding Board of Trustees.

(c) Any vacancy in the office of the Town Clerk shall be filled by appointment by the Board of Trustees for the unexpired term of office created by the vacancy.

(d) One (1) person may simultaneously serve as Town Clerk and Town Treasurer.

(e) The Board of Trustees may make an interim appointment in order to temporarily fill a vacancy in the office of the Town Clerk pending a regular appointment under paragraph (c) above.

(Ord. 6 §1, 2010; Ord. 1 §1, 2012)

Sec. 2-3-50. Town Clerk; powers and duties.

In addition to the duties imposed by state law, the Town Clerk shall perform the following duties:

(1) Coordinate, plan and prepare agendas and information packets for Town meetings; post notices; attend and record minutes of Town meetings.

(2) Coordinate functions of the Town Clerk's Office pursuant to the provisions of the state statutes and this Code, which may include complex administrative, clerical and secretarial functions.

(3) Act as custodian of all official Town ordinances, resolutions, proclamations and archival records.

(4) Maintain custody of and administer the official Town seal.

(5) Supervise the entire Town election process and function as the Deputy County Clerk for voter registration.

(6) Maintain the Municipal Code book and oversee annual codification.

(7) Write resolutions, proclamations, public notices, letters, flyers, newsletters and memorandums for the Mayor, Board of Trustees and Town Administrator as needed.

(8) Other duties and responsibilities as may be assigned by the Board of Trustees or Town Administrator at any time.

Sec. 2-3-60. Town Clerk; oath.

(a) The Town Clerk, before entering upon his duties, shall take an oath before an officer qualified by law to administer such oath, that he will support the Constitution and laws of the United States and the State of Colorado and the ordinances of the Town, and faithfully perform the duties of his office. Such oath shall be made and subscribed substantially in the following form:

I, _____, do solemnly swear that I will support the Constitution and laws of the United States, the Constitution and laws of the State of Colorado and the Ordinances of the Town of Foxfield, and that I will faithfully perform all the duties of the office or Town Clerk, upon which I am about to enter.

Sworn to and subscribed before me this ____ day of _____, A.D. 20__.

(b) No bond shall be required of the Town Clerk.

(Ord. 6 §3, 2010; Ord. 1 §1, 2012)

Sec. 2-3-70. Town Clerk; compensation.

The Town Clerk shall receive compensation for services rendered in an amount to be determined by the Board of Trustees.

Sec. 2-3-80. Town Clerk; removal.

The Town Clerk may be removed from office in accordance with state law.

Sec. 2-3-90. Town Treasurer; appointment.

(a) The Town Treasurer shall be appointed by the Board of Trustees not later than the second regular meeting of the Board of Trustees after each regular municipal election.

(b) Unless the Town Treasurer shall sooner resign or be removed from office, the Town Treasurer shall hold office until his successor is duly appointed and has complied with Section 31-4-401, C.R.S., but in no event beyond thirty (30) days after compliance with Section 31-4-401, C.R.S., by members of the succeeding Board of Trustees.

(c) Any vacancy in the office of the Town Treasurer shall be filled by appointment by the Board of Trustees for the unexpired term of office created by the vacancy.

(d) One (1) person may simultaneously serve as Town Clerk and Town Treasurer.

(e) The Board of Trustees may make an interim appointment in order to temporarily fill a vacancy in the office of the Town Treasurer pending a regular appointment under paragraph (c) above.

(Ord. 7 §1, 2010; Ord. 1 §1, 2012)

Sec. 2-3-100. Town Treasurer; powers and duties.

In addition to the duties imposed by state law, the Town Treasurer shall perform the following duties:

(1) Receive all monies belonging to the Town and give receipt therefor.

(2) Maintain and account for all monies received in such funds as may be provided by law and by the Board of Trustees and keep an accurate account of all monies received and expended by the Town.

(3) Pay such sums from the treasury of the Town as may be approved by the Board of Trustees.

(4) Other duties and responsibilities as may be assigned by the Board of Trustees or Town Administrator at any time.

Sec. 2-3-110. Town Treasurer; oath of office; bond.

(a) The Town Treasurer, before entering upon his duties, shall take an oath before an officer qualified by law to administer such oath, that he will support the Constitution and laws of the United States and of the State of Colorado and the ordinances of the Town, and faithfully perform the duties of his office. Such oath shall be made and subscribed substantially in the following form:

> I, _____, do solemnly swear that I will support the Constitution and laws of the United States, the Constitution and laws of the State of Colorado and the Ordinances of the Town of Foxfield, and that I will faithfully perform all the duties of the office of Town Treasurer, upon which I am about to enter.
>
> Sworn to and subscribed before me this ____ day of _____, A.D. 20__.

(b) Before entering upon the duties of the office, the Town Treasurer shall furnish a surety bond in the amount of ten thousand dollars ($10,000.00) to be approved by the Board of Trustees, conditioned upon the faithful performance of his duties as Town Treasurer and that, when he shall vacate such office, he will turn over and deliver to his successor all monies, books, papers, property or things belonging to the Town in his charge as Town Treasurer. The premium of said bond shall be paid by the Town.

(Ord. 7 §3, 2010; Ord. 1 §1, 2012)

Sec. 2-3-120. Town Treasurer; compensation.

The Town Treasurer shall receive compensation for services rendered in an amount to be determined by the Board of Trustees.

Sec. 2-3-130. Town Treasurer; removal.

The Town Treasurer may be removed from office in accordance with state law.

Sec. 2-3-140. Town Attorney; appointment.

(a) The Town Attorney shall be appointed by the Board of Trustees not later than the second regular meeting of the Board of Trustees after each regular municipal election.

(b) Unless the Town Attorney shall sooner resign or be removed from office, the Town Attorney shall hold office until his successor is duly appointed and has complied with Section 31-4-401, C.R.S., but in no event beyond thirty (30) days after compliance with Section 31-4-401, C.R.S., by members of the succeeding Board of Trustees.

(c) Any vacancy in the office of the Town Attorney shall be filled by appointment by the Board of Trustees for the unexpired term of office created by the vacancy.

(d) The Board of Trustees may make an interim appointment in order to temporarily fill a vacancy in the office of the Town Attorney pending a regular appointment under Subsection (c) above.

(Ord. 8 §1, 2010; Ord. 1 §1, 2012)

Sec. 2-3-150. Town Attorney; powers and duties.

In addition to the duties imposed by state law, the Town Attorney shall perform the following duties.

(1) The Town Attorney shall act as legal advisor to, and be the attorney and counsel for, the Board of Trustees and shall be responsible solely to the Board of Trustees. He shall render such services as may be requested from time to time by the Board of Trustees.

(2) He shall advise any officer or department head of the Town in matters relating to his official duties and shall file with the Town Clerk a copy of all written opinions given by him.

(3) He shall call to attention the Board of Trustees all matters of law, and changes or developments therein, affecting the Town.

(4) He shall perform such other duties as may be prescribed for him by the Board of Trustees.

Sec. 2-3-160. Town Attorney; oath of office.

The Town Attorney, before entering upon his duties, shall take an oath before an officer qualified by law to administer such oath, that he will support the Constitution and laws of the United States and of the State of Colorado and the ordinances of the Town, and faithfully perform the duties of his office. Such oath shall be made and subscribed substantially in the following form:

> I, _____, do solemnly swear that I will support the Constitution and laws of the United States, the Constitution and laws of the State of Colorado and the Ordinances of the Town of Foxfield, and that I will faithfully perform all the duties of the office of Town Treasurer, upon which I am about to enter.
>
> Sworn to and subscribed before me this ____ day of _____, A.D. 20__.

(Ord. 8 §3, 2010; Ord. 1 §1, 2012)

Sec. 2-3-170. Town Attorney; compensation.

The Town Attorney shall receive compensation for services rendered in an amount to be determined by the Board of Trustees.

Sec. 2-3-180. Town Attorney; removal.

The Town Attorney may be removed from office in accordance with state law.

ARTICLE 4 Municipal Court

Division 1 General Provisions

Sec. 2-4-10. Creation of Municipal Court.

There is created and established a qualified Municipal Court of record in and for the Town, pursuant to and governed by the provisions of state law.

Sec. 2-4-20. Original jurisdiction.

The Municipal Court shall have original jurisdiction of all cases arising under the provisions of this Code and the ordinances of the Town, with full power to punish violators thereof by the imposition of such fines and penalties as are prescribed in this Code or by ordinance.

Sec. 2-4-30. Appointment of Municipal Judge.

The Municipal Court shall be presided over by a Municipal Judge, appointed for a term of two (2) years by ordinance of the Board of Trustees. Additional judges as may be needed to transact the business of the Court may be appointed by the Board of Trustees for such terms as necessary.

Sec. 2-4-40. Compensation of Judge.

The compensation of the Municipal Judge shall be an annual salary in an amount set by ordinance of the Board of Trustees, and shall be payable monthly.

Sec. 2-4-50. Oath of office.

Before entering upon the duties of his office, the Municipal Judge shall take an oath or affirmation that he will support the Constitution of the United States, the Constitution of the State and the laws of the Town, and will faithfully perform the duties of his office.

Sec. 2-4-60. Rules of procedure.

The procedures of the Municipal Court shall be in accordance with the Municipal Court Rules of Procedure as promulgated by the Colorado Supreme Court. In addition to other powers, the Municipal Judge shall have full power and authority to make and adopt rules and regulations for conducting the business of the Municipal Court, consistent with Municipal Court Rules of Procedure.

Sec. 2-4-70. Court costs.

(a) Whenever the presiding judge imposes any fine for any violation of a municipal ordinance, in addition to any such fine or any other sentence, the Municipal Judge may also impose the following costs:

(1) Twenty-five dollars ($25.00) upon the entry of a plea of guilty or no contest, or the finding of guilt by the Municipal Court.

(2) Twenty-five dollars ($25.00) upon the issuance of a bench warrant for failing to appear in Court, failing to pay fines and costs, or failing to comply with any order of the Court.

(3) Five dollars ($5.00) for each subpoenaed Town witness who appears at a trial upon a finding of guilty by the Court or by the jury, or upon the entry of a plea of guilty or no contest on the date of trial.

(b) For all appeals from decisions in the Municipal Court to the Arapahoe County District Court, the Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall require a transcript deposit according to the following schedule:

(1) One hundred fifty dollars ($150.00) transcript deposit for a trial to the Court; and

(2) Two hundred dollars ($200.00) transcript deposit for a trial to a jury.

(c) The Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall charge the transcript preparation fee and photocopy cost prescribed by the Supreme Court of Colorado. The transcript deposit shall be applied

against the preparation cost of a transcript. If the preparation cost of a transcript is less than the transcript deposit, then the balance will be refunded to the requesting party by the Municipal Court Clerk. If the preparation cost of the transcript is more than the transcript deposit, the Municipal Judge as ex-officio Clerk or the Municipal Court Clerk shall require the requesting party to pay the additional cost to prepare the transcript. The Municipal Judge may waive the transcript deposit and transcript preparation cost in all instances of proven indigence.

(Ord. 9 §1, 2006; Ord. 2 §1, 2011; Ord. 1 §1, 2012)

Sec. 2-4-80. Transcripts.

Verbatim records of all proceedings and evidence at trials of all cases coming before the Municipal Court shall be kept by either electronic devices or stenographic means.

Sec. 2-4-90. Trials.

(a) Trial by jury. A defendant shall be entitled to a jury trial if:

(1) The defendant is charged with an offense for which Section 16-10-101, et seq., C.R.S., preserves the right to a jury by trial; and

(2) Within twenty (20) days after arraignment or entry of a plea, the defendant files with the Municipal Court a written jury demand and at the same time tenders a jury fee of forty-five dollars ($45.00), unless the jury fee is waived by the Judge because of the indigence of the defendant.

(b) Jury membership. The jury shall consist of three (3) jurors unless a greater number, not to exceed six (6), is requested by the defendant in a written jury demand. Jurors shall be selected from a jury list as provided for courts of record, and shall be paid the sum of:

(1) Six dollars ($6.00) per day for actual jury service; or

(2) Three dollars ($3.00) for each day of service on the jury panel alone.

(Ord. 9 §2, 2006; Ord. 1 §1, 2012)

Division 2 Traffic Infractions

Sec. 2-4-110. General.

Notwithstanding any provisions of the law to the contrary, all violations of the Model Traffic Code as the same may be adopted from time to time by the Town, except for any violation specifically identified as a misdemeanor traffic violation by said Model Traffic Code, shall be classified as a Traffic Infraction and shall constitute a civil and not a criminal matter.

Sec. 2-4-120. Definitions.

The following words, terms and phrases when used in this Section shall have the following meanings:

Charging document shall mean the document commencing or initiating a Traffic Infraction matter or other offense, whether denoted as a complaint, summons and complaint, citation, penalty assessment notice or other document charging the person with the commission of one (1) or more Traffic Infractions or other offenses.

Clerk of the Court shall mean the Town employee or the Town employee's designee assigned to the duties of supervision and management of the Municipal Court functions.

Defendant shall mean any person charged with the commission of a Traffic Infraction or other offense.

Judgment shall mean a finding by the Court of guilt or liability against any person for the commission of a Traffic Infraction or other offense.

Penalty shall mean a fine imposed pursuant to the Ordinances of the Town for a violation of a Traffic Infraction.

Traffic Infraction shall mean a violation of any provision of the Model Traffic Code, as may be adopted by the Town, except when said Model Traffic Code specifically designates offenses as misdemeanor traffic offenses. Any person against whom judgment is entered for a Traffic Infraction hereunder shall be subject to the penalty of a fine and shall not be subject to imprisonment on account of such judgment. A Traffic Infraction shall constitute a civil matter and not a criminal violation.

Sec. 2-4-130. Scope and purpose.

This Division is promulgated to govern practice and procedures for the handling of Traffic Infractions as described herein and in accordance with Section 42-4-1701, et seq., C.R.S. The purpose is to provide orderly, expeditious and fair disposition of such Traffic Infractions.

Sec. 2-4-140. Application.

The provisions of this Division apply to actions in which only the commission of Traffic Infractions are charged. In any action in which the commission of a Traffic Infraction and any other offense are charged, the action shall be treated as one proceeding governed by the rules, ordinances and statutes applicable to the alleged offense.

Sec. 2-4-150. Fines.

Fines for Traffic Infractions. The Board of Trustees shall have the authority to set fines for Traffic Infractions by adopting a fine schedule by resolution. Such fines shall fall within the ranges established by this Section or other applicable provision of law. The Municipal Court shall have the ability to waive, in part or in whole, fines based on appropriate plea agreements.

Sec. 2-4-160. No jury trial for traffic infractions.

A defendant brought to trial solely upon a Traffic Infraction shall have no right to a trial by jury as contemplated by Section 13-10-14, C.R.S., or Rule 223 of the Colorado Municipal Court Rules of Procedure, and a trial of a Traffic Infraction shall be to the Court. No defendant found civilly liable for a Traffic Infraction shall be punished by imprisonment for the infraction.

Sec. 2-4-170. Commencement of action.

Any action under these rules is commenced by the tender or service of a charging document upon a defendant, and by the filing of a charging document with the Municipal Court.

Sec. 2-4-180. Payment before appearance.

(a) The Clerk of the Court shall accept payment of a penalty assessment notice by a defendant without an appearance before the Court if payment is made within the period following the issuance of the charging

document and ending at the time scheduled for the first hearing, provided that the Clerk of the Court has a copy of the charging document.

(b) At the time of payment, the defendant shall sign a waiver of rights and acknowledgement of guilt or liability or tender a no contest plea upon a form approved by the Municipal Judge.

(c) This procedure shall constitute an entry and satisfaction of judgment.

(Ord. 9 §3, 2006; Ord. 1 §1, 2012)

CHAPTER 4
Revenue and Finance

ARTICLE 1 Fiscal Year

Sec. 4-1-10. Fiscal year established.

The fiscal year of the Town shall commence on January 1 of each year and shall extend through December 31 of the same year.

ARTICLE 2 General and Special Funds

Sec. 4-2-10. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Town Treasurer. The Town Treasurer shall maintain accounting records and account for all of said moneys as provided by law. Moneys in the funds of the Town shall be invested or deposited by the Town Treasurer in accordance with the provisions of law. All income from the assets of any fund shall become a part of the fund from which derived and shall be used for the purpose for which such fund was created; provided that, except as otherwise provided in this Code or by other ordinances or laws, the Board of Trustees may transfer out of any fund, other than any enterprise funds, any amount at any time to be used for such purpose as the Board of Trustees may direct.

Sec. 4-2-20. General Fund created.

There is hereby created a fund, to be known as the General Fund, which shall consist of the following:

(1) All cash balances of the Town not specifically belonging to any existing special fund of the Town.

(2) All fixed assets of the Town (to be separately designated in an account known as the General Fund Fixed Assets) not specifically belonging to any existing special fund of the Town.

Sec. 4-2-30. Conservation Trust Fund created.

There is hereby created a special fund, to be known as the Conservation Trust Fund, and the funds therein shall be used only for the purposes allowed by law.

ARTICLE 3 Sales Tax

Sec. 4-3-10. Purpose.

The purpose of this Article is to impose a sales tax upon the sale at retail of tangible personal property and the furnishing of certain services in the Town, pursuant to the authority granted to incorporated towns of the State by Article 2 of Title 29, C.R.S. This Article shall be so construed and interpreted as to effectuate the general purpose of making it uniform with the sales tax of the State, levied by Article 26 of Title 39, C.R.S.

Sec. 4-3-20. Definitions.

For the purposes of this Article, the definition of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., and said definitions are incorporated herein.

Sec. 4-3-30. Property and services taxed.

(a) There is hereby levied and there shall be collected and paid a sales tax in the amount provided for in this Article, upon the sale at retail of tangible personal property and the furnishing of certain services, as provided in Section 39-26-104, C.R.S.

(b) The amount subject to tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.

(c) The gross receipts from sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made.

(d) No sales tax shall apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to such local government evidencing that a local use tax has been paid or is required to be paid.

(e) No sales or use tax shall apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants and children, 42 U.S.C. Section 1786. For the purposes of this paragraph, "food" shall have the same meaning as provided in 42 U.S.C. Section 1786, as such section exists on October 1, 1987 or is thereafter amended.

(f) No sales tax shall apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule city and county, city or town equal to or in excess of that sought to be imposed by the Town. A credit shall be granted against the sales tax imposed by the Town with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city or town. The amount of the credit shall not exceed the sales tax imposed by the Town.

(g) Notwithstanding any other provision of this Article, the value of construction and building material on which a use tax has previously been collected by an incorporated town, city or county shall be exempt from the town, city or county sales tax is the materials are delivered by the retailer or his agent to a site within the limits of such town, city or county.

(Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-40. Exemptions.

There shall be exempt from taxation under the provisions of the Article all of the tangible personal property and services which are exempt under the provisions set forth in Article 26, Title 39, C.R.S., which exemptions are incorporated here in by this reference. In addition, the following exemptions are expressly included as being exempt from the collection of sales tax in the Town: purchases of machinery and machine tools as provided in Section 39-26-114(11), C.R.S., as amended; sales and purchases of electricity, coal, gas, fuel, oil and coke as provided in Section 39-26-114(1)(a)(XXI), C.R.S; and sales of food as provided in Section 39-26-114(1)(a)(XX), C.R.S.

Sec. 4-3-50. Amount of tax.

There is hereby imposed upon all sales of tangible personal property and the furnishing of certain services, as specified in the Property and Services Taxed Section of this Article, a sales tax of three and three-quarters percent (3.75%) upon the sale at retail of tangible personal property and the furnishing of certain services as provided herein.

Sec. 4-3-60. General provisions.

(a) For the purposes of this Article, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.

(b) In the event a retailer has no permanent place of business in the Town or has more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of the sales tax imposed by this Article shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by the rules and regulations promulgated by the Colorado Department of Revenue.

(Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 4-3-70. Collection, administration and enforcement.

The collection, administration and enforcement of the sales tax imposed by this Article shall be performed by the Executive Director of the Colorado Department of Revenue in the same manner as the collection, administration and enforcement of the Colorado state sales tax. Accordingly, the provisions of Articles 26 and 21 of Title 39 and Article 2 of Title 29, C.R.S., and all rules and regulations promulgated by the Executive Director of the Colorado Department of Revenue pertaining to such collection, administration and enforcement, are incorporated herein by this reference.

ARTICLE 4 Use Tax

Sec. 4-4-10. Surcharge.

The Town hereby imposes a surcharge of ten percent (10%) of the total use tax imposed, said fee to cover the administrative costs of collecting said use tax. Said surcharge shall be calculated based on the ten percent (10%) of the actual use tax imposed by the Town.

Sec. 4-4-20. Use tax; imposed; amount.

There is imposed a tax of three percent (3%) as a use tax to be imposed only for the privilege of storing, using or consuming within the Town any construction and building materials greater than twenty thousand dollars ($20,000.00). If a use tax is imposed, it shall be on the total value or the use, storage or consumption of building materials provided and not just on the amount over twenty thousand dollars ($20,000.00). The tax imposed by this Article shall be in addition to any and all sales taxes imposed by ordinance.

Sec. 4-4-30. Exemptions.

The use tax shall not apply to:

(1) The storage, use or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town.

(2) The storage, use or consumption of any tangible personal property purchased for resale in the Town either in its original form or as an ingredient of a manufactured or compounded product in the regular course of business.

(3) The storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible personal property brought into this State by a nonresident to be used in the conduct of a business in this State.

(4) The storage, use or consumption of tangible personal property by the United States Government or the government of the State or its institutions or political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.

(5) The storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or services which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.

(6) a. The storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule town, city or county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him in a previous statutory or home rule town, city or city and county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule town, city or county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

b. With respect to the use tax of a statutory or home rule county, to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the subsequent statutory or home rule county of tangible personal property purchased by him in a previous statutory or home rule county. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule county on his

purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this Article.

(7) The storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.

(8) The storage, use or consumption of any construction and building materials if a written contract for the purchase thereof was entered into prior to June 1, 1996.

(9) The storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid let or entered in at any time prior to June 1, 1996.

(10) The storage of construction and building materials.

(11) The use or consumption of tangible personal property within the Town which occurs more than three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it was purchased.

(12) No use tax of any home rule city, town or city and county shall apply to the storage, use or consumption of any article of tangible personal property the sale or use of which has already been subjected to a sales or use tax of another statutory or home rule city, town or city and county legally imposed on the purchaser or user equal to or in excess of that imposed by the subsequent home rule city, town or city and county. A credit shall be granted against the use tax of the home rule city, town, or city and county with respect to the person's storage, use or consumption in the home rule city, town or city and county of tangible personal property, the amount of the credit to equal the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule city, town or city and county on his purchase or use of the property. The amount of the credit shall not exceed the tax imposed by the subsequent home rule city, town or city and county.

Sec. 4-4-40. Formulation of tax brackets.

The exact tax brackets for the use tax imposed by this Article shall be identical to and correspond with the use tax brackets formulated by the Colorado Department of Revenue.

Sec. 4-4-50. Collection, administration and enforcement.

The collection of the use tax for construction and building materials shall be administered by the Board of Trustees. Tax on the retail purchase price of such materials stored, used or consumed within the Town must be paid upon the storage, use or consumption of the materials within the Town. In no event shall any certificate of occupancy be issued, or no final inspection performed in the event a certificate of occupancy is not required, prior to the full payment to the Town of all use tax due and owing pursuant to this Article.

Sec. 4-4-60. Calculation.

The amount of tax owed to the Town shall be calculated as follows: the use tax of the construction or building materials stored, used or consumed within the Town. It shall be the burden of the taxpayer to provide all the receipts for the actual cost of the construction and building materials. If the taxpayer is unable to prove the actual cost of the construction and building materials, the Town will make a good faith estimate of the cost of the construction and building materials. The good faith estimate shall be based upon one half (½) of the total cost of construction.

Sec. 4-4-70. Collection; limitation of actions.

For transactions consummated on or after June 1, 1996:

(1) No use tax or interest thereon or penalties with respect thereto shall be assessed, nor shall any notice of lien be filed or distraint warrant issued or suit for collection be instituted, nor any other action to collect the same be commenced more than three (3) years after the date on which the tax was or is payable; nor shall any lien continue after such period except for taxes assessed before the expiration of such period, notice of lien with respect to which has been filed prior to the expiration of such period, in which case such lien shall continue only for one (1) year after the filing of notice thereof. In the case of a false or fraudulent return with intent to evade tax, the tax, together with interest and penalties thereon, may be assessed or proceedings for the collection of such taxes may be begun at any time. Before the expiration of such period of limitation, the taxpayer and the Town may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(2) In the case of failure to file a return, the use tax may be assessed and collected at any time.

Sec. 4-4-80. Refunds; limitation of actions.

(a) An application for refund of use tax paid under dispute by a purchaser or user who claims and exemption shall be made within sixty (60) days after the storage, use or consumption of the goods or services whereon an exemption is claimed.

(b) An application for refund of tax moneys paid in error or by mistake shall be made within three (3) years after the date of storage, use or consumption of the goods for which the refund is claimed.

(Ord. 3 §7, 1996; Ord. 1 §1, 2012)

Sec. 4-4-90. Interest on underpayment, nonpayment or extensions of time for payment of tax.

(a) If any amount of use tax is not paid on or before the last date prescribed for payment, interest on such amount at the rate imposed under Section 4-4-150 of this Article shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a tax in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for the tax arises, and in no event shall it be later than the date notice and demand for the tax is made by the Town.

(b) Interest prescribed under this Section through Section 4-4-140 shall be paid upon notice and demand and shall be assessed, collected and paid in the same manner as the tax to which it is applicable.

(c) If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this Section on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment.

(d) Interest prescribed under this Section through Section 4-4-140 on any use tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be assessed and collected.

(Ord. 3 §8, 1996; Ord. 1 §1, 2012)

Sec. 4-4-100. Deficiency due to negligence.

If any part of the deficiency in payment of the use tax is due to negligence or intentional disregard of the ordinances or of authorized rules and regulations of the Town with knowledge thereof, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 4-4-130, in addition to the interest provided by Section 4-4-110, on the amount of such deficiency from the time the return was due, from the person required to file the return, which interest and addition shall become due and payable ten (10) days after written notice and demand to him by the Town. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added one hundred percent (100%) of the total amount of the deficiency and in such case the whole amount of the tax unpaid, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town and an additional three percent (3%) per month on such amount shall be added from the date the return was due until paid.

Sec. 4-4-110. Neglect or refusal to make return or to pay.

If a person neglects or refuses to make a return in payment of the use tax or to pay any use tax as required, the Town shall make an estimate, based upon such information as may be available, of the amount of taxes due for the period for which the taxpayer is delinquent and shall add thereto a penalty equal to ten percent (10%) thereof and interest on such delinquent taxes at the rate imposed under Section 4-4-150, plus one-half of one percent (.5%) per month from the date when due.

Sec. 4-4-120. Penalty interest on unpaid use tax.

Any use tax due and unpaid shall be a debt to the Town and shall draw interest at the rate imposed under Section 4-4-130, in addition to the interest provided by Section 4-4-110, from the time when due until paid.

Sec. 4-4-130. Rate of interest.

When interest is required or permitted to be charged under any provisions of Section 4-4-110 through Section 4-4-140 of this Article, the annual rate of interest shall be that established by the State Commissioner of Banking pursuant to Section 39-21-110.5, C.R.S.

Sec. 4-4-140. Other remedies.

Nothing in Sections 4-4-110 through 4-4-150 of this Chapter shall preclude the Town from utilizing any other applicable penalties or remedies for the collection or enforcement of use taxes.

Sec. 4-4-150. Final decision of Town; appeals; posting of bonds.

For transactions consummated on or after June 1, 1996:

(1) Within fifteen (15) days after filing a notice of appeal, the taxpayer shall file with the district court a surety bond in twice the amount of the taxes, interest and other charges stated in the final decision by the Town which are contested on appeal. The taxpayer may, at his option, satisfy the surety bond requirement by a savings account or deposit in or a certificate of deposit issued by a state or national bank or by a state or federal savings and loan association, in accordance with the provisions of Section 11-35-101(1), C.R.S., equal to twice the amount of the taxes, interest and other charges stated in the final decision by the Town.

(2) The taxpayer may, at his option, deposit the disputed amount with the district court in lieu of posting a surety bond. If such amount is so deposited, no further interest shall accrue on the deficiency

contested during the pendency of the action. At the conclusion of the action, after appeal to the Supreme Court or the Court of Appeals or after the time for such appeal has expired, the funds deposited shall be, at the direction of the Court, either directed to the Town and applied against the deficiency or returned in whole or in part to the taxpayer with interest at the rate imposed pursuant to Section 4-4-150 of this Article. No claim for refund of amounts deposited with the Town need be made by the taxpayer in order for such amounts to be repaid in accordance with the direction of the Court.

Sec. 4-4-160. Collection; map of municipal boundaries.

The Town Clerk shall make available to any requesting vendor a map showing the boundaries of the Town. For transactions consummated on or after June 1, 1996, the requesting vendor may rely on such map and any update thereof available to such vendor in determining whether to collect a use tax. No penalty shall be imposed or action for deficiency maintained against such a vendor who in good faith complies with the most recent map available to it.

ARTICLE 5 Enhanced Sales Tax Incentive Program

Sec. 4-5-10. Established.

There is hereby established within the Town an Enhanced Sales Tax Incentive Program ("ESTIP").

Sec. 4-5-20. General purpose of ESTIP.

The purpose of the ESTIP is to encourage the establishment and/or substantial expansion of retail sales tax generating business within the Town, thereby stimulating the economy within the Town, providing employment for the residents of the Town and others, further expanding the goods available for purchase and consumption by residents of the Town, and further increasing the sales tax collected by the Town, which increased sales tax collection will enable the Town to provide expanded and improved municipal services to and for the benefit of the residents of the Town, while at the same time providing Public or Public-Related Purposes, as defined below, at no cost or at deferred cost, to the Town and its taxpayers and residents.

Sec. 4-5-30. Definitions.

As used in this Article, the following phrases shall have the following meanings:

Enhanced Sales Tax or *Taxes* shall mean the amount of sales tax collected by the Town over and above a base amount negotiated by, and agreed upon by, the applicant and the Town, and which amount is approved by the Board of Trustees, which base amount shall never be lower than the amount of sales tax collected by the Town at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales tax.

Owner or *proprietor* shall mean any of the following:

a. The record owner or operator of an individual business;

b. In the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual business operated thereon; or

c. A special district which is or will be responsible for the expenses for Public or Public-Related Purposes, as defined below, that will further the general purposes of this ESTIP.

Public or *Public-Related Purposes* ("PPRP") shall mean public activities and improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, sound walls, streets, traffic safety devices and improvements, park and recreational facilities, water lines, sewer lines, lift stations, and all necessary incidental and appurtenant activities, structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the Town upon the Town's findings that said activities and/or improvements are PPRP, and that such activities and/or improvements shall benefit the economic health of the Town. If the applicant is a special district, PPRP shall specifically include all activities and/or improvements permitted by said special district. PPRP shall include those costs directly associated with the PPRP, including but not limited to design, engineering, surveying, financing, borrowing costs, issuance costs and interest.

Sec. 4-5-40. Application requirements.

Participation in the ESTIP shall be based upon approval by the Town, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business location or development, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the Town for inclusion within the ESTIP, provided that the new or expanded business is reasonably expected to generate enhanced sales tax of at least twenty thousand dollars ($20,000.00) in the first year of operation or the first year following completion of the PPRP.

Sec. 4-5-50. Approval of agreement; conditions; effect.

Approval by the Town of an agreement implementing the ESTIP shall entitle the successful applicant to share in enhanced sales tax derived from the applicant's property or business in an amount which shall not exceed fifty percent (50%) of the enhanced sales taxes until a greater amount is approved by the voters of the Town; provided, however, that the applicant may use said amounts only for PPRP such as those specified herein and which are expressly approved by the Town. The time period in which said enhanced sales taxes may be shared shall not commence until all PPRP are completed, and shall be limited by the Town in its discretion, to a specified time or until a specified amount is reached.

Sec. 4-5-60. Permitted use of funds.

The uses to which said shared enhanced sales tax may be put by an applicant shall be strictly limited PPRP.

Sec. 4-5-70. Incremental payments.

The base amount for sales taxes (prior to the reasonable expected enhanced sales tax) shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties and approval by the Town, and which increments shall be reasonably related to the average monthly performance of the business or property in question or similar businesses in the area (i.e., adjust for seasonal variations). If in any month the agreed-upon base amount is not met by the applicant for said month, no portion of the sales tax shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, only sales taxes in excess of the base amount shall have been shared with any applicant.

Sec. 4-5-80. Existing tax revenue sources unaffected.

It is an overriding consideration and determination of the Town that existing sources of Town sales tax revenues shall not be used, impaired or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the property described in an application shall be subject

to division or sharing under this ESTIP. It shall be the affirmative duty of the Town Treasurer to collect and hold all such enhanced sales taxes in a separate account apart from the existing sales taxes generated in and collected by the Town, and to provide an accounting system which accomplishes the overriding purpose of this Section. It is conclusively stated by the Town that this Article would not be adopted or implemented but for the provision of this Section.

Sec. 4-5-90. Criteria for approval.

Approval of an application for inclusion in this ESTIP shall be granted by the Town, at a public hearing held as a portion of a regularly scheduled Town meeting, based upon the following criteria:

(1) The amount of enhanced sales taxes which are reasonable to be anticipated to be derived by the Town through the expanded or new retail sales tax generating business or development;

(2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for Town residents, etc.;

(3) The amount of expenditures which may be defined by the Town based upon PPRP to be performed and/or accomplished by the applicant;

(4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances or approved development plans of the Town;

(5) The agreement required by Section 4-5-100 having been reached, which agreement shall contain and conform to all requirements of said Section 4-5-100.

Sec. 4-5-100. Agreement with Town; required; contents.

Each application for approval submitted to the Town shall be subject to approval by the Town solely on its own merits. Approval of an application shall require that an agreement be executed by the Owner/Proprietor and the Town, which agreement shall, at a minimum, contain:

(1) A list of PPRP which justify the applicant's approval, and the amount which shall be spent on PPRP;

(2) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and affect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached of the maximum amount to be shared (whether or not the maximum time set forth has expired);

(3) A statement that this is a personal agreement which is not transferable and which does not run with the land;

(4) A statement that, except for enhanced sales taxes the sharing of which has been approved at a Town election, this agreement shall never constitute a debt of the Town within any constitutional or statutory provision;

(5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal said amount, there shall be no sharing of funds for said month;

(6) The base amount shall be agreed upon which shall consider the historic level of sales at the property in question or in the case of a newly established business, an amount of sales tax which could be generated from the new business without the participation by the applicant in the ESTIP created

hereunder, and a reasonable allowance for increased sales due to the PPRP performed and/or accomplished as a result of inclusion within this ESTIP;

(7) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefor;

(8) Unless specifically agreed to the contrary, an affirmative statement that the obligations, benefits and/or provisions of this agreement may be not assigned in whole or in part without the expressed authorization of the Town, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

(9) Unless the provisions of Section 20, Article X of the Colorado Constitution have been met that allow for multi-fiscal year financial obligations, the agreement shall be subject to the annual appropriation of sufficient funds for payments as provided in this Article.

(10) That the agreement shall provide that the successful applicant shall have no right, claim, lien or priority in or to the Town's sales tax revenue superior to or on parity with the rights, claims of liens of the holders as any sales tax revenue bonds, notes, certificates or debentures payable from or secured by any sales taxes existing or hereafter issued by the Town; and that all rights of the successful applicant are, and at all times shall be, subordinate and inferior to the rights, claims and liens of the holder of any and all such sales tax revenue bonds, notes, certificates or debentures, payable from or secured by any sales taxes issued by the Town; and

(11) Any other provisions agreed upon by the parties and approved by the Town.

Sec. 4-5-110. Findings.

(a) The Town has enacted this ESTIP for the purpose of:

(1) Providing the Town with increased sales tax revenues generated upon and by properties as a result of this ESTIP; and

(2) PPRP being performed and/or accomplished by the Owners/Proprietors with no debt obligation being incurred on the part of the Town except as approved by the voters within the Town.

(b) The Town specifically finds and determines that creation of this ESTIP is consistent with the Town's powers as a municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, no agreement entered pursuant to this ESTIP shall be interpreted to make the Town a joint venturer or partner with any public or private entity or activity which participates in this ESTIP, and the Town shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

(Ord. 6 §11, 2006; Ord. 1 §1, 2012)

Sec. 4-5-120. Voter approval.

The provisions and requirements of this Article may be amended or modified by initiated or referred ballot measure approved by the voters within the Town.

CHAPTER 5
Franchises and Communication Systems

ARTICLE 1 Electric Franchise[1]

Sec. 5-1-10. Definitions.

Whenever the word "Town" is hereinafter employed, it shall designate the Town of Foxfield, Arapahoe County, Colorado, the Grantor, and whenever the word "Company" is used, it shall designate not only the Intermountain Rural Electric Association, a Colorado Corporation, the Grantee, but also its successors and assigns.

Sec. 5-1-20. Grant of authority.

There is hereby granted by the Town to the Company the franchise right, privilege and authority to construct, purchase, acquire, locate, maintain, operate and extend into, within and through the Town, plants, works, systems and facilities for the generation, transmission and distribution of electrical energy for lighting, heating, cooling, power, or other similar utility purposes, with the right and privilege, for the period, and upon the terms and conditions hereinafter specified, to sell, furnish and distribute electrical energy for lighting, heating, cooling, power or other utility purposes to the Town and the inhabitants thereof, by means of conduits, wires, cables, poles and structures, or otherwise, on, over, under, along and across all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places in the Town and on, over, under, along and across any extension, connection with, or continuation of the same, and on, over, under, along and across all new public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places as may

[1]Editor's note(s)—Ord. 08 , § 1, adopted Nov. 5, 2015, repealed the former Art. 1, §§ 5-1-10—5-1-160, and enacted a new article as set out herein. The former Art. 1 pertained to similar subject matter and derived from Ord. 10, adopted in 1995; and Ord. 1, § 1, adopted in 2012.

be hereafter laid out, opened, located or constructed within the territory now or hereafter included within the boundaries of the Town, all in accordance with the terms herein. This grant does not include authority to use Company facilities within such public ways and other public places for the provision of telephone, internet, cable broadcasting, or similar services; provided that the Company may license the use of its facilities for such purpose to third parties who have such authorization as may be required by the Town. In the event the Company desires to use facilities installed within Town public ways or other public places for internet, cable broadcasting, or similar services, or for any other purposes not expressly above authorized, the Company shall first secure an amendment to this franchise.

Sec. 5-1-30. Manner of use—Repair.

The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all public and dedicated streets, alleys, viaducts, bridges, roads, lanes, public ways and other public places under the supervision of properly constituted Town authority for the purpose of bringing electrical energy into, within and through the Town and supplying electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto, provided, however, that the Company shall so locate its substations, transmission and distribution structures, lines, equipment, and conduits within the Town as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of the said public and dedicated streets, alleys or other public ways and places. This grant is further subject to permitting, inspection and approval by an official representative of the Town in accordance with the then-applicable ordinances of the Town. The Company shall obtain separate, written consent of the Town prior to the installation of any new facilities within Town parks or open space, which consent shall not be unreasonably denied. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, graveled or paved streets or public place or any other public improvement, the Company shall repair the same in a workmanlike manner and within a reasonable time, in accordance with and subject to the then-applicable ordinances of the Town. The Company shall use due care not to interfere with or damage any water mains, sewers, or other structures in said public and dedicated streets, alleys or other public places. Any interference or damage to water mains, sewers, or other structures shall be promptly restored to its former condition by the Company at its expense, or in the sole discretion of the Town by the Town at the Company's expense. Such restoration work if completed by the Company shall be subject to inspection and acceptance by the Town. The Town shall have the right to petition the Company for municipal use of trenches the Company may have or intend to open for installation or repair of facilities within the Town limits, for any reasonable Town purpose directly related to the conduct of any municipal business.

Sec. 5-1-40. Town held harmless.

The Company shall so maintain its electrical equipment and distribution system as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company shall save and hold the Town harmless from all liability or damage and all reasonable expenses, including reasonable attorneys' fees, necessarily accruing against the Town arising out of the negligent exercise by the Company of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and shall be permitted at its own expense to appear and defend or assist in the defense of such action.

Sec. 5-1-50. Relocation of company facilities.

The parties agree that payment of the costs of relocation of Company facilities shall be accomplished as follows:

(a) The Company will relocate the Company's facilities located in the public right-of-way and other public places at its own cost and expense when the Town deems it necessary to make improvements to municipal public utilities provided by the Town, public parks, open space, or Town building sites, streets or sidewalks, or to change street grades, regardless of the manner in which the improvements are funded, regardless of what entity performs or contracts to perform the actual construction, and regardless of the characterization of the public right-of-way as, by way of example, an unimproved or improved right-of-way, a local or regional right-of-way, a residential or nonresidential right-of-way, or an unplatted or platted right-of-way. The rights granted herein shall permit any relocation requested by the Town without further grant of an easement to the Company from the Town. Relocation of Company facilities shall be made by the Company and shall be completed within a reasonable time from the date that the Town requests such relocation. The parties acknowledge this subsection a. is intended to restate and reflect the common law rule of utility relocation as it exists on the date of this Franchise Agreement.

(b) The Company shall have no obligation to relocate at its expense any Company facilities located on private property, private easements, or private rights-of-way, whether such private property rights have been acquired by conveyance or by prescription.

(c) Underground facilities shall be relocated underground. Aboveground facilities may be relocated above ground.

(d) In the event the Town abandons or vacates any public right-of-way in which the Company has located its facilities, the Town agrees to exercise its authority pursuant to C.R.S. § 43-2-303(3) to reserve the rights granted to Company by this Franchise Agreement; provided, however, this reservation is made on the express condition that the Company agrees to remove and, if necessary, relocate such facilities to the nearest and/or most practicable public right-of-way at the request of a property owner that is burdened by such reservation, so long as the property owner pays the actual costs of said removal and relocation.

Sec. 5-1-60. Use of facilities by Town.

The Town shall have the right at locations to be approved by Company, without cost to Company, to use all poles and suitable overhead structures within the Town for the purpose of installing wires thereon for any reasonable Town use. In addition, the Town shall have the right, without cost, to use illumination poles for the placement of traffic control signs. The Company shall assume no liability or expense in connection with the use of said poles, and Town wires or traffic control signs shall not interfere with Company's use of said poles and structures. To the extent permitted by law, the Town shall indemnify and hold harmless the Company from any claim for any liability which may arise out of or be caused by any negligent or intentional act or omission of the Town or its employees, agents or contractors, related to installation, maintenance, presence, use, condition, repair or removal of The Town's attachment of wires or traffic control signs to any poles or structure and the Town shall assume all risk and responsibility related to the actions of its employees, agents and contractors when working on, at or near the Company's facilities.

Sec. 5-1-70. Rates regulation.

The Company shall furnish electrical energy within the corporate limits of the Town or any addition thereto, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in the Town or any addition thereto, at the rates and under the terms and conditions set forth in the Rates and Regulations promulgated by the Board of Directors of the Company, as amended from time to time.

Sec. 5-1-80. No discrimination.

The Company shall not, as to rates, charges, services, facilities, rules, regulations, or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage, provided that nothing in this Section shall be taken to prohibit the establishment from time to time of a graduated scale of charges and classified rate schedules to which any customer coming within an established classification would be entitled.

Sec. 5-1-90. Extensions.

The Company will, from time to time during the term of this franchise, make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's Rates and Regulations, as amended from time to time. Except when otherwise approved by the Town, all new distribution facilities within the Town shall be placed underground.

Sec. 5-1-100. Rules and regulations.

The Company from time to time may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its local office, available to the public, copies of its Rates and Regulations, including such revisions thereto as are adopted by the Company from time to time.

Sec. 5-1-110. Franchise payment.

As a further consideration for this franchise, and in lieu of all occupancy, occupation, use and license taxes, or other taxes on the rights to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses), the Company shall pay to the Town, for the period beginning on the effective date of this article, to the termination of this franchise, a sum equal to three percent (3%) of the first ten thousand dollars ($10,000.00) of annual gross revenue derived from the sale of electrical energy to each customer at any one (1) location, plus two percent (2%) of the annual gross revenue derived from the sale of electrical energy in excess of ten thousand dollars ($10,000.00) to each customer for each such service at any one (1) location; provided, however, there shall be excluded from all of such gross revenue all amounts paid to the Company by the Town or any federal, state, or local governmental entities for electrical energy furnished. The franchise percentage payment provided for in this section is established at the Town's sole discretion, and Town shall save and hold the Company harmless from all liability and all reasonable expenses necessarily accruing against the Company arising from or related to the establishment or amount thereof.

Sec. 5-1-120. Payment schedule.

For each quarter of each year of the term hereof, the Company shall pay to the Town the actual amount due to the Town in the months of April, July, October, and January for the quarter immediately preceding the month of payment.

Sec. 5-1-130. Gross revenue.

The term "gross revenue," as used herein, shall be construed to mean any revenue derived by the Company under authorized rates, temporary or permanent, excluding franchise fees, within the Town from the sale of

electrical energy to customers other than the Town or any federal, state, or local governmental entities after the net write-off of uncollectible accounts and corrections of bills theretofore rendered.

Sec. 5-1-140. Adjustments.

In the event that the gross revenue of the Company for any period of time during the term of this franchise is reduced as a result of a customer refund after payment of the franchise fee for that period, the Company shall be entitled to a credit toward further payments for all franchise payments paid in excess of the franchise fee based on the Company's gross revenue as so reduced.

Sec. 5-1-150. Proration.

Payments for the portions of the initial and terminal years of the term of this franchise shall be made on the basis of revenue as above provided for the months and portions of months during which this franchise is in effect.

Sec. 5-1-160. Audit.

For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this article, the Town Clerk and/or any committee or auditor appointed by the Board of Trustees of the Town shall have access to the books of the Company for the purpose of checking the gross revenue received for operations within the Town.

Sec. 5-1-170. Most favored status.

In the event that the Company should, during the term of this franchise, increase its franchise payments to any city or town in any of the counties in which it supplies electric service under a franchise, by reason of an increase in the percentage payments on revenue or a different basis of determining revenue excluded from the percentage payment, the same change or changes to provide increased franchise payments shall be placed in effect in the Town, upon the Town's written request. The Company shall notify the Town of any such increased payments, provided that in no event shall the Company be liable to the Town for damages resulting from any delay or failure to give such notice.

Sec. 5-1-180. Term—Effective date.

This article shall become effective, as provided by law, thirty (30) days after its publication following final passage, upon acceptance in writing by the Company within said period, and the terms, conditions and covenants thereof shall remain in full force and effect for a period of twenty (20) years from and after effective date.

Sec. 5-1-190. Removal.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the public and dedicated streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places of the Town, for the purpose of removing therefrom any and all of its plants, structures, conduits, cables, poles and wires, and equipment pertaining thereto at any time after the Town has had ample time and opportunity to purchase, condemn or replace them. In so removing said conduits, cables, poles, wires and equipment, the Company shall, at its own expense and in a workmanlike manner and within a reasonable time, refill, repair, resurface and return to its original state any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public or private places after the removal of conduits, poles or other structures.

Sec. 5-1-200. Police power reserved.

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State of Colorado, or with orders of other authorities having jurisdiction. Subject to the terms of this franchise agreement, the Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the public ways and other public places, including requirements for permits.

Sec. 5-1-210. Assignment.

Nothing in this article shall be so construed as to prevent the Company from assigning all, but not less than all, of its rights, title or interest, gained or authorized under or by virtue of the terms of this article, subject to the Town's approval, which shall not be unreasonably withheld, conditioned or delayed. Approval shall not be required for an assignment for the purpose of increased capitalization or loan or bond guarantee.

Sec. 5-1-220. Acceptance by company.

This franchise shall be subject to all of the provisions of the laws of the State of Colorado and municipal ordinances of the Town; provided that the Town's municipal ordinances shall be reasonable and not destructive of the rights herein granted. The Company shall accept this Franchise by a writing filed with the Town Clerk within sixty (60) days from and after the passage of this article by the Board of Trustees of the Town.

Sec. 5-1-230. Effect of ordinance.

This article is the entire understanding of the Town and the Company regarding its subject matter and may be changed or modified only by written agreement of the parties. This article repeals, replaces and supersedes all previous Town ordinances granting or amending any franchises to the Company, specifically including Trustee Bill No. 10 granting a franchise by ordinance passed and approved August 24, 1995.

Sec. 5-1-240. Extension or renewal of ordinance.

In the event the parties mutually agree that this article should be continued beyond the termination date set forth in section 5-1-180, and mutually agree to the terms of the extension or renewal, including any adjustment to the franchise payment under section 5-1-110, the parties shall amend this article in writing to reflect the new terms and the Town shall adopt an ordinance to effect the extension or renewal of this article and the inclusion of the new terms. In the event the parties mutually agree that this article should be continued beyond the expiration date set forth in section 5-1-180, but have not agreed to the terms of the extension or renewal or have not amended the Ordinance in writing or passed an ordinance extending the terms of the article on the expiration date of the article, the parties may mutually agree to a month-to-month extension, upon the same terms as are set forth in this article, until such amendment shall be adopted or an ordinance shall be passed giving effect to such new terms as may be agreed upon by the Town and the Company. No agreement under this section shall be effective unless in writing and signed by authorized representatives or agents of the Town and the Company.

Sec. 5-1-250. Termination.

In the event of the failure of either party to comply with any of the material provisions of this article, this article may be terminated by the non-defaulting party; provided that the party in default fails to cure within one hundred twenty (120) days following notice from the non-defaulting party of the existence of said default. Such termination shall not affect or diminish the rights, claims, or remedies available in equity or at law to the non-defaulting party arising by reason of said default.

ARTICLE 2 Gas Franchise[2]

Sec. 5-2-10. Definitions.

In addition to the capitalized terms defined elsewhere in this franchise, the following capitalized words and phrases shall have the meanings set forth below. Words not defined in this Article 2 of the Code shall be given their common and ordinary meaning.

Board refers to and is the legislative body of the Town.

Clean energy means energy produced from renewable energy resources (as defined below), eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, *cost* means all those costs as determined by the PUC.

Company means Public Service Company of Colorado, a Colorado corporation, and an Xcel Energy company and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

Company designee has the meaning ascribed in Section 5-2-90(b).

Company facilities refers to all facilities of the Company which are reasonably necessary or desirable to provide gas service into, within and through the Town, including, but not limited to plants, works, systems, substations, transmission and distribution structures and systems, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, wire, cables and poles as well as all associated appurtenances.

Effective date has the meaning ascribed in Section 5-2-50.

Energy conservation means the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

Franchise or *franchise agreement* means this franchise agreement by and between the Town and Company.

Franchise fee has the meaning ascribed in Section 5-2-70(a).

Force majeure event means the inability to undertake an obligation of this franchise agreement due to a cause, condition or event that could not be reasonably anticipated by a party or is beyond a party's reasonable control after exercise of best efforts to perform. Such cause, condition or event includes but is not limited to fire, strike, war, riots, terrorist acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in the delivery of materials. Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a force majeure event.

Gross revenues refers to those amounts of money the Company receives from the sale of gas within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town, as adjusted for refunds, net write-offs of uncollectible accounts, corrections, expense

[2]Editor's note(s)—Ord. No. 04, §1, adopted Nov. 5, 2020, repealed the former Art. 2, §§ 5-2-10—5-2-480, and enacted a new Art. 2 as set out herein. The former Art. 2 pertained to similar subject matter and derived from Ord. 16 §§1—15, adopted in 1995; Ord. 1 §1, adopted in 2012.

reimbursements or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation.

Gross revenues shall exclude any revenues from the sale of gas to the Town or the transportation of gas to the Town.

Industry standards refers to standards developed by government agencies and generally recognized organizations that engage in the business of developing utility industry standards for materials, specifications, testing, construction, repair, maintenance, manufacturing, and other facets of gas utility industries. Such agencies and organizations include, but are not limited to the U.S. Department of Transportation, the Federal Energy Regulatory Commission (FERC), the Pipeline and Hazardous Materials Safety Administration (PHMSA), the Colorado Public Utilities Commission, the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the Pipeline Research Council International, Inc. (PRCI), the American Society of Mechanical Engineers (ASME), the Gas Technology Institute (GTI), and the National Fire Protection Association (NFPA).

Open space refers to privately-owned property protected by real covenant, or publicly-owned property protected by covenant and/or designated by ordinance or resolution of the Town Board, which covenant or designation designates the property for use as one (1) or more of the following: a community buffer; a wildlife corridor and habitat area; a wetland; a view corridor; agricultural land; an area of archeological, historical, geologic or topographic significance; an area containing significant renewable and/or nonrenewable natural resources; and/or other undesignated, typically non-irrigated, undeveloped land uses. Open space shall not include parks.

Other Town property refers to the surface, the air space above the surface and the area below the surface of any property owned by the Town or directly controlled by the Town due to the Town's real property interest in the same or hereafter owned by the Town, that would not otherwise fall under the definition of *Streets*, but which provides a suitable location for the placement of Company facilities as specifically approved in writing by the Town. Other Town property does not include public utility easements.

Parks refers to land area owned by the Town, either independently or with another governmental or quasi-governmental entity, that is developed and maintained for active or passive recreational use and is open for the general public's use and enjoyment; which, by way of example only, may include public playfields, courts, and other recreation facilities, or may include greenways, water features, picnic areas, or natural areas.

Private project refers to any project not included in the definition of public project.

Public project refers to (1) any public work or improvement within the Town that is wholly owned by the Town; or (2) any public work or improvement within the Town where at least fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State of Colorado, or any Colorado county, but excluding all entities established under Title 32 of the Colorado Revised Statutes.

Public Utilities Commission or *PUC* refers to the Public Utilities Commission of the State of Colorado or other state agency succeeding to the regulatory powers of the Public Utilities Commission.

Public utility easement refers to any platted easement over, under, or above public or private property, expressly dedicated to, and accepted by, the Town for the use of public utility companies for the placement of utility facilities, including, but not limited to Company facilities.

Relocate and *relocation*, and any variation thereof, means a temporary or permanent change or alteration by the Company in the position of any Company facilities.

Residents refers to all persons, businesses, industries, governmental agencies, including the Town, and any other entity whatsoever presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

Streets or *Town streets* refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated or Town-maintained streets, alleys, bridges, roads, lanes, access easements, and other public rights-of-way within the Town, which are primarily used for motorized vehicle traffic. Streets shall not include public utility easements and other Town property.

Supporting documentation refers to all information reasonably required or needed in order to allow the Company to design and construct any work performed under the provisions of this franchise. Supporting documentation may include, but is not limited to, construction plans, a description of known environmental issues, the identification of critical right-of-way or easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date gas service and meter set are needed, and the name and contact information for the Town's project manager.

Tariffs refer to those tariffs of the Company on file and in effect with the PUC or other governing jurisdiction, as amended from time to time.

Town means the Town of Foxfield, a municipal corporation of the State of Colorado.

Town Designee has the meaning ascribed in Section 5-2-90(a).

Utility service refers to the sale of gas to residents by the Company under tariffs approved by the PUC, as well as the delivery of gas to residents by the Company.

Sec. 5-2-20. Principle of construction.

(a) Singular/plural. Unless the context otherwise requires, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural.

(b) Mandatory/permissive. The words "shall" and "will" are mandatory and the word "may" is permissive.

(Ord. 04, §1, 2020)

Sec. 5-2-30. Grant of franchise.

(a) Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of Town streets, public utility easements (as applicable) and other Town property:

  (1) To provide utility service to the Town and to its residents under the tariffs; and

  (2) to acquire, purchase, construct, install, locate, maintain, operate, upgrade and extend into, within and through the Town all Company facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transportation, transmission and distribution of utility service within and through the Town.

(b) New Company facilities in other Town property, excluding parks and open space. For all other Town property that is not a park or open space, the Town's grant to the Company of the right to locate Company facilities in, on, over or across such other Town property shall be subject to the Company's already having or first receiving from the Town approval of the location of such Company facilities, in the Town's reasonable discretion; and the terms and conditions of the use of such other Town property shall be governed by this franchise as may be reasonably supplemented to account for the unique nature of such other Town property. Nothing in this Section 5-2-30(b) shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company facilities already located in parks or open space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such other Town

property or, if there is no such license agreement, permit or other agreement, in accordance with this franchise.

(c) New Company facilities in other Town property that are parks or open space. The Town's grant to the Company of the right to locate Company facilities in, on, over or across other Town property that is a park or open space shall be subject to (i) the company's already having or first receiving from the Town a revocable license, permit or other agreement approving the location of such Company facilities, which the Town may grant or deny in its sole discretion; and (ii) the terms and conditions of such revocable license agreement, permit or other written agreement. Nothing in this Section 5-2-30(c) shall modify or extinguish pre-existing Company property rights. Further, this paragraph shall not prohibit the Company from modifying, replacing or upgrading Company facilities already located in parks or open space in accordance with the terms and conditions of the Town license agreement, permit or other agreement that granted the Company the right to use such parks or open space or, if there is no such license agreement, permit or other agreement, in accordance with this franchise.

(Ord. 04, §1, 2020)

Sec. 5-2-40. Conditions and limitations.

(a) Scope of franchise. The grant of this franchise shall extend to all areas of the Town as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of utility service.

(b) Subject to Town usage. The Company's right to make reasonable use of Town streets and other Town property to provide utility service to the Town and its residents under this franchise is subject to and subordinate to any Town usage of said streets and other Town property.

(c) Prior grants not revoked. This grant and franchise is not intended to and does not revoke any prior license, grant, or right to use the streets, other Town property or public utility easements, and such licenses, grants or rights of use are hereby affirmed.

(d) Franchise not exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm, or corporation.

(Ord. 04, §1, 2020)

Sec. 5-2-50. Effective date and term.

This franchise shall take effect on January 28, 2021 (the "effective date") and shall supersede any prior franchise grants to the Company by the Town. This franchise shall terminate on January 27, 2041, unless extended by mutual consent.

Sec. 5-2-60. Police powers.

(a) The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's streets, public utility easements and other Town property, it will make a good faith

effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's non-compliance with any applicable local requirements.

(b) Regulation of streets and other Town property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the streets and/or other Town property. In addition, the Company acknowledges the Town's right to require the Company to obtain permits for work in streets, other Town property, and public utility easements.

(c) Compliance with laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders lawfully enacted by the Town.

(d) Industry standards. In enacting laws and regulations and issuing permits that affect the Company's access to or use of the streets, other Town property and public utility easements, the Town agrees to make good faith efforts to make its regulations and permit conditions consistent with industry standards to the extent practicable, and the Company agrees to make good faith efforts to advise the Town of industry standards that affect the Company's operations within the Town. Without limiting the Town's police power in any way, the Town will take into consideration any input from the Company on new regulations and permit conditions that the Company believes unnecessarily increase its costs of operations within the Town.

(Ord. 04, §1, 2020)

Sec. 5-2-70. Franchise fee.

(a) Fee. In consideration for this franchise, which provides the certain terms related to the Company's use of Town streets, public utility easements and other Town property, which are valuable public properties acquired and maintained by the Town at the expense of its residents, and in recognition of the fact that the grant to the Company of this franchise is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of gross revenues (the "franchise fee"). To the extent required by law, the Company shall collect the franchise fee from a surcharge upon Town residents who are customers of the Company.

(b) Obligation in lieu of franchise fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount that the Company would have paid as a franchise fee as partial consideration for use of the Town streets, public utility easements and other Town property. Such payments shall be made in accordance with applicable provisions of law. Further, to the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon utility service provided to Town residents who are customers of the Company.

(c) Changes in utility service industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in making reasonable modifications of this franchise agreement in an effort to provide that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.

(d) Utility service provided to the Town. No franchise fee shall be charged to the Town for utility service provided directly or indirectly to the Town for its own consumption, unless otherwise directed by the Town in writing and in a manner consistent with Company policy.

(Ord. 04, §1, 2020)

Sec. 5-2-80. Remittance of franchise fee.

(a) Remittance schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each calendar month.

(b) Correction of franchise fee payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, either party shall provide written notice of the error to the other party. Subject to the following sentence, if the party receiving written notice of the error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 5-2-80(d) of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the Town, and said overpayment is in excess of five thousand dollars ($5,000.00), correction of the overpayment by the Town shall take the form of a credit against future franchise fees and shall be spread over the same period the error was undiscovered or the Town shall make a refund payment to the Company. If such period would extend beyond the term of this franchise, the Company may elect to require the Town to provide it with a refund instead of a credit, with such refund to be spread over the same period the error was undiscovered, even if the refund will be paid after the termination date of this franchise. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. Subject to the terms of the tariffs, in no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the error.

(c) Audit of franchise fee payments.

(1) Company audit. At the request of the Town, every three (3) years commencing at the end of the third calendar year of the term of this franchise, the Company shall conduct an internal audit, in accordance with the Company's auditing principles and policies that are applicable to gas utilities that are developed in accordance with the Institute of Internal Auditors, to investigate and determine the correctness of the franchise fees paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Clerk summarizing the audit procedures followed along with any findings.

(2) Town audit. If the Town disagrees with the results of the Company's audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, in accordance with generally accepted auditing principles applicable to gas utilities that are developed in accordance with the Institute of Internal Auditors, and the Company shall cooperate by providing the Town's auditor with non-confidential information that would be required to be disclosed under applicable state sales and use tax laws and applicable PUC rules and regulations.

(3) Underpayments. If the results of a Town audit conducted pursuant to Section 5-2-80(c)(2) above concludes that the Company has underpaid the Town by five percent (5%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all reasonable costs of the Town's audit. The Company shall not be responsible for the costs of the Town's audit when the underpayment is caused by errors from information provided by an entity certified by the Colorado

Department of Revenue as a "hold harmless entity" or other similar entity recognized by the Department of Revenue.

(d) Fee disputes. Either party may challenge any written notification of error as provided for in [Section 5-2-80(b)] of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(e) Reports. To the extent allowed by law, upon written request by the Town, but not more than once per year, the Company shall supply the Town with a list of the names and addresses of registered natural gas suppliers and brokers of natural gas that utilize Company facilities to sell or distribute natural gas within the Town. The Company shall not be required to disclose any confidential or proprietary information.

(f) Franchise fee payment not in lieu of permit or other fees. Payment of the franchise fee by the Company to the Town does not exempt the Company or its property from any other lawful tax or fee imposed generally upon persons doing business within the Town, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax or fee for the Company's use of Town streets, public utility easements or other Town property under the terms set forth in this franchise.

(Ord. 04, §1, 2020)

Sec. 5-2-90. Administration of franchise.

(a) Town designee. The Town Clerk shall designate in writing to the Company an official or officials having full power and authority to administer this franchise (whether one (1) or more, the "Town designee"). The Town Clerk may also designate one (1) or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name(s) and telephone number(s) of said Town designee. The Town Clerk may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times and with reasonable notice to the Company, to inspect any Company facilities in Town streets and other Town property.

(b) Company designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for the Company's representative under this franchise ("Company designee"). The Company may change its designation by providing written notice to the Town. The Town shall use the Company designee to communicate with the Company regarding utility service and related service needs for Town facilities.

(c) Coordination of work. The Company and the Town agree to coordinate their activities in Town streets, public utility easements and other Town property with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets, including, but not limited to, any planned Town streets paving projects. The Town and Company shall hold such meetings as either deems necessary to exchange additional information with a view toward coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all applicable provisions of this franchise, applicable building and zoning codes, and applicable Town air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(Ord. 04, §1, 2020)

Sec. 5-2-100. Supply, construction and design.

(a) Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the residents that require the Company to provide prompt and reliable utility service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide utility service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to provide for other processes and procedures related to the provision of utility service to the Town.

(b) Supply. Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas to residents at the lowest reasonable cost consistent with reliable supplies.

(c) Charges to the Town for service to Town facilities. No charges to the Town by the Company for utility service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate gas rates. All charges to the Town shall be in accord with the tariffs.

(Ord. 04, §1, 2020)

Sec. 5-2-110. Restoration of service.

(a) Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a Company designee from whom the Town may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of utility service in any part of the Town.

(b) Restoration. In the event the Company's gas system within the Town, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such system to satisfactory service within the shortest practicable period of time, or provide a reasonable alternative to such system if the Company elects not to restore such system.

(Ord. 04, §1, 2020)

Sec. 5-2-120. Obligations regarding company facilities.

(a) Company facilities. All Company facilities within Town streets, public utility easements and other Town property shall be maintained in good repair and condition.

(b) Company work within the Town. All work within Town streets and other Town property performed or caused to be performed by the Company shall be performed:

(1) In a high-quality manner that is in accordance with industry standards;

(2) In a timely and expeditious manner;

(3) In a manner that reasonably minimizes inconvenience to the public;

(4) In a cost-effective manner, which may include the use of qualified contractors; and

(5) In accordance with all applicable Town laws, ordinances and regulations that are consistent with the tariffs.

(c) No interference with Town facilities. Company facilities shall not unreasonably interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other Town uses of the streets or other Town property. Company facilities shall be installed and maintained in

Town streets and other Town property so as to reasonably minimize interference with other property, trees, and other improvements and natural features in and adjoining the streets and other Town property in light of the Company's obligation under Colorado law to provide safe and reliable utility facilities and services.

(d) Permit and inspection. The installation, renovation, and replacement of any Company facilities in the Town streets or other Town property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town in accordance with applicable Town laws. Such permitting, inspection and approval may include, but shall not be limited to, the following matters: location of Company facilities, cutting and pruning of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town streets or other Town property; provided, however, the Company shall have the right to cut, prune, and/or remove vegetation in accordance with its adopted vegetation management requirements and procedures. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection that is consistent with industry standards.

(e) Compliance. Subject to the provisions of Section 5-2-60 above, the Company and all of its contractors shall comply with the requirements of applicable municipal laws, ordinances, regulations, permits, and standards lawfully adopted that do not conflict with industry standards, including, but not limited to, requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. If any of the foregoing requirements conflict with industry standards, the Company shall describe and explain such conflict to the Town in writing. The Company shall use commercially reasonable efforts to require that its contractors working in Town streets and other Town property hold the necessary licenses and permits required by law.

(Ord. 04, §1, 2020)

Sec. 5-2-130. As-built drawings.

(a) Within thirty (30) days after project completion, the Company shall commence its internal process to permit the Company to provide, on a project by project basis, as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets. The Company shall provide the requested documents no later than forty-five (45) days after it commences its internal process.

(b) If the information must be limited or cannot be provided pursuant to regulatory requirements or Company data privacy policies, the Company shall promptly notify the Town of such restrictions. The Town acknowledges that the requested as-built drawings are confidential information of the Company and the Company asserts that disclosure to members of the public would be contrary to the public interest. Accordingly, the Town shall deny the right of inspection of the Company's confidential information as set forth in C.R.S. § 24-72-204(3)(a)(IV), as may be amended from time to time (the "Open Records Act"). If an Open Records Act request is made by any third party for as-built drawings that the Company has provided to the Town pursuant to this franchise, the Town will immediately notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action, the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third party as-built drawings provided by the Company pursuant to this franchise without first conferring with the Company. Provided the Town complies with the terms of this Section, the Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

(c) As used in this Section 5-2-130, "as-built drawings" refers to hard copies of the facility drawings as maintained in the Company's business records and shall not include information maintained in the

Company's geographical information system. The Company shall not be required to create drawings or data that do not exist.

(Ord. 04, §1, 2020)

Sec. 5-2-140. Excavation and construction.

Subject to Section 5-2-60, the Company shall be responsible for obtaining, paying for, and complying with all applicable permits, in the manner required by the laws, ordinances, and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Section 5-2-160 of this franchise, the Town will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the Town shall promptly and fully advise the Company in writing of all requirements for the restoration of Town streets in advance of Company excavation projects in Town streets, based upon the design submitted, if the Town's restoration requirements are not addressed in publicly available standards.

Sec. 5-2-150. Restoration.

(a) Subject to the provisions of Section 5-2-120(d), when the Company does any work in or affecting the Town streets or other Town property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore the affected surface of such Town streets or other Town property to a condition that is substantially the same as existed before the work, in accordance with applicable Town standards.

(b) If weather or other conditions do not permit the complete restoration required by Section 5-2-150(a), the Company may, with the approval of the Town, temporarily restore the affected Town streets or other Town property, provided that such temporary restoration is not at the Town's expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

(c) Upon the request of the Town, the Company shall restore the streets or other Town property to a better condition than existed before the Company work was undertaken, provided that the Town shall be responsible for any incremental costs of such restoration not required by then-current Town standards, and provided the Town seeks and/or grants, as applicable, any additional required approvals.

(d) If the Company fails to promptly restore the Town streets or other Town property as required by this Section 5-2-150, and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health, safety or welfare, the Town may restore such streets or other Town property or remove the obstruction therefrom; provided however, Town actions do not interfere with Company facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town streets or other Town property or to remove any obstructions therefrom. In the course of its restoration of Town streets or other Town property under this Section 5-2-150, the Town shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

(Ord. 04, §1, 2020)

Sec. 5-2-160. Relocation of company facilities.

(a) Relocation obligation. The Company shall relocate any Company facility in Town streets or in other Town property at no cost or expense to the Town whenever such relocation is necessary for the completion of any public project. In the case of relocation that is necessary for the completion of any public project in a public

utility easement that is not in a Town street, the Company shall not be responsible for any relocation costs. For all relocations, the Company and the Town agree to cooperate on the location and relocation of the Company facilities in the Town streets or other Town property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has completed a relocation of any Company facility at the Town's direction, if the Town requests a relocation of the same Company facility within two (2) years, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third-parties.

(b) Private projects. Subject to Section 5-2-160(f), the Company shall not be responsible for the expenses of any relocation required by private projects, and the Company has the right to require the payment of estimated relocation expenses from the party causing, or responsible for, the relocation before undertaking the relocation.

(c) Relocation performance. The relocations set forth in Section 5-2-160(a) of this franchise shall be completed within a reasonable time, not to exceed one hundred twenty (120) days from the later of the date on which the Town designee requests, in writing, that the relocation commence, or the date when the Company is provided all supporting documentation. The Company shall receive an extension of time to complete a relocation where the Company's performance was delayed due to force majeure or the failure of the Town to provide adequate supporting documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown, and the Town shall not unreasonably withhold or condition any such extension.

(d) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding Company facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(e) Completion. Each such relocation shall be complete only when the Company actually relocates the Company facilities, restores the relocation site in accordance with Section 5-2-160 of this franchise or as otherwise agreed with the Town, and properly abandons on site all unused Company facilities, equipment, material and other impediments. "Unused" for the purposes of this franchise shall mean the Company is no longer using the Company facilities in question and has no plans to use the Company facilities in the foreseeable future.

(f) Scope of obligation. Notwithstanding anything to the contrary in this franchise, the Company shall not be required to relocate any Company facilities from property (i) owned by the Company in fee; or (ii) in which the Company has a property right, grant or interest, including without limitation an easement but excluding public utility easements.

(g) Coordination.

(1) When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require relocation of Company facilities in Town streets and other Town property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the Town for any public project.

(2) The Town shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company facilities that are located underneath the streets within the two-year period if practicable.

(h) Proposed alternatives or modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company facilities. The Town shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the discretion of the Town. In the event the Town accepts the proposed alternative or modification, the Company shall promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.

(i) New or modified service requested by Town. The conditions under which the Company shall install new or modified utility service to the Town as a customer shall be governed by this franchise and the Company's tariffs.

(j) Service to new areas. If the territorial boundaries of the Town are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the tariffs and this franchise, including the payment of franchise fees.

(k) Town not required to advance funds. Upon receipt of the Town's authorization for billing and construction, the Company shall install Company facilities to provide utility service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the installation of Company facilities once completed in accordance with the tariffs. Notwithstanding anything to the contrary, the provisions of this Section to allow the Town to not advance funds prior to construction shall apply unless prohibited by PUC rules or the tariffs. The parties agree that as of the date of execution of this franchise, Company Gas Tariff Sheets R36 and 39 govern the terms of installation of Company facilities for the Town and allows installation of Company facilities without the Town advancing funds prior to construction.

(l) Technological improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents.

(Ord. 04, §1, 2020)

Sec. 5-2-170. Reliability.

(a) The Company shall operate and maintain Company facilities efficiently and economically, in accordance with industry standards, and in accordance with the standards, systems, methods and skills consistent with the provision of adequate, safe and reliable utility service.

(b) Franchise performance obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.

(c) Reliability reports. Upon written request, the Company shall provide the Town with a report regarding the reliability of Company facilities and utility service.

(Ord. 04, §1, 2020)

Sec. 5-2-180. New or modified service to town facilities.

In providing new or modified utility service to Town facilities, the Company agrees to perform as follows:

(a) Performance. The Company shall complete each project requested by the Town within a reasonable time. Where the Company's performance obligations are governed by tariff, the parties agree that a

reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required supporting documentation for all Company facilities including a copy to the area manager as designated in Section 5-2-290(d) below. Provided that the Town provides the Company's designated representative with a copy of the supporting documentation, the Company shall notify the Town within twenty (20) days of receipt of the request if the supporting documentation is sufficient to complete the project. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to force majeure. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(b) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or substantially change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(c) Completion/restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of this franchise or as otherwise agreed with the Town and properly abandons on site any unused Company facilities, equipment, material and other impediments.

Sec. 5-2-190. Adjustment to company facilities.

The Company shall perform adjustments to Company facilities that are consistent with industry standards, including manhole rings and other appurtenances in streets and other Town property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company facilities, the Company agrees to perform as follows:

(a) Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a force majeure event. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(b) Completion/restoration. Each such adjustment shall be complete only when the Company actually adjusts and, if required, readjusts, Company facilities to accommodate Town operations in accordance with Town instructions following Town paving operations.

(c) Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company facilities in streets or other Town property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

Sec. 5-2-200. Third party damage recovery.

(a) Damage to Company facilities. If any individual or entity damages any Company facilities to the extent permitted by law, the Town will notify the Company of any such incident of which it has knowledge and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(b) Damage to company facilities for which the Town is responsible. If any individual or entity, for which the Town is obligated to reimburse the Company for the cost of the repair or replacement, damages any Company facilities, to the extent permitted by law, the Company will notify the Town of any such incident of which it has knowledge and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(c) Meeting. The Company and the Town agree to meet periodically upon written request of either party for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third-parties for damaging Company facilities.

(Ord. 04, §1, 2020)

Sec. 5-2-210. Billing for utility services.

(a) Monthly billing. Unless otherwise provided in the tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for utility service and other related services for which the Company is entitled to payment.

(b) Address for billing. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the Town and payment for same shall be made as prescribed in this franchise and the applicable tariffs.

(c) Supporting documents. To the extent requested by the Town, the Company shall provide all billings and any underlying supporting documentation reasonably requested by the Town in an editable and manipulatable electronic format that is acceptable to the Company and the Town.

(d) Annual meetings. The Company agrees to meet with the Town designee on a reasonable basis at the Town's request, but no more frequently than once a year, for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the Town.

(e) Payment to Town. In the event the Town determines after written notice to the Company that the Company is liable to the Town for payments, costs, expenses or damages of any nature, and subject to the Company's right to challenge such determination, the Town may deduct all monies due and owing the Town from any other amounts currently due and owing the Company. Upon receipt of such written notice, the Company may request a meeting between the Company's designee and a designee of the Town to discuss such determination. The Town agrees to attend such a meeting. As an alternative to such deduction and subject to the Company' s right to challenge, the Town may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill unless it challenges the validity of the charge. If the Company challenges the Town determination of liability, the Town shall make such payments to the Company for utility service received by Town pursuant to the tariffs until the challenge has been finally resolved.

(Ord. 04, §1, 2020)

Sec. 5-2-220. Municipal right to purchase or condemn.

(a) Right and privilege of Town. The right and privilege of the Town to construct, own and operate a municipal utility, and to purchase pursuant to a mutually acceptable agreement or condemn any Company facilities

located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution, statutes and case law of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to condemn Company facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such condemnation, no value shall be ascribed or given to the right to use town streets or other Town property granted under this franchise in the valuation of the property thus sold.

(b) Notice of intent to purchase or condemn. The Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company facilities. Nothing in this Section 5-2-220 shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company facilities, nor a waiver of any Company defenses or challenges related thereto.

(Ord. 04, §1, 2020)

Sec. 5-2-230. Transfer of franchise.

(a) Consent of Town required. The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the Town approves such transfer or assignment in writing. The Town may impose reasonable conditions upon the transfer, but approval of the transfer or assignment shall not be unreasonably withheld, conditioned or delayed.

(b) Transfer fee. In order that the Town may share in the value this franchise adds to the Company's operations, any transfer or assignment of rights granted under this franchise requiring Town approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the Town a transfer fee in an amount equal to the proportion of the Town's then-population provided utility service by the Company to the then-population of the City and County of Denver provided utility service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of residents.

(Ord. 04, §1, 2020)

Sec. 5-2-240. Continuation of utility service.

(a) Continuation of utility service. In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no obligation to remove any Company facilities from streets, public utility easements or other Town property or discontinue providing utility service unless otherwise ordered by the PUC, and shall continue to provide utility service within the Town until the Town arranges for utility service from another provider. The Town acknowledges and agrees that the Company has the right to use streets, other Town property and public utility easements during any such period. The Company further agrees that it will not withhold any temporary utility services necessary to protect the public.

(b) Compensation. The Town agrees that in the circumstances of this Section 5-2-240, the Company shall be entitled to monetary compensation as provided in the tariffs and the Company shall be entitled to collect from residents and, upon the Town's compliance with applicable provisions of law, shall be obligated to pay the Town, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town's streets and other Town property. Only upon receipt of written notice from the Town stating that the

Town has adequate alternative utility service for residents and upon order of the PUC shall the Company be allowed to discontinue the provision of utility service to the Town and its residents.

(Ord. 04, §1, 2020)

Sec. 5-2-250. Indemnification and immunity.

(a) Town held harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or directly arising from the grant of this franchise, the exercise by the Company of the related rights, but in both instances only to the extent caused by the Company, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (b) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel reasonably satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers, agents or employees or to the extent that the Town is acting in its capacity as a customer of record of the Company.

(b) Governmental Immunity Act. Nothing in this Section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101, et seq., as amended) or of any other defenses, immunities, or limitations of liability available to the Town by law.

(Ord. 04, §1, 2020)

Sec. 5-2-260. Breach.

(a) Change of tariffs. The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs, including, but not limited to the rates, charges, terms, and conditions of providing utility service to the Town and its residents, and the Town retains all rights that it may have to intervene and participate in any such proceedings.

(b) Notice/cure/remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "non-breaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach or, if such breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

(1) Specific performance of the applicable term or condition to the extent allowed by law; and

(2) Recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any special, punitive or consequential damages.

(c) Termination of franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed sixty (60) days in which to remedy the material breach or, if such material breach cannot be remedied in sixty (60) days, such additional time as reasonably needed to remedy the material breach, but not exceeding an additional sixty (60) day period, or such other time as the parties may agree. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, in its sole discretion, terminate this franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this franchise. In the event of the termination of this franchise by the Town pursuant to this Section 5-2-260(c), the Company shall continue to provide utility service to the Town and its residents in accordance with Section 5-2-240.

(d) Company shall not terminate franchise. In no event does the Company have the right to terminate this franchise.

(e) No limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

(Ord. 04, §1, 2020)

Sec. 5-2-270. Amendments.

(a) Proposed amendments. At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.

(b) Effective amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed in writing by the parties, which alterations, amendments or modifications shall be adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term herein, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. Any amendment of the franchise shall become effective only upon the approval of the PUC, if such PUC approval is required.

(Ord. 04, §1, 2020)

Sec. 5-2-280. Equal opportunity.

(a) Economic development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is committed also to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.

(b) Employment.

(1) Programs. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.

(2) Businesses. The Company recognizes that the Town and the business community in the Town, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under-represented communities into management positions, and agrees to keep the Town regularly advised of the Company's progress by providing the Town a copy of the Company's annual affirmative action report upon the Town's written request.

(3) Recruitment. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies, such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.

(4) Advancement. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under-represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.

(5) Non-discrimination. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, gender, sexual orientation, marital status, age, military status, national origin, ancestry, or physical or mental disability, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified.

(6) Board of Directors. The Company shall identify and consider women, persons of color and other under-represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the shareholders, customers and employees of the Company.

(c) Contracting.

(1) Contracts. It is the Company's policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

(2) Community outreach. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.

(3) Community development. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned,

women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company.

(d) Coordination. Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

(Ord. 04, §1, 2020)

Sec. 5-2-290. Miscellaneous.

(a) No waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

(b) Successors and assigns. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article 11 of this franchise. Upon a transfer or assignment pursuant to Article 11, the Company shall be relieved from all liability from and after the date of such transfer, except as otherwise provided in the conditions imposed by the Town in authorizing the transfer or assignment and under state and federal law.

(c) Third parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

(d) Notice. Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail, reputable overnight courier or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Notice shall be deemed received (a) three (3) days after being mailed via the U.S. Postal Service; (b) one (1) business day after mailed if via reputable overnight courier; or (c) upon hand delivery if delivered by courier. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:
Town Clerk
Town of Foxfield
P.O. Box 461450
Foxfield, Colorado 80046

To the Company:
Senior Director, State Affairs and Community Relations
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:
Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

and

Area Manager
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

Any request involving any audit specifically allowed under this Franchise shall also be sent to:

Audit Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

(e) Examination of records.

(1) The parties agree that any duly authorized representative of the Town and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of the lesser of three (3) years or the time period permitted by a party's record retention policy. To the extent that either party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other party, the parties agree to meet and discuss providing confidential materials, including without limitation providing such materials subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such materials and complies with PUC rules and regulations.

(2) With respect to any information requested by the Town and provided by the Company, which the Company identifies as "confidential" or "proprietary":

a. The Town will maintain the confidentiality of the information;

b. The information will be used solely for the purposes stated in the Town's request;

c. By executing this franchise, the Town agrees and represents that Town employees and consultants agree to be bound by the provisions of this subsection; and

d. Information provided to address a franchise issue shall be held by the Town for such time as is reasonably necessary for the Town to address such issue and shall be returned to the Company when the Town has concluded its use of the information. The parties agree that such information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including, but not necessarily limited to litigation, administrative proceedings and/or other disputes, the Town may maintain the information until such issues are fully and finally concluded.

(f) Confidential or proprietary information. If an Open Records Act (C.R.S. § 24-72-201, et seq.) request is made by any third-party for confidential or proprietary information that the Company has provided to the Town pursuant to this franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third-party confidential information provided by the Company pursuant to this franchise without first conferring with the Company. Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, confidential or non-public information related to the compromise and settlement of disputed claims, including, but not limited to PUC dockets, information provided to the Company which is

declared by the provider to be confidential and which would be considered confidential to the provider under applicable law.

(g) List of utility property. Upon written request by the Town, but in no event more than once every two (2) years, the Company shall provide the Town a list of gas utility-related real property owned in fee by the Company within the County in which the Town is located. The list shall include the legal description of the real property, and where available on the deed, the physical street address. If the physical address is not available on the deed, if the Town requests the physical address of the real property described in this Section 5-2-290(g), to the extent that such physical street address is readily available to the Company, the Company shall provide such address to the Town. All such records must be kept for a minimum of three (3) years or such shorter duration if required by Company policy.

(h) PUC filings. Upon written request by the Town, the Company shall provide the Town non-confidential copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Public Utilities Commission. Notwithstanding the foregoing, notice regarding any gas filings that may affect utility service rates in the Town shall be sent to the Town upon filing.

(i) Information. Upon written request, the Company shall provide the Town Clerk or the Town Clerk's designee with:

(1) A copy of the Company's or its parent company's consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company's website;

(2) Maps or schematics indicating the location of specific Company facilities (subject to Town executing a confidentiality agreement as required by Company policy), including gas lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request and related to an ongoing project within the Town. The Company does not represent or warrant the accuracy of any such maps or schematics; and

(3) A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.

(j) Payment of taxes and fees.

(1) Impositions. Except as otherwise provided herein, the Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this franchise ("impositions"), provided that the Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

(2) Town liability. The Town shall not be liable for the payment of late charges, interest or penalties of any nature other than pursuant to applicable tariffs.

(k) Conflict of interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.

(l) Certificate of public convenience and necessity. The Town agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

(m) Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this Franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The Town acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

(n) Severability. Should any one (1) or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one (1) or more substitute provisions that will achieve the original intent of the parties hereunder.

(o) Force majeure. Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a force majeure event, as defined herein.

(p) Earlier franchises superseded. This franchise shall constitute the only franchise between the Town and the Company related to the furnishing of utility service, and it supersedes and cancels all former franchises between the parties hereto.

(q) Titles not controlling. Titles of the paragraphs herein are for reference only and shall not be used to construe the language of this franchise.

(r) Applicable law. Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Arapahoe County, State of Colorado.

(s) Payment of expenses incurred by Town in relation to franchise agreement. The Company shall pay for expenses reasonably incurred by the Town for the adoption of this franchise, limited to the publication of notices, publication of ordinances, and photocopying of documents and other similar expenses.

(t) Costs of compliance with franchise. The parties acknowledge that PUC rules, regulations and final decisions may require that costs of complying with certain provisions of this franchise be borne by customers of the Company who are located within the Town.

(u) Conveyance of Town streets, public utility easements or other Town property. In the event the Town vacates, releases, sells, conveys, transfers or otherwise disposes of a Town street, or any portion of a public utility easement or other Town property in which Company facilities are located, the Town shall reserve an easement in favor of the Company over that portion of the street, public utility easement or other Town property in which such Company facilities are located. The Company and the Town shall work together to prepare the necessary legal description to effectuate such reservation. For the purposes of Section 5-2-160(a) of this franchise, the land vacated, released, sold, conveyed, transferred or otherwise disposed of by the Town shall no longer be deemed to be a street or other Town property from which the Town may demand the Company temporarily or permanently relocate Company facilities at the Company's expense.

(v) Audit. For any audits specifically allowed under this franchise, such audits shall be subject to the tariff and PUC rules and regulations. Audits in which the auditor is compensated on the basis of a contingency fee arrangement shall not be permitted.

(w) Land use coordination. The Town shall coordinate with the Company regarding its land use planning. This coordination shall include meeting with the Company and identifying areas for future utility development.

(x) Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan that is consistent with Company policies. The Town and the Company shall work cooperatively with each other in any emergency or disaster situation to address the emergency or disaster.

(Ord. 04, §1, 2020)

ARTICLE 3 Cable Television Franchise

Sec. 5-3-10. Franchise agreement.

(a) This Franchise Agreement (this "Franchise") is between the Town of Foxfield, Colorado, hereinafter referred to as "Franchising Authority" and United Cable Television of Colorado. Inc., hereinafter referred to as "Grantee."

(b) The Franchising Authority, having determined that the financial, legal and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Grantee for the construction and operation of a cable system on the terms set forth herein.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-20. Definition of terms.

Terms. For the purpose of this Franchise, the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number:

Basic Cable is the lowest priced tier of service that includes the retransmission of local broadcast television signals.

Cable Act means 47 U.S.C. § 151, et seq., as amended.

Cable Services shall mean (A) the one-way transmission to Subscribers of (i) video programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Cable System shall mean a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

FCC means Federal Communications Commission, or successor governmental entity thereto.

Franchise shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable System.

Franchising Authority means the Town of Foxfield, Colorado, or the lawful successor, transferee or assignee thereof.

Grantee means United Cable Television of Colorado, Inc., or the lawful successor, transferee or assignee thereof.

Gross Revenues mean any revenue received by the Grantee from the operation of the Cable System to provide Cable Services in the Service Area; provided, however, that such phrase shall not include any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency. Gross Revenues shall specifically include franchise fees collected from Subscribers.

Person means an individual, partnership, association, joint stock company, trust, corporation or governmental entity.

Public Way shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle or other public right-of-way, including but not limited to public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System. *Public Way* shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to the Cable System.

Service Area means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.

Subscriber means a Person who lawfully receives services of the Cable System with the Grantee's express permission.

Sec. 5-3-30. Grant of Franchise.

(a) Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or state law.

(b) Term. The Franchise granted hereunder shall be for an initial term of fifteen (15) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-40. Standards of Service.

(a) Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

(b) Restoration of Public Ways. If during the course of the Grantee's construction, operation or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance, in a manner satisfactory to the Town, provided such approval shall not be unreasonably held.

(c) Relocation at request of the Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than five (5) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes or any other type of structures or improvements by the Franchising Authority; but the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any Person using such street, easement or right of way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall make application for such funds on behalf of the Grantee.

(d) Relocation at request of third party. The Grantee shall, on the request of any Person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by said Person, including, if required by the Grantee, making such payment in advance; and (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

(e) Trimming of trees and shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from corning in contact with the Grantee's wires, cables or other equipment. The Grantee shall reasonably compensate the Franchising Authority for any damages caused by such trimming, or shall, in its sole discretion and at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction of the Cable System undertaken by the Grantee. Such replacement shall satisfy any and all obligations the Grantee may have to the Franchising Authority pursuant to the terms of this Section.

(f) Safety requirements. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state and local regulations and the National Electric Safety Code. The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

(g) Aerial and Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric

services are underground, the Grantee likewise shall construct, operate and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, the Grantee shall construct, operate and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this Section shall require the Grantee to construct, operate and maintain underground any ground-mounted appurtenances such as Subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals or other related equipment. Notwithstanding anything to the contrary contained, in this Section, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Franchise, the Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

(1) New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned commercial/ residential developments within the Service Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require as a condition of issuing the permit that developer give the Grantee access to open trenches for deployment of cable facilities and written notice of the date of availability of trenches. Such notice must be received by the Grantee at least ten (10) business days prior to availability. The Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering, deployment labor and cable facilities. Installation from utility easements to individual homes or other structures shall be at the cost of the home/building owner or developer unless otherwise provided.

(2) Local Improvement District. If an ordinance is passed creating a local improvement district which involves placing underground certain utilities including that of the Grantee which are then located overhead, the Grantee shall participate in such underground project and shall remove poles, cables and wires from the surface of the streets within such district and shall place them underground in conformity with the requirements of the Franchising Authority. The Grantee may include its costs of relocating facilities associated with the undergrounding project in said local improvement district if allowed under applicable law.

(h) Required Extensions of Service. The Cable System, as constructed as of the date of the passage and final adoption of this Franchise, substantially complies with the material provisions hereof. Whenever the Grantee shall receive a request for service from at least fifteen (15) residences within one thousand three hundred twenty (1,320) cable-bearing strand feet (one-quarter [¼] cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for Cable System extension, other than the usual connection fees for all Subscribers, provided that such extension is technically feasible, and if it will not adversely affect the operation, financial condition or market development of the Cable System, or as provided for under Subsection 5-3-40(i) below.

(i) Subscriber charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than fifteen (15) residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by the Grantee and

Subscribers in the area in which service may be expanded, the Grantee will contribute an amount equal to the construction and other costs per mile, multiplied by a fraction whose numerator equals the actual number of residences per one thousand three hundred twenty (1,320) cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) residences. Subscribers who request service hereunder will bear the remainder of the construction and other costs on a *pro rata* basis. The Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

(j) Service to Public Buildings. The Grantee shall, upon request, provide without charge one (1) outlet of Basic Service to the Franchising Authority municipal offices, provided that said offices are passed by its Cable System. The outlets of Basic Service shall not be used to distribute or sell services in or throughout such buildings, nor shall such outlets be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. Users of such outlets shall hold the Grantee harmless from any and all liability or claims arising out of their use of such outlets, including but not limited to those arising from copyright liability. The Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or premises exceeds or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. If additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including but not limited to labor and materials.

(k) Emergency Use.

(1) In accordance with and at the time required by the provisions of FCC Regulations Part 11, subpart D, Section 11.51(h)(1), and as such provisions may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations Section 11.51.

(2) The Franchising Authority shall permit only appropriately trained and authorized Persons to operate the EAS equipment and shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use thereof, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority shall hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to reasonable attorneys' fees and costs.

(l) Customer Service Standards. The Grantee shall comply with any applicable Customer Service Standards as contained in Appendix 5-A to this Chapter, as amended from time to time.

(m) Public, Educational and Governmental Access (PEG). At such time that the Cable System is capable of delivering at least sixty (60) twenty-four-hour analog video services to all Subscribers in the Service Area, the Grantee shall provide one (1) channel for PEG upon receiving one hundred twenty (120) days' written request for such from the Franchising Authority.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-50. Regulation by the Franchising Authority.

(a) Franchise Fee.

(1) The Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3%) of Gross Revenues (as defined in Section 5-3-20 above) received by the Grantee from the operation of the Cable System to provide Cable Services on an annual basis; provided, however, Gross Revenues shall not include: (i) any tax, fee, or assessment of any kind imposed by the Franchising Authority or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers (including any such tax, fee or assessment imposed, both on utilities and cable operators and their services); and (iii) any other special tax, assessment or fee such as a business, occupation and entertainment tax. For the purpose of this Section, the twelve-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year, unless otherwise agreed to in writing by the Franchising Authority and the Grantee. The franchise fee payment shall be due and payable sixty (60) days after the close of the quarter ending March, June, September and December of each year. Each payment shall be accompanied by a brief report from a representative of the Grantee showing the basis for the computation.

a. Any time during the term of this Agreement the Franchising Authority may, by ordinance, increase the Franchise Fee in an amount not to exceed five percent (5%) of Gross Revenues. In the event the Franchise Fee is increased by ordinance, the Grantee shall begin remitting the increased rate to the Franchising Authority within one hundred twenty (120) days following final adoption of said ordinance and written notice to the Grantee.

b. The parties acknowledge that, at present, applicable federal law limits the Franchising Authority to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that, at any time during the duration of this Agreement, this maximum permissible Franchise Fee is increased, the Franchising Authority may, by ordinance, increase the Franchise Fee, provided that the maximum permissible Franchise Fee does not exceed seven percent (7%), and provided that the Grantee has received one hundred twenty (120) days' written notice from the Franchising Authority of such amendment.

(2) Limitation on Franchise Fee Actions. The period of limitation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment by the Grantee is due. Unless the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, within years from and after such payment due date, such recovery shall be barred and the Franchising Authority shall be estopped from asserting any claims whatsoever against the Grantee relating to any such alleged deficiencies.

(b) Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by applicable law.

(c) Renewal of Franchise.

(1) The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

(2) In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs

and interests, as well as, the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such preliminary assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term. Notwithstanding anything to the contrary set forth in this Section, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize in formal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this Section to be consistent with the express provisions of Section 626 of the Cable Act.

(d) Conditions of Sale.

(1) If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

(2) The Grantee and the Franchising Authority agree that, in the case of a final determination of a lawful revocation of the Franchise, at the Grantees request, which shall be made in its sole discretion, the Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that, during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that the Grantee's continued operation of its Cable System during the six-month period shall not be deemed to be a waiver nor an extinguishment of any rights of either the Franchising Authority or the Grantee.

(e) Transfer of Franchise. The Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation or by assignment of any rights, title or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving the request for transfer, the Franchising Authority shall, in accordance with FCC rules and regulations, notify the Grantee in writing of the information it requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantees request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-60. Books and records.

The Grantee agrees that the Franchising Authority upon reasonable notice to the Grantee may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of

the FCC. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

Sec. 5-3-70. Insurance and indemnification.

(a) Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of one million dollars ($1,000,000.00) combined single limit for bodily injury, and property damage. The Grantee shall provide a Certificate of Insurance designating the Franchising Authority as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days' prior written notice to the Franchising Authority.

(b) Indemnification. The Grantee agrees to indemnify, save and hold harmless and defend the Franchising Authority, its officers, boards and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation or maintenance of its Cable System, including but not limited to reasonable attorneys' fees and costs, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this Section. If the Franchising Authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the Franchising Authority.

(c) Guarantee in Lieu of a Bond. Within thirty (30) days of execution of this Franchise, the Grantee shall provide a Corporate Guarantee in Lieu of a Bond executed by United Cable Television Corporation in the amount of five thousand dollars ($5,000.00) to secure the faithful performance by the Grantee of its obligations under this Franchise. This guarantee, however, shall not limit the liability of the grantee for any failure to perform its obligations under this franchise.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-80. Enforcement and termination of Franchise.

(a) Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

(b) Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Subsection (a) above: (a) to respond to the Franchising Authority, contesting the assertion of noncompliance; or (b) to cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the thirty-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

(c) Public Hearing. In the event that the Grantee fails to respond to the notice described in Subsection 5-3-80(a) pursuant to the procedures set forth in Subsection (b) above, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to Item 5-3-80(b)(c) above, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority which is scheduled at a time which is no less than five (5) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with an opportunity to be heard.

(d) Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages;

(2) Commence an action at law for monetary damages or seek other equitable relief; or

(3) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

a. The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a response satisfactory from the Grantee, it may then seek termination of the Franchise at a public meeting. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public meeting, a written notice specifying the time and place of such meeting and stating its intent to request such termination.

b. At the designated meeting, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority "de novo" and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

c. The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

(e) Technical Violations. The parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for so-called "technical" breach(es) or violation(s) of the Franchise or local cable ordinance, which shall include but are not limited to the following:

(1) In instances or for matters where a violation or a breach by the Grantee of the Franchise or local cable ordinance was a good faith error that resulted in no or minimal negative impact on the customers within the Service Area; or

(2) Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise or local cable ordinance, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise or local cable ordinance.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

Sec. 5-3-90. Miscellaneous provisions.

(a) Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in

any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

(b) Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

(c) Equal Protection. In the event the Franchising Authority enters into a Franchise, permit, license, authorization or other agreement of any kind with any other Person or entity other than the Grantee to enter into the Franchising Authority's Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one (1) operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

(d) Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope when hand-delivered or sent by certified or registered mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

Town of Foxfield
18150 E. Hinsdale Avenue
Foxfield, CO 80016
ATTN: Carasel Yarian

with a copy to:

Bradley Shefrin,
Hayes, Phillips and Maloney
1350 Seventeeth Street Ste. 450
Denver, Colorado 80202

The notices or responses to the Grantee shall be addressed as follows:

United Cable Television
of Colorado, Inc.
1617 South Acoma Street
Denver, Colorado 80223

with a copy to:

United Cable Television
of Colorado, Inc.
Attention Legal Department
4700 South Syracuse Street

Suite 1100
Denver, Colorado 80237-2722

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

(e) Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

ARTICLE 4 Cable Television Franchise—Comcast

Sec. 5-4-10. Franchise agreement.

(a) This franchise agreement (hereinafter, the "agreement" or "franchise agreement") is made between the Town of Foxfield, a Colorado municipality (hereinafter, "Town") and Comcast of Colorado IV, LLC (hereinafter, "Grantee").

(b) The Town, having determined that the financial, legal, and technical ability of the grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable related needs of the community, desires to enter into this franchise agreement with the grantee for the construction, operation and maintenance of a cable system on the terms and conditions set forth herein.

(Ord. 04 §1, 2017)

Sec. 5-4-20. Definition of terms.

For the purpose of this franchise agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the "Cable Act"), unless otherwise defined herein.

Applicable law means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

Cable system means any facility, including grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (B) a facility that serves subscribers without using any right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a cable system (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

Customer means a person or user of the cable system who lawfully receives cable service therefrom with the grantee's express permission.

FCC means the Federal Communications Commission, or successor governmental entity thereto.

Franchise area means the present legal boundaries of the Town as of the Effective Date, and shall also include any additions thereto, by annexation or other legal means.

Gross revenue means the cable service revenue derived by the grantee from the operation of the cable system in the franchise area to provide cable services, calculated in accordance with generally accepted accounting principles. Cable service revenue includes monthly basic, premium and pay-perview video fees, advertising and home shopping revenue, installation fees and equipment rental fees. Gross revenue shall not include refundable deposits, bad debt, late fees, investment income, programming launch support payments, advertising sales commissions, nor any taxes, fees or assessments imposed or assessed by any governmental authority.

Person means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit, but shall not mean the franchising authority.

Public way means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or easements dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the franchising authority in the franchise area, which shall entitle the franchising authority and the grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the cable system. Public way shall also mean any easement now or hereafter held by the franchising authority within the franchise area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the franchising authority and the grantee to the use thereof for the purposes of installing, operating, and maintaining the grantee's cable system over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the cable system.

Video service provider or *VSP* means any entity using the public rights-of-way to provide video programming services to subscribers, for purchase or at no cost, regardless of the transmission method, facilities, or technology used; including cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet-Protocol based services.

Sec. 5-4-30. Grant of authority.

(a) The franchising authority hereby grants to the grantee a nonexclusive franchise authorizing the grantee to construct and operate a cable system in the public ways within the franchise area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any public way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the cable system, and to provide such services over the cable system as may be lawfully allowed.

(1) Subject to federal and state preemption, the provisions of this franchise constitute a valid and enforceable contract between the parties. The material terms and conditions contained in this franchise may not be unilaterally altered by the franchising authority through subsequent amendment to any ordinance, rule, regulation, or other enactment of the franchising authority, except in the lawful exercise of the franchising authority's police power.

(2) Notwithstanding any other provision of this franchise, grantee reserves the right to challenge provisions of any ordinance, rule, regulation, or other enactment of the franchising authority that conflicts with its contractual rights under this franchise, either now or in the future.

(b) Term of franchise. The term of the franchise granted hereunder shall be ten (10) years, commencing on _____ (the "effective date"), unless the franchise is renewed or is lawfully terminated in accordance with the terms of this franchise agreement and the Cable Act.

(c) Renewal. Any renewal of this franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended. Should the franchise agreement expire without a mutually agreed upon renewed franchise agreement and grantee and Town are engaged in an informal or formal renewal process, the franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the franchise, and the grantee and Town shall continue to comply with all obligations and duties under the franchise.

(d) Reservation of authority. Grantee shall comply with the Town Code and the lawful exercise of the Town's police power. Subject to the Town's lawful exercise of its police power, in the event of a conflict between the Town Code and the agreement, the agreement shall govern. Grantee acknowledges that the Town may enforce or modify its generally applicable regulatory policies by lawful exercise of the Town's police powers throughout the term of this agreement, and grantee agrees to comply with such lawful enforcement or modifications; provided however, that such lawful enforcement or modifications shall be reasonable and not materially modify the terms of this agreement. Grantee reserves the right to challenge provisions of any ordinance, rule regulation, or other enactment of the Town that conflicts with its contractual rights under this agreement, either now or in the future.

(Ord. 04 §1, 2017)

Sec. 5-4-40. Construction and maintenance of the cable system.

(a) Permits and general obligations. The grantee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the cable system, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the cable system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the grantee for use in the cable system in accordance with the terms and conditions of this franchise agreement shall be located so as to minimize the interference with the proper use of the public ways and the rights and reasonable convenience of property owners who own property that adjoins any such public way.

(b) Conditions of street occupancy.

(1) New grades or lines. If the grades or lines of any public way within the franchise area are lawfully changed at any time during the term of this franchise agreement, then the grantee shall, upon reasonable advance written notice from the franchising authority (which shall not be less than fourteen (14) business days) and at its own cost and expense, protect or promptly alter or relocate the cable system, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the public way for the purpose of defraying the cost of any of the foregoing, the franchising authority shall notify grantee of such funding and make available such funds to the grantee in the same manner as other users of the public way.

(2) Relocation at request of third party. The grantee shall, upon reasonable prior written request of any person holding a permit issued by the franchising authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the grantee may impose a reasonable charge on any person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the grantee is given not less than fourteen (14) business days advance written notice to arrange for such temporary relocation.

(3) Restoration of public ways. If in connection with the construction, operation, maintenance, or repair of the cable system, the grantee disturbs, alters, or damages any public way, the grantee agrees that it

shall at its own cost and expense replace and restore any such public way to a condition reasonably comparable to the condition of the public way existing immediately prior to the disturbance.

(4) Safety requirements. The grantee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the cable system shall be performed in substantial accordance with applicable FCC or other federal and state regulations. The cable system shall not unreasonably endanger or interfere with the safety of persons or property in the franchise area.

(5) Trimming of trees and shrubbery. The grantee shall have the authority to trim trees or other natural growth overhanging any of its cable system in the franchise area so as to prevent contact with the grantee's wires, cables, or other equipment. All such trimming shall be done at the grantee's sole cost and expense. The grantee shall be responsible for any damage caused by such trimming.

(6) Aerial and underground construction. At the time of cable system construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable systems' transmission and distribution facilities underground, provided that such underground locations are actually capable of accommodating the grantee's cable and other equipment without technical degradation of the cable system's signal quality. In any region(s) of the franchise area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing in this Section shall be construed to require the grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

(7) Undergrounding and beautification projects. In the event all users of the public way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Grantee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Grantee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project in the same manner as other users of the public way.

(c) Reimbursement of grantee costs. Grantee specifically reserves any rights it may have under applicable law for reimbursement of costs related to undergrounding or relocation of the cable system and nothing herein shall be construed as a waiver of such rights.

(Ord. 04 §1, 2017)

Sec. 5-4-50. Service obligations.

(a) General service obligation. The grantee shall make cable service available to every residential dwelling unit within the franchise area where the minimum density is at least thirty (30) dwelling units per mile and the residential dwelling unit is within one (1) mile of the existing cable system. Subject to the density requirement, grantee shall offer cable service to all new homes or previously unserved homes located within one hundred fifty (150) feet of the grantee's distribution cable.

The grantee may elect to provide cable service to areas not meeting the above density and distance standards. The grantee may impose on a customer an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such

additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above.

(b) Programming. The grantee shall offer to all customers a diversity of video programming services.

(c) No discrimination. The grantee shall not discriminate or permit discrimination between or among any Persons in the availability of cable services or other services provided in connection with the cable system in the franchise area. It shall be the right of all persons to receive all available services provided on the cable system so long as such Person's financial or other obligations to the grantee are satisfied. Nothing contained herein shall prohibit the grantee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

(d) New developments. The franchising authority shall provide the grantee with written notice of the issuance of building or development permits for planned developments within the franchise area requiring undergrounding of cable facilities. The franchising authority agrees to require the developer, as a condition of issuing the permit, to give the grantee access to open trenches for deployment of cable facilities and at least fourteen (14) business days written notice of the date of availability of open trenches. Notwithstanding the foregoing, the grantee shall not be required to utilize any open trench.

(Ord. 04 §1, 2017)

Sec. 5-4-60. Fees and charges to customers.

All rates, fees, charges, deposits and associated terms and conditions to be imposed by the grantee or any affiliated person for any cable service as of the effective date shall be in accordance with applicable FCC's rate regulations. Before any new or modified rate, fee, or charge is imposed, the grantee shall follow the applicable FCC notice requirements and rules and notify affected customers, which notice may be by any means permitted under applicable law.

Sec. 5-4-70. Customer service standards; customer bills; and privacy protection.

(a) Customer service standards. The franchising authority hereby adopts the customer service standards set forth in Part 76, §76.309 of the FCC's rules and regulations, as amended. The grantee shall comply in all respects with the customer service requirements established by the FCC.

(b) Customer bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 5-4-70(a), above, the grantee may, in its sole discretion, consolidate costs on customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

(c) Privacy protection. The grantee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

(Ord. 04 §1, 2017)

Sec. 5-4-80. Oversight and regulation by franchising authority.

(a) Franchise fees. The grantee shall pay to the Franchising Authority a franchise fee in an amount equal to three percent (3%) of annual gross revenues received from the operation of the cable system to provide cable service in the franchise area; provided, however, that grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the franchise area. The payment of franchise fees shall be made on a quarterly basis and shall be due sixty (60) days after the

close of each calendar quarter. Each franchise fee payment shall be accompanied by a report prepared by a representative of the grantee showing the basis for the computation of the franchise fees paid during that period.

(b) Franchise fees subject to audit.

(1) Upon reasonable prior written notice, during normal business hours at grantee's principal business office, the franchising authority shall have the right to inspect the grantee's financial records used to calculate the franchising authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the franchising authority receives such payment, after which period any such payment shall be considered final.

(2) Upon the completion of any such audit by the franchising authority, the franchising authority shall provide to the grantee a final report setting forth the franchising authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the grantee shall have thirty (30) days from the receipt of the report to provide the franchising authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "finally settled amount." For purposes of this Section, the term "finally settled amount(s)" shall mean the agreed upon underpayment, if any, to the franchising authority by the grantee as a result of any such audit. If the parties cannot agree on a "final settlement amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

(3) Any "finally settled amount(s)" due to the franchising authority as a result of such audit shall be paid to the franchising authority by the grantee within thirty (30) days from the date the parties agree upon the "finally settled amount." Once the parties agree upon a finally settled amount and such amount is paid by the grantee, the franchising authority shall have no further rights to audit or challenge the payment for that period. The franchising authority shall bear the expense of its audit of the grantee's books and records.

(c) Oversight of franchise. In accordance with applicable law, the franchising authority shall have the right to, on reasonable prior written notice and in the presence of grantee's employee, periodically inspect the construction and maintenance of the cable system in the franchise area as necessary to monitor grantee's compliance with the provisions of this franchise agreement.

(d) Technical standards. The grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this franchise, the grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The franchising authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

(e) Maintenance of books, records, and files.

(1) Books and records. Throughout the term of this franchise agreement, the grantee agrees that the franchising authority may review the grantee's books and records regarding customer service performance levels in the franchise area to monitor grantee's compliance with the provisions of this franchise agreement, upon reasonable prior written notice to the grantee, at the grantee's business office, during normal business hours, and without unreasonably interfering with grantee's business operations. All such documents that may be the subject of an inspection by the franchising authority shall be retained by the grantee for a minimum period of three (3) years.

(2) Proprietary information. Notwithstanding anything to the contrary set forth in this Section, the grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The franchising authority agrees to treat information disclosed by the grantee and designated as "confidential," "trade secret" or "proprietary" as such and only to disclose such information to those employees, representatives, and agents of the franchising authority that have a need to know in order to enforce this franchise agreement and who agree to maintain the confidentiality of all such information. The grantee shall not be required to provide customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the grantee to be competitively sensitive. Grantee may make proprietary or confidential information available for inspection but not copying or removal by the Town's representative. In the event that the franchising authority has in its possession and receives a request under a state "sunshine," public records, or similar law for the disclosure of information the grantee has designated as confidential, trade secret or proprietary, the franchising authority shall notify grantee of such request and cooperate with grantee in opposing such request.

(Ord. 04 §1, 2017)

Sec. 5-4-90. Transfer of cable system or franchise or control of grantee.

Neither the grantee nor any other person may transfer the cable system or the franchise without the prior written consent of the franchising authority, which consent shall not be unreasonably withheld or delayed. No transfer of control of the grantee, defined as an acquisition of fifty one percent (51%) or greater ownership interest in grantee, shall take place without the prior written consent of the franchising authority, which consent shall not be unreasonably withheld or delayed. No consent shall be required, however, for (A) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the grantee in the franchise or in the cable system in order to secure indebtedness, or (B) a transfer to an entity directly or indirectly owned or controlled by Comcast Corporation. Within thirty (30) days of receiving a request for consent, the franchising authority shall, in accordance with FCC rules and regulations, notify the grantee in writing of the additional information, if any, it requires to determine the legal, financial and technical qualifications of the transferee or new controlling party. If the franchising authority has not taken final action on the grantee's request for consent within one hundred twenty (120) days after receiving such request, consent shall be deemed granted.

Sec. 5-4-100. Insurance and indemnity.

(a) Insurance. Throughout the term of this franchise agreement, the grantee shall, at its own cost and expense, maintain comprehensive general liability insurance with policy endorsements designating the franchising authority and its officers, boards, commissions, elected officials, agents, volunteers, and employees as additional insureds. Grantee shall demonstrate to the franchise authority that the Grantee has obtained the insurance required in this Section. Such policy or policies shall be in the minimum amount of one million dollars ($1,000,000.00) for bodily injury or death to any one (1) person, and one million dollars ($1,000,000.00) for bodily injury or death of any two (2) or more persons resulting from one (1) occurrence, and one million dollars ($1,000,000.00) for property damage resulting from any one (1) accident. Such policy or policies shall be non-cancelable except upon thirty (30) days prior written notice to the franchising authority.

The grantee shall provide workers' compensation coverage in accordance with applicable law. The grantee shall indemnify and hold harmless the franchising authority from any workers compensation claims to which the grantee may become subject during the term of this franchise agreement

(b) Indemnification. The grantee shall indemnify, defend and hold harmless the franchising authority, its officers, employees, and agents from and against any liability or claims resulting from property damage or bodily injury (including accidental death) that arise out of the grantee's construction, operation, maintenance or removal of the cable system, including, but not limited to, reasonable attorneys' fees and costs, provided that the franchising authority shall give the grantee written notice of its obligation to indemnify and defend the franchising authority within fourteen (14) business days of receipt of a claim or action pursuant to this Section. If the franchising authority determines that it is necessary for it to employ separate counsel, the costs for such separate counsel shall be the responsibility of the franchising authority. Grantee shall not be obligated to indemnify the city to the extent of the city's negligence or willful misconduct.

(Ord. 04 §1, 2017)

Sec. 5-4-105. System description and service.

(a) System capacity. During the term of this agreement the grantee's cable system shall be capable of providing a minimum of eighty-five (85) channels of video programming with satisfactory reception available to its customers in the franchise area.

(b) Service to school buildings. The grantee shall provide free "basic" cable service and free installation at one (1) outlet to each state accredited K-12 public and private school, not including "home schools," located in the franchise area within one hundred twenty-five (125) feet of the grantee's distribution cable.

(c) Service to governmental and institutional facilities. The grantee shall provide free "basic" cable service and free installation at one (1) outlet to each municipal building located in the franchise area within one hundred twenty-five (125) feet of the grantee's distribution cable. "Municipal buildings" are those buildings owned or leased by the franchising authority for government administrative purposes, and shall not include buildings owned by franchising authority but leased to third parties or buildings such as storage facilities at which government employees are not regularly stationed. Such obligation to provide free basic cable service shall not extend to areas of municipal buildings where the grantee would normally enter into a commercial contract to provide such cable service (e.g., golf courses, airport restaurants and concourses, and recreation center work out facilities). Such cable service shall not be located in public waiting areas or used to entertain the public nor shall they be used in a way that might violate copyright laws.

(d) The Town acknowledges that the provision of one (1) outlet of basic service to all Town owned and occupied buildings and schools reflects a voluntary initiative on the part of the grantee and is exempt from Section 5-4-80 of this franchise agreement. Grantee does not waive any rights it may have regarding complimentary services under federal law or regulation. Subject to applicable law, should grantee elect to offset governmental complimentary services against franchise fees, grantee shall first provide the Town with ninety (90) days' prior written notice.

(Ord. 04 §1, 2017)

Sec. 5-4-110. Enforcement and termination of franchise.

(a) Procedure for remedying franchise violations.

(1) If the Town reasonably believes that grantee has failed to perform any obligation under this franchise or has failed to perform in a timely manner, the Town shall notify grantee in writing, stating with

reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(A) respond to the Town, contesting the Town's assertion that a default has occurred, and requesting a meeting in accordance with subsection (c), below;

(B) cure the default; or,

(C) notify the Town that grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (b) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether grantee's proposed completion schedule and steps are reasonable.

(2) If grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection 5-4-110(a)(3), or denies the default and requests a meeting in accordance with 5-4-110(a)(1), or the Town orders a meeting in accordance with subsection 5-4-110(a)(1)(C), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(3) If, after the meeting, the Town determines that a default exists, the Town shall order grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:

(A) Recommend the revocation of this franchise pursuant to the procedures in subsection 5-4-110(b); or,

(B) Recommend any other legal or equitable remedy available under this franchise or any applicable law.

(4) The determination as to whether a violation of this franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under applicable law.

(b) Revocation.

(1) In addition to revocation in accordance with other provisions of this franchise, the Town may revoke this franchise and rescind all rights and privileges associated with this franchise in the following circumstances, each of which represents a material breach of this franchise:

(A) If grantee fails to perform any material obligation under this franchise or under any other agreement, ordinance or document regarding the Town and grantee;

(B) If grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted cable service;

(C) If grantee attempts to evade any material provision of this franchise or to practice any fraud or deceit upon the Town or subscribers; or

(D) If grantee becomes insolvent, or if there is an assignment for the benefit of grantee's creditors;

(E) If grantee makes a material misrepresentation of fact in the application for or negotiation of this franchise.

(2) Following the procedures set forth in subsection 5-4-110(a) and prior to forfeiture or termination of the franchise, the town shall give written notice to the grantee of its intent to revoke the franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(3) Any proceeding under the paragraph above shall be conducted by the Town Board of Trustees and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(A) At such proceeding, grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Town Board of Trustees shall hear any persons people interested in the revocation, and shall allow grantee, in particular, an opportunity to state its position on the matter.

(B) Within ninety (90) days after the hearing, the Town Board of Trustees shall determine whether to revoke the franchise and declare that the franchise is revoked or if the breach at issue is capable of being cured by grantee, direct grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Board of Trustees determines are reasonable under the circumstances. If the Town determines that the franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the grantee. Grantee shall be bound by the Town's decision to revoke the franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(C) Grantee shall be entitled to such relief as the Court may deem appropriate.

(D) The Town Board of Trustees may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the franchise in lieu of revocation of the franchise.

(c) Procedures in the event of termination or revocation.

(1) If this franchise expires without renewal after completion of all processes available under this franchise and federal law or is otherwise lawfully terminated or revoked, the Town may, subject to applicable law:

(A) Allow grantee to maintain and operate its cable system on a month-to-month basis or short-term extension of this franchise for not less than six (6) months, unless a sale of the cable system can be closed sooner or grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(B) Purchase grantee's cable system in accordance with the procedures set forth in subsection 5-4-110(d), below.

(2) In the event that a sale has not been completed in accordance with subsections 5-4-110(c)(1)(A) and/or 5-4-110(c)(1)(B) above, the Town may order the removal of the aboveground cable system facilities and such underground facilities from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that is made by it and shall leave all right-of-way, public places and

private property in as good condition as that prevailing prior to grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions shall remain in full force and effect during the period of removal, and grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(3) If grantee fails to complete any removal required by subsection 5-4-110(c)(2) to the Town's satisfaction, after written notice to grantee, the Town may cause the work to be done and grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs.

(4) The Town may seek legal and equitable relief to enforce the provisions of this franchise.

(d) Purchase of cable system.

(1) If at any time this franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the cable system.

(2) The Town may, at any time thereafter, offer in writing to purchase grantee's cable system. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(3) In any case where the Town elects to purchase the cable system, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of grantee. The Town shall pay for the cable system in cash or certified funds, and grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(4) For the purposes of this subsection, the price for the cable system shall be determined as follows:

(A) In the case of the expiration of the franchise without renewal, at fair market value determined on the basis of grantee's cable system valued as a going concern, but with no value allocated to the franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of grantee which the Town would assume.

(B) In the case of revocation for cause, the equitable price of grantee's cable system.

(e) Receivership and foreclosure.

(1) At the option of the Town, subject to applicable law, this franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(A) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(B) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this franchise, and have remedied all defaults under the franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this franchise.

(2) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of grantee, the Town may serve notice of revocation on grantee and to the purchaser at the sale, and the rights and privileges of grantee under this franchise shall be revoked thirty (30) days after service of such notice, unless:

(A) The Town has approved the transfer of the franchise, in accordance with the procedures set forth in this franchise and as provided by law; and

(B) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this franchise.

(f) No monetary recourse against the Town. Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

(g) Alternative remedies. No provision of this franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by grantee, or to seek and obtain judicial enforcement of grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

(h) Assessment of monetary damages.

(1) The Town may assess against grantee monetary damages (i) up to five hundred dollars ($500.00) per day for general construction delays or payment obligations, (ii) up to two hundred fifty dollars ($250.00) per day for any other material breaches, or (iii) up to one hundred dollars ($100.00) per day for defaults, and collect the assessment as specified in this franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following grantee's receipt of the notice required by subsection 5-4-110(a)(1), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 5-4-110(a) have been completed.

(2) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the franchise or applicable law, including its right to recover from grantee any additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this franchise.

(i) Effect of abandonment. If the grantee abandons its cable system during the franchise term, or fails to operate its cable system in accordance with its duty to provide continuous service, the Town, at its option, may operate the cable system; designate another entity to operate the cable system temporarily until the grantee restores service under conditions acceptable to the Town, or until the franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the grantee to continue operations. If the Town is required to operate or designate another entity to operate the cable system, the grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

(j) What constitutes abandonment. The Town shall be entitled to exercise its options in subsection 5-4-110(i) if:

(1) The grantee fails to provide cable service in accordance with this franchise over a substantial portion of the franchise area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(2) The grantee, for any period, willfully and without cause refuses to provide cable service in accordance with this franchise.

(Ord. 04 §1, 2017)

Sec. 5-4-120. Competitive equity.

(a) Competitive equity.

(1) The grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide cable services within the Town. If the Town grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material obligations under this franchise, then the Town agrees that the obligations in this franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise fees and gross revenues; complementary services; insurance; system build-out requirements; security instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(2) The modification process of this franchise as provided for in Section 5-4-120(a)(1) shall only be initiated by written notice by the grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from grantee's obligations under this franchise; (2) identifying the franchise terms and conditions for which grantee is seeking amendments; (3) providing text for any proposed franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.

(3) Upon receipt of grantee's written notice as provided in Section 5-4-120(a)(2), the Town and grantee agree that they will use best efforts in good faith to negotiate grantee's proposed franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and grantee reach agreement on the franchise modifications pursuant to such negotiations, then the Town shall amend this franchise to include the modifications.

(4) In the alternative to franchise modification negotiations as provided for in Section 5-4-120(a)(3), or if the Town and grantee fail to reach agreement in such negotiations, grantee may, at its option, elect to replace this franchise by opting into the franchise or other similar lawful authorization that the City grants to another provider of cable services, with the understanding that grantee will use its current system design and technology infrastructure to meet any requirements of the new franchise, so as to insure that the regulatory and financial burdens on each entity are equivalent. If grantee so elects, the Town shall immediately commence proceedings to replace this franchise with the franchise issued to the other cable services provider.

(5) Notwithstanding anything contained in this Section 5-4-120(a)(1) through 5-4-120(a)(4) to the contrary, the Town shall not be obligated to amend or replace this franchise unless the new entrant makes cable services available for purchase by subscribers or customers under its franchise agreement with the Town.

(6) Notwithstanding any provision to the contrary, at any time that wireline facilities based entity, legally authorized by state or federal law, makes available for purchase by subscribers or customers, cable

services or multiple channels of video programming within the franchise area without a franchise or other similar lawful authorization granted by the Town, then:

(A) Grantee may negotiate with the Town to seek franchise modifications as per Section 5-4-120(a)(3) above; or

(i) the term of grantee's franchise shall, upon ninety (90) days written notice from grantee, be shortened so that the franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of grantee's notice; or,

(ii) Grantee may assert, at grantee's option, that this franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

(Ord. 04 §1, 2017)

Sec. 5-4-130. Miscellaneous provisions.

(a) Force majeure. The grantee shall not be held in default under, or in noncompliance with, the provisions of the franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, failure of utility service necessary to operate the cable system, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the grantee's ability to anticipate or control. This provision also covers work delays outside of grantee's control caused by waiting for other utility providers to service or monitor their own utility poles on which the grantee's cable or equipment is attached, as well as documented unavailability of materials or qualified labor to perform the work necessary.

(b) Furthermore, the parties hereby agree that it is not the grantee's intention to subject the grantor to penalties, fines, forfeiture or revocation of the agreement for violations of the agreement where the violation was a good faith error that resulted in no or minimal negative impact on the subscribers within the service area, or where strict performance would result in practical difficulties and hardship to the grantee which outweigh the benefit to be derived by the grantor and/or subscribers.

(c) Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service; addressed as follows; and effective upon the date of mailing:

To the franchising authority:

Town of Foxfield
P.O. Box 461450
Foxfield, CO 80046
Attn: Town Clerk

with a copy to:

Hoffmann, Parker, Wilson & Carberry, P.C.
511 Sixteenth Street, Suite 610
Denver, CO 80202
Attention: Corey Y. Hoffmann

To the Grantee:

Comcast of Colorado IV, LLC
8000 E. Iliff Ave.
Denver, CO 802031
Attn: Government Affairs Dept.

with a copy to:

Comcast Cable
Attn.: Government Affairs Department
1701 John F. Kennedy Blvd.
Philadelphia, PA 19103

(d) Entire agreement. This franchise agreement embodies the entire understanding and agreement of the franchising authority and the grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral.

(e) Severability. If any section, subsection, sentence, clause, phrase, or other portion of this franchise agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

(f) Governing law. This franchise agreement shall be deemed to be executed in the State of Colorado, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Colorado, as applicable to contracts entered into and performed entirely within the State.

(g) Modification. No provision of this franchise agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the franchising authority and the grantee, which amendment shall be authorized on behalf of the franchising authority through the adoption of an appropriate resolution or order by the franchising authority, as required by applicable law.

(h) No third-party beneficiaries. Nothing in this franchise agreement is intended to confer third-party beneficiary status on any member of the public to enforce the terms of this franchise agreement.

(i) No waiver of rights. Nothing in this franchise agreement shall be construed as a waiver of any rights, substantive or procedural, grantee or franchising authority may have under federal or state law unless such waiver is expressly stated herein.

(Ord. 04 §1, 2017)

APPENDIX 5-A
CABLE TELEVISION CUSTOMER SERVICE STANDARDS

I. POLICY

Grantee should be permitted the option and autonomy to first resolve citizen complaints without delay and interference from the Grantor. Where a given complaint is not addressed by Grantee to the citizen's satisfaction, the Grantor may intervene.

II. CUSTOMER SERVICE

1. Grantee shall maintain local telephone access lines that shall be available 24 hours a day, seven days a week for service/repair requests and billing inquiries.

2. Grantee shall have dispatchers and technicians, on call 24 hours a day, 7 days a week, including legal holidays.

3. Grantee shall retain sufficient customer service representatives and telephone line capacity to ensure that telephone calls to service/repair and billing inquiry lines are answered by a customer service representative within 30 seconds or less, and that any transfers are made within 30 seconds. These standards shall be met no less than 90 percent of the time measured monthly.

4. The total number of calls receiving busy signals shall not exceed 3% of the total telephone calls. This standard shall be met 90 percent or more of the time measured monthly.

III. RESIDENTIAL INSTALLATION

1. Grantee shall complete all standard residential installations requested by customers within 7 business days after the order is placed, unless a later date for installation is requested. "Standard" residential installations are those located up to 150 feet from the existing distribution system. If the customer requests a nonstandard residential installation, or Grantee determines that a nonstandard residential installation is required, Grantee shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

2. Residential Installation and Service Appointments

   (a) . Customers requesting installation of cable service or service to an existing installation may choose any of the following blocks of time for the installation appointment: 8:00 a.m. to 12:00 a.m.; 12:00 Noon to 4:00 p.m.; 4:00 p.m. to 8:00 p.m.; or a four-hour block of time mutually agreed upon by the customer and Grantee. Grantee may not cancel an appointment with a customer after 5:00 p.m. on the day before the scheduled appointment, except for appointments scheduled within twelve (12) hours after the initial call.

   (b) . Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives within the agreed upon time, and, if the customer is absent when the technician arrives, the technician leaves notification of arrival and return time. In such circumstances, Grantee shall contact the customer within forty-eight (48) hours.

3. Residential Service Interruptions

   a. In the event of system outages (loss of reception on all channels) resulting from Cable Operator equipment failure affecting 5 or more customers, Grantee shall respond to such failure within 2 hours after the 5th customer call is received.

   b. All other service interruptions resulting from Cable Operator equipment failure shall be responded to by Grantee by the end of the next calendar day.

   c. All service outages and interruptions for any cause beyond the control of Grantee shall be corrected within 36 hours, after the conditions beyond its control have been corrected.

4. If a customer experiences poor video or audio reception attributable to Grantee's equipment, Grantee shall respond no later than the day following the customer call. If an appointment is necessary, customer may choose the same blocks of time described in Section 1II.2.a. At the customer's request, Grantee shall respond to the problem at a later time convenient to the customer.

5. Problem Resolution

Grantee's customer service representatives shall have the authority to provide credit for interrupted service or any of the other credits listed in Schedule A, to waive fees, to schedule service appointments and to change billing cycles, where appropriate. Any difficulties that cannot be resolved by the customer service

representative shall be referred to the appropriate supervisor who shall contact the customer within 4 hours and respond to the problem within 48 hours or within such other time frame as is acceptable to the customer and Grantee.

6. Billing, Credits, and Refunds

Grantee shall allow at least thirty (30) days from the beginning date of the applicable service period for payment of a customer's service bill for that period. If a customer's service bill is not paid within that period of time, Grantee may apply a five dollar ($5) administrative fee to the customer's account. If the customer's service bill is not paid within fifty two (52) days of the beginning date of the applicable service period, Grantee may disconnect the customer's service, provided that Grantee has given at least two (2) weeks' notice to the customer that such disconnection may result.

7. Respectful Treatment of Private Property

   a. Except in the case of an emergency involving public safety or service interruption to a large number of subscribers, Grantee shall give reasonable notice to property owners or legal tenants prior to entering upon private premises.

   b. Grantee personnel shall clean all areas surrounding any work site and ensure that all cable materials have been disposed of properly.

8. Services for Customers with Disabilities

   a. For any customer with a disability, Grantee shall at no charge deliver and pick up converters at customers' homes. In the case of a malfunctioning converter, the technician shall provide another converter, hook it up and ensure that it is working properly, and shall return the defective converter to Grantee.

   b. Grantee shall provide TDD service with trained operators who can provide every type of assistance rendered by Grantee's customer service representatives for any hearing-impaired customer at no charge.

   c. Grantee shall provide free use of a remote control unit to mobility-impaired (if disabled, in accordance with subsection 4, below) customers.

   d. Any customer with a disability may request the special services described above by providing Grantee with a letter from the customer's physician stating the need, or by making the request to Grantee's installer or service technician, where the need for the special services can be visually confirmed.

9. Customer Information

   A. Notifications to Subscribers:

   1. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:

      (i) products and services offered;

      (ii) prices and options for services and conditions of subscription to programming and other services;

      (iii) installation and service maintenance policies;

      (iv) instructions on how to use the service;

      (v) channel positions of programming carried on the Cable System; and

(vi) billing and complaint procedures, including the address and telephone number of the local Grantor's cable office.

2. Subscribers will be notified of any changes in rates, programming services, channel positions, or customer service center location as soon as possible through public announcements. Notice will be given to Subscribers a minimum of 30 days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers 30 days in advance of any significant changes in the other information required by the preceding paragraph.

3. Grantee shall provide written notification of any change in rates, programming, or channel positions, at least 30 days before the effective date of change.

4. All officers, agents, and employees of Grantee or its contractors or subcontractors who are in personal contact with cable customers shall wear on their outer clothing identification cards bearing their name and photograph. Grantee shall account for all identification cards at all times. All CSRs shall identify themselves orally to callers immediately following the greeting during each telephone contact with the public. Every vehicle of a subcontractor or contractor shall be labeled with the name of the contractor.

5. Each CSR, technician or employee of Grantee in each contact with a customer shall state the estimated cost of the service, repair, or installation orally prior to delivery of the service or before any work is performed, and, upon request, shall provide the customer with an oral statement of the total charges before terminating the telephone call or before leaving the location at which the work was performed.

10. Satisfaction Guaranteed

Grantee shall guarantee customer satisfaction for every customer who requests new installation of cable service or adds any additional programming service to the customer's cable subscription. Any such customer who requests disconnection of such service within 30 days from its date of activation shall receive a credit to his/her account in the amount of one month's subscription charge for the service that has been disconnected,

11. Non-Compliance with Customer Service Standards.

Non-compliance with any provision of these Standards is a violation of the Agreement,

12. MISCELLANEOUS

A. Severability.

Should any section, subsection, paragraph, term, or provision of these Standards be determined to be illegal, invalid, or unconstitutional by any court or agency of competent jurisdiction with regard thereto, such determination shall have no effect on the validity of any other section, subsection, paragraph, term, or provision of these Standards, each of the latter of which shall remain in full force and effect.

B. Non-Waiver.

Failure to enforce any provision of these Standards shall not operate as a waiver of the obligations or responsibilities of Grantee under said provision, or any other provision of these Standards.

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

SCHEDULE A
SUGGESTED MINIMUM CREDITS TO CUSTOMERS

1. Telephone access line available twenty-four hours/day seven days/week.	1. $5 credit to customer
2. Dispatchers and technicians on call twenty-four hours/day seven days/week.	2. $5 credit to customer
3. Telephone calls answered within thirty seconds or less 90% of the time on a monthly basis.	3. $5 credit to customer
4. Installations completed within seven days of placement of order.	4. $5 credit to customer
5. Installation appointments kept within scheduled four-hour appointment window.	5. Installation free
6. Service appointments kept within scheduled four hour appointment window.	6. $20 credit to customer
7. System outages from Grantee equipment affecting five or more customers repaired within two hours.	7. One day free for each 24 hour delay
8. Interruptions resulting from Grantee equipment corrected within 24 hours or by the end of the next day.	8. One day free for each 24 hour delay
9. Service outages beyond Grantee's control corrected 36 hours after conditions beyond Grantee control have been corrected.	9. One day free for each 24 hour delay
10. Grantee to respond to customer phone inquiry within 48 hours and written inquiry within 2 weeks.	10. $5 credit to customer
11. Grantee to attempt to give reasonable notices before entering premises.	11. $5 credit to customer
12. Grantee to clean up area surrounding work sites and properly disposes of cable materials.	12. $5 credit to customer
13. Grantee to pick up and deliver converters at homes of customers with disabilities.	13. $5 credit to customer
14. Grantee to provide specific and timely customer information.	14. $5 credit to customer
15. Written notification of changes in rates, programming, channel location and location of customer service centers.	15. $5 credit to customer
16. Employees and contractors of Grantee to wear proper identification.	16. $5 credit to customer

(Ord. 06 §1, 1998; Ord. 1 §1, 2012)

CHAPTER 6
Business Licenses and Regulations

ARTICLE 1 Business Licenses

Sec. 6-1-10. Purpose.

The purpose of this Article is the regulation and registration of businesses operating within the Town for the health, safety and welfare of the citizens of the Town and to enable the Town to enforce the obligation of businesses to remit sales, use and additional taxes to support the Town.

Sec. 6-1-20. License required.

(a) Every person must obtain a license from the Town before operating, conducting or carrying on any retail trade, profession or business with a physical storefront within the Town (zone district PD or VC); except that nonprofit state corporations, excluding federal, state or municipal corporations, are hereby exempt from the license requirements set forth in this Article.

(b) Each license shall be granted and issued by the Town Clerk and shall be in force and effect until the thirty-first day of December 31 of the year in which it is issued, unless sooner revoked. Such license shall be granted or renewed only upon an application which states the name and address of the person desiring such license, the name of such business and location and such other facts as the Town Clerk may require.

(Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 6-1-30. License application.

An application for a business license shall be made to the Town Clerk on forms provided by the Town. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license. It is

unlawful for any person to make any false statement or misrepresentation in connection with any application for a license.

Sec. 6-1-40. License fees.

(a) Every person required to be licensed by the provisions of this Article shall pay a fee of fifty dollars ($50.00). The fee for renewal of an existing license shall be thirty-five dollars ($35.00). For a license obtained after July 1, the fee for the first year shall be thirty-five dollars ($35.00).

(b) Before granting the license, the fee required for the license must be paid at the office of the Town Clerk.

(Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 6-1-50. Issuance.

Upon receipt of the required fee and compliance with Section 6-1-30, the Town Clerk will issue a license that indicates that the license tax has been paid for the specified year.

Sec. 6-1-60. Carrying or posting license required.

Each license shall be numbered and shall show the name and place of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. If the business is not operated, conducted or carried on at a fixed location, then the licensee must carry the license upon his person when operating, conducting or carrying on any retail trade, profession or business. Every licensee shall produce his license for examination when requested to do so by any Town police officer or by any person representing the Town.

Sec. 6-1-70. Separate license for each location.

Any storefront business operating, conducting or carrying on any retail trade, profession or business within the City must obtain a separate license for each location of such trade, profession or business.

Sec. 6-1-80. License nontransferable.

No license issued under the provisions of this Article shall be transferable from person to person or place to place.

Sec. 6-1-90. Period of license.

All licenses shall expire on January 1 of each calendar year.

Sec. 6-1-100. Renewal.

(a) An application for renewal of a general business license shall be considered in the same manner as an original application.

(b) It shall be the duty of each such licensee on or before January 1st of each year during which this Article remains in effect to obtain a renewal thereof if the licensee remains in retail business or is liable to account for the tax provided for in Chapter 4 of this Code, but nothing herein contained shall be construed to empower the Town Clerk to refuse such renewal except revocation for cause of licensee's prior license.

(c) Any applicant who fails to submit the renewal application and fee within the required time shall be subject to the following additional fees: an additional twenty-five percent (25%) of the license fee for the first fifteen (15) days, and thereafter, and an additional fifty percent (50%) of such fee.

(Ord. 15 §1, 1995; Ord. 1 §1, 2012)

Sec. 6-1-110. Suspension.

A license may be suspended:

(1) When any money due the Town has not been paid. This includes failure to pay civil penalties, fines, taxes, impact fees or any other money owed to the Town.

(2) When any activity conducted by the licensee or his employee or agent violates any federal, state or local rule, regulation or law.

(3) Upon failure to comply with the terms and conditions of the license.

(4) Upon any grounds of suspension provided by this Code.

Sec. 6-1-120. Revocation of license.

A license may be revoked by the Town:

(1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application.

(2) When it appears that the activity conducted pursuant to such license is a public nuisance as defined by this Code or statute or violates any federal, state or local rule, regulation or law.

(3) Upon failure to comply with the terms and conditions of the license.

(4) Upon any grounds of revocation provided by this Code.

Sec. 6-1-130. Notice and hearing prior to suspension or revocation.

All hearings to revoke, suspend or cancel a license shall be before the Board of Trustees. The suspension or revocation of any license shall not release or discharge anyone from his civil liability for the payment of the taxes, penalty and interest or from the prosecution of the offense.

Sec. 6-1-140. Cease and desist.

If any business is operating without a license, the Town Clerk may issue an order to the business to cease and desist all further operation until a license is issued for the business. The order shall give the business three (3) days to pay all amounts due the Town; or to post a bond in the amount owing the Town and to request in writing a hearing with the Town Clerk. If the business does nothing, it shall cease operations on the third day. The hearing will be before the Board of Trustees. The proceedings shall not relieve or discharge anyone from the civil liability for the payment of the taxes, penalty and interest or from the prosecution of the offense.

Sec. 6-1-150. Refund of fees.

Upon refusal by the Town of any license or permit, the fee therefor paid in advance shall be returned to the applicant. In the event that any license or permit is revoked by the Town, all monies paid therefor shall be and remain the monies of the Town and no refund shall be made to any licensee or holder of a permit.

Sec. 6-1-160. Penalty.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

ARTICLE 2 Liquor Licensing Regulations

Division 1 Alcoholic Beverages

Sec. 6-2-10. Definitions.

(a) As used in this Article, unless the context otherwise requires:

Adult means a person lawfully permitted to purchase alcoholic beverages.

Alcoholic beverage means fermented malt beverage or malt, vinous or spirituous liquors; except that alcoholic beverage shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S.

Bed and breakfast means an overnight lodging establishment that provides at least one (1) meal per day at no charge other than a charge for overnight lodging and does not sell malt, vinous or spirituous liquors by the drink.

Brew pub means a retail establishment that manufactures not more than one million eight hundred sixty thousand (1,860,000) gallons of malt liquor on its premises each year.

Brewery means any establishment where malt liquors are manufactured, except brew pubs licensed under this Chapter.

Club means:

a. A corporation that:

1. Has been incorporated for not less than three (3) years;

2. Has a membership that has paid dues for a period of at least three (3) years; and

3. Has a membership that for three (3) years has been the owner, lessee or occupant of an establishment operated solely for objects of a national, social, fraternal, patriotic, political or athletic nature, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

b. A corporation that is a regularly chartered branch, lodge, or chapter of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.

Distillery means any establishment where spirituous liquors are manufactured.

Fermented malt beverage or *3.2 beer* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (0.5%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume; except that fermented malt beverage shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S.

Fine means a form of discipline imposed pursuant to this Chapter in lieu of a suspension. Any fine shall be the equivalent of twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall be not less than two hundred dollars ($200.00) nor more than five thousand dollars ($5,000.00).

Good cause, for the purpose of refusing or denying a license renewal or initial license issuance, means:

a. The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Chapter or any rules and regulations promulgated pursuant to this Chapter;

b. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;

c. In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in Section 12-47-301(2), C.R.S.; or

d. Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the establishment is located, which evidence must include a continuing pattern of fights, violent activity or disorderly conduct. For purposes of this Paragraph, disorderly conduct has the meaning as provided for in Section 18-9-106, C.R.S.

Hard cider means an alcoholic beverage containing at least one-half of one percent (0.5%) and less than seven percent (7%) alcohol by volume that is made by fermentation of the natural juice of apples or pears, including but not limited to flavored hard cider and hard cider containing not more than 0.392 gram of carbon dioxide per hundred milliliters. For the purpose of simplicity of administration of this Chapter, hard cider shall in all respects be treated as a vinous liquor except where expressly provided otherwise.

Hotel means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.

Inhabitant, with respect to cities or towns having less than forty thousand (40,000) population, means an individual who resides in a given neighborhood or community for more than six (6) months each year.

License means a grant to a licensee to manufacture or sell fermented malt beverages, or malt, vinous or spirituous liquors as provided by this Article.

Licensed premises means the premises specified in an application for a license under this Article which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense or serve fermented malt beverages or malt, vinous or spirituous liquors in accordance with the provisions of this Article.

Licensee means a person holding a license issued pursuant to this Article.

Limited winery means any establishment manufacturing not more than one hundred thousand (100,000) gallons, or the metric equivalent thereof of vinous liquors annually which uses not less than seventy-five percent (75%) Colorado-grown products in the manufacture of such vinous liquors.

Liquor license shall include the following classes of licenses:

a. Retail liquor store license;

b. Liquor-licensed drugstore;

c. Beer and wine license;

d. Hotel and restaurant license;

e. Club license;

f. Tavern or gaming tavern license;

g. Optional premises license;

h. Brew pub license;

i. Arts license; and

j. Racetrack license.

Liquor-licensed drugstore means any drugstore licensed by the state board of pharmacy that has also applied for and has been granted a license by the state licensing authority to sell malt, vinous and spirituous liquors in original sealed containers for consumption off the premises.

Local Licensing Authority means, for purposes of this Article, the Board of Trustees.

Location means a particular parcel of land that may be identified by an address or by other descriptive means.

Malt liquors includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight or four percent (4%) alcohol by volume.

Meal means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

Medicinal spirituous liquors means any alcoholic beverage, excepting beer and wine, that has been aged in wood for four (4) years and bonded by the United States government and is at least one hundred (100) proof.

Nudity means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a noticeably turgid state. For purposes of this definition, a *female breast* is considered uncovered if the nipple only or the nipple and the areola only are covered.

Optional premises means:

a. Premises specified in an application for a hotel and restaurant license under Title 12, Article 47, C.R.S., with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant which is licensed to serve alcoholic beverages in accordance with the provisions of this Article and at the discretion of the state and local licensing authorities; and

b. The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility. For purposes of this Paragraph, *outdoor sports and recreational facility* means a facility that charges a fee for the use of such facility.

Person means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof.

Premises means a distinct and definite location, which may include a building, a part of a building, a room or any other definite contiguous area.

Racetrack means any premises where race meets or simulcast races with pari-mutuel wagering are held in accordance with the provisions of Article 60 of Title 12, C.R.S.

Rectify means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.

Rectifying plant means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

Resort complex means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.

Resort hotel means a hotel, as defined in this Section, with well-defined occupancy seasons.

Restaurant means an establishment, which is not a hotel as defined in this Section, provided with special space, sanitary kitchen and dining room equipment and persons to prepare, cook and serve meals, where, in consideration of payment, meals, drinks, tobaccos and candies are furnished to guests and in which nothing is sold excepting food, drinks, tobaccos, candies and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area. Any establishment connected with any business wherein any business is conducted, excepting hotel business, limited gaming conducted pursuant to Article 47.1 of Title 12, C.R.S., or the sale of food, drinks, tobaccos, candies or such items of souvenir merchandise, is declared not to be a restaurant. Nothing in this Subsection shall be construed to prohibit the use in a restaurant of orchestras, singers or floor shows, coin-operated music machines, amusement devices that pay nothing of value and cannot by adjustment be made to pay anything of value or other forms of entertainment commonly provided in restaurants.

Retail license means a grant to a licensee to sell fermented malt beverages pursuant to the Colorado Beer Code (Article 46 of Title 12, C.R.S.) or a grant to a licensee to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 47 of Title 12, C.R.S.).

Retail licensee or *licensee* means the holder of a license to sell fermented malt beverages pursuant to the Colorado Beer Code or the holder of a license to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code.

Retail liquor store means an establishment engaged only in the sale of malt, vinous and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises; tobaccos, tobacco products, smokers' supplies and nonfood items related to the consumption of such beverages; and liquor-filled candy and food items approved by the state licensing authority, which are prepackaged, labeled and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen (16) ounces. Nothing in this Subsection shall be construed to authorize the sale of food items that could constitute a snack, a meal or portion of a meal.

School means a public, parochial or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one (1) through twelve (12). *Basic academic education* has the same meaning as set forth in Section 22-33-104(2)(b), C.R.S.

Sealed containers means any container or receptacle used for holding an alcoholic beverage, which container or receptacle is corked or sealed with any stub, stopper or cap.

Sell or *sale* means any of the following: To exchange, barter or traffic in; to solicit or receive an order for except through a licensee licensed under this Chapter or Article 46 or 48 of Title 12, C.R.S.; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or

to possess with intent to sell; to possess or transport in contravention of this Chapter; to traffic in for any consideration promised or obtained, directly or indirectly.

Sell at wholesale means selling to any other than the intended consumer of fermented malt beverages or malt, vinous or spirituous liquors. Sell at wholesale shall not be construed to prevent a brewer or wholesale beer dealer from selling fermented malt beverages or malt, vinous or spirituous liquors to the intended consumer thereof or to prevent a licensed manufacturer or importer from selling such beverages to a licensed wholesaler.

Spirituous liquors means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor, except as provided in the definitions of *meal* and *winery* in this Section, shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

State licensing authority means the Executive Director of the Colorado Department of Revenue or the Deputy Director of the Colorado Department of Revenue if the Executive Director so designates.

Tavern means an establishment serving malt, vinous and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

Vinous liquors means wine and fortified wines that contain not less than one-half of one percent (0.5%) and not more than twenty-one percent (21%) alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

Winery means any establishment where vinous liquors are manufactured.

(b) All other terms shall be defined as set forth in the provisions of the Colorado Beer Code, the Colorado Liquor Code and Special Event Permits, as the definitions presently exist or may hereafter be amended.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-20. Application of state statutes.

The Colorado Beer Code, Section 12-46-101, et seq., C.R.S., the Colorado Liquor Code, Section 12-47-101, et seq., C.R.S., and Special Event Permits, Section 12-48-101, et seq., C.R.S., as they presently exist or may hereafter be amended, shall apply to the sale of fermented malt beverages, alcoholic beverages, special malt liquors, spirituous liquors and vinous liquors in the Town.

Sec. 6-2-30. Power and purpose.

The Board of Trustees finds and determines that it is empowered by Section 12-47-505, C.R.S., to fix and collect certain fees in connection with the application for issuance, transfer and renewal of certain types of beer, wine and liquor licenses. The Board of Trustees further finds that the fees established in this Article are reasonable and are in amounts sufficient to cover actual and necessary expenses incurred by the Town in connection with the handling of such licenses and applications therefor.

Sec. 6-2-40. Licensing fees.

The following fees shall be paid to the Town Clerk by the applicant at the time of filing the application or request:

(1) For a new license, the sum of seven hundred fifty dollars ($750.00);

(2) For a transfer of location or ownership, the sum of seven hundred fifty dollars ($750.00);

(3) For renewal of a license, the sum of one hundred dollars ($100.00); and

(4) For a temporary liquor license, the sum of two hundred fifty dollars ($250.00).

Sec. 6-2-50. Suspension or revocation; fine.

(a) Whenever a decision of the Board of Trustees, acting as the Local Licensing Authority (hereinafter "Authority"), suspending a retail license for fourteen (14) days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the retail licensee may, before the operative date of the suspension, petition the Authority for permission to pay a fine in lieu of having his retail license suspended for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the retail licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) That the books and records of the retail licensee are kept in such a manner that the loss of sales of alcoholic beverages which the retail licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(3) That the retail licensee has not had his license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the retail license.

(b) The fine accepted shall be equivalent to twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars ($200.00) nor more than five thousand dollars ($5,000.00).

(c) Payment of any fine pursuant to the provisions of this Section shall be in the form of cash, certified check or cashier's check made payable to the Town Clerk and shall be deposited in the general fund of the Town.

(d) Upon payment of the fine pursuant to this Section, the Authority shall enter its further order permanently staying the imposition of the suspension.

(e) In connection with any petition pursuant to this Section, the authority of the Authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(f) If the Authority does not make the findings required in Subsection (a) above and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Authority.

(Ord. 1 §1, 2012)

Sec. 6-2-60. Optional premises.

(a) An optional premises license and optional premises for a hotel and restaurant license may be issued by the Authority.

(b) The following standards shall be applicable to the issuance of a license under this Section, in addition to all other applicable standards set forth in the Colorado Liquor Code for optional premises license and optional premises for a hotel and restaurant license.

(1) Eligible facilities. Outdoor sports and recreational facilities as defined in Section 12-47-103(13.5), C.R.S., are eligible for licensing as an optional premises or an optional premises for a hotel and restaurant.

(2) Number of optional premises. There are no restrictions on the number of optional premises which any one (1) licensee may have on an outdoor sports or recreational facility.

(3) Minimum size of facility. There is no restriction on the minimum size of an outdoor sports or recreational facility which would be eligible for issuance of an optional premises license or optional premises for a hotel and restaurant license.

(c) The application for an optional premises license or optional premises for a hotel or restaurant license shall be accompanied by the following:

(1) A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premise requested;

(2) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use; and

(3) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises.

(Ord. 1 §1, 2012)

Sec. 6-2-70. Alcoholic beverage tastings authorized.

Pursuant to Section 12-47-301(10), C.R.S., the Town authorizes alcoholic beverage tastings for licensed retail liquor stores and liquor-licensed drug stores within the Town. The Town shall not require a further application prior to allowing retail liquor licensees to conduct alcoholic beverage tastings, and elects not to impose additional limitations on such tastings beyond those limitations set forth in Chapter 47 of Title 12, C.R.S.

Sec. 6-2-80. Educational requirements.

Every hotel and restaurant licensee, registered manager and licensee's employee is encouraged to obtain a certificate of completion from an educational program of training for intervention procedures for servers of alcohol. Those registered managers obtaining a certificate of completion may file a copy of the certificate of completion with the Authority with an application of renewal of a liquor license.

Sec. 6-2-90. Persons prohibited as licensees.

(a) No license provided by this Article shall be issued to or held by:

(1) Any person until the annual occupational tax has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors or stockholders holding ten percent (10%) or more of the outstanding and issued capital stock of the corporation are not of good moral character;

(4) Any partnership, association or company, any of whose officers, or any of whose members holding ten percent (10%) or more interest, are not of good moral character;

(5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the Board of Trustees;

(6) Any sheriff, deputy sheriff; police officer, prosecuting officer, the state licensing authority or any of its inspectors or employees;

(7) Any person whose character, record and reputation is not satisfactory to the Board of Trustees; and

(8) Any natural person under twenty-one (21) years of age.

(b) Consideration.

(1) In making a determination as to character or when considering the conviction of a crime, the Authority shall be governed by the provisions of Section 24-5-101, C.R.S.

(2) With respect to club license applications by corporation only, an investigation of the character of the corporate president and the club manager shall be deemed sufficient to determine whether to issue the club license to the corporation.

(c) Criminal history and criminal justice agency.

(1) In investigating the qualifications of the applicant or a licensee, the Authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the Authority takes into consideration information concerning the applicant's criminal history record, the Authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in Paragraph (1) of this Subsection, *criminal justice agency* means any federal, state or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

(Ord. 1 §1, 2012)

Sec. 6-2-100. Separate license for each business.

Each license issued under this Article is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific business and each location, and in such license the particular liquors which the applicant is authorized to manufacture or sell shall be named and described.

Sec. 6-2-110. Sale of all or part of business interest.

(a) Whenever any individual, corporation or partnership existing or licensed under this Article sells all or part of its corporate stock, partnership interest or business interest in a beer or liquor outlet and a new license application is required by the State, an application fee in an amount to be determined by the Town by resolution shall be paid to the Town at the time of making the application.

(b) The Town Clerk shall follow the procedures in this Article for the investigation of the applicant, and shall determine whether the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license pursuant to Section 6-2-20. If the investigation reveals no information tending to establish that the applicant may be prohibited from holding a license, the Town Clerk shall issue a

license to the applicant; provided, however, that if the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license, the Town Clerk shall cause the new application for the existing outlet to be placed on the agenda not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. The applicant, or his attorney, shall be in attendance at the Board of Trustees meeting at which his application is presented. The date of presentation of the application to the Board of Trustees shall be deemed the date of filing the application. Upon receipt of the application, the Board of Trustees shall follow procedures set forth in this Article for the conduct of a public hearing. The Board of Trustees shall only consider the criteria listed in Section 6-2-20 when conducting the hearing.

(c) The Town Clerk shall have the authority to issue a temporary permit to any applicant under this Section who has also satisfied the applicable provisions of Section 12-47-303, C.R.S., and the provision of such statute shall apply to both the issuance and administration of such a temporary permit. The Town Clerk shall not charge a fee for a temporary permit if the application for the temporary permit is filed with the Town Clerk at the same time as the application to transfer ownership of a license. Otherwise, the Town Clerk shall charge a fee to be determined by the Town by resolution for a temporary permit.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-120. Change of corporate officers or directors.

(a) Whenever any corporation causes a change in its corporate officers or directors, and a license addendum is required to be filed with the State, an application fee in an amount to be determined by the Town by resolution shall be paid.

(b) Upon the filing of a license addendum, the procedures set forth in Subsection 6-2-40(b) of this Article shall be followed.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-130. Renewal fee and procedures.

(a) All renewal applications for malt, vinous and spirituous liquor licenses and fermented malt beverage licenses shall be submitted to the Town Clerk on the prescribed forms, together with the applicable license fee, no later than forty-five (45) days prior to the date on which the license expires. No renewal application shall be accepted by the Town Clerk which is not complete in every detail.

(b) Upon receiving the completed renewal application, the Town Clerk shall assemble the file of the applicant and review the file to determine whether "good cause" is present for nonrenewal. Whether "good cause" is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the Town Clerk's review indicates no facts or circumstances supporting "good cause" for nonrenewal, the Town Clerk shall issue a renewal license; provided, however, that in the event the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before the Board of Trustees.

(c) If there is information before the Town Clerk tending to constitute good cause for not renewing a particular license for an additional year, the Town Clerk, at the direction of the Board of Trustees, shall cause to be issued a notice of hearing on the license renewal. In the event the Town Clerk issues a notice requiring a hearing to renew a license, the notice shall be served at least thirty (30) days prior to the expiration date on the license and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to hearing.

(d) Hearings held on any renewal application, after proper notice has been given, may result in denial of renewal of the license for good cause.

(e) In the event that a license is renewed by the Authority, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The Authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-140. Application.

(a) The Authority may issue only the following malt, vinous and spirituous liquor licenses upon payment of the fee to be determined by the Town by resolution and Section 12-47-505, C.R.S.:

(1) Retail liquor store license;

(2) Liquor-licensed drugstore license;

(3) Beer and wine license;

(4) Hotel and restaurant license;

(5) Tavern license;

(6) Brew pub license;

(7) Club license;

(8) Arts license;

(9) Racetrack license;

(10) Optional premises license; and

(11) Retail gaming tavern license.

(b) An application for a new liquor license shall be filed with the Town Clerk. It shall be filed in duplicate on forms made available by the state licensing authority. It shall be accompanied by the following:

(1) The application fee for the license as specified herein;

(2) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building;

(3) Some evidence of ownership or right to possession of the premises, consisting of a copy of a deed or lease;

(4) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner, along with their name and residence address and telephone number; and

(5) In the case of a corporation, a copy of its articles of incorporation, and, if a foreign corporation, evidence of qualification to do business in this State, and a sworn statement setting forth the name, residence address and telephone number of each stockholder, director and officer of the corporation.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-150. Optional premises license.

(a) The requirements for an optional premises license shall be:

(1) An applicant or holder of a hotel and restaurant license desiring to sell or serve alcoholic beverages on an optional premises shall:

a. Provide a scale drawing showing the area to be licensed.

b. Show on the scale drawing the location at which alcoholic beverages are to be dispersed, and significant land or architectural factors.

c. An affidavit of the owner or the agent and manager of the facility showing the need, convenience or desirability of the optional premises license.

(b) An applicant for a hotel and restaurant license who desires to sell or serve alcoholic beverages on optional premises shall file with the optional premises permit application a list of the optional premises locations. Such application and list shall be filed with the state licensing authority and the Authority upon initial application, and each license year thereafter. Approval of the areas must be obtained from the state licensing authority and the Authority. The decision of each authority shall be discretionary. In the event that the state licensing authority and Authority allow the area or areas to be designated optional premises, no alcoholic beverages may be served on the optional premises without the licensee having provided written notice to the state licensing authority and Authority forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Chapter under circumstances not specified in this Subsection.

(c) An applicant for an optional premises license who desires to sell, dispense or serve alcoholic beverages on optional premises shall file with the optional premises license application a list of the optional premises locations and the area in which the applicant desires to store malt, vinous and spirituous liquors for future use on the optional premises. The application and additional information shall be filed with the state licensing authority and Authority upon initial application, and each license year thereafter. Approval of the license and areas must be obtained from the state licensing authority and the Authority. The decision of each authority shall be discretionary. In the event that the state licensing authority and Authority allow the area or areas to be designated optional premises, no alcoholic beverages may be served on the optional premises without the licensee having provided written notice to the state licensing authority and Authority forty-eight (48) hours prior to serving alcoholic beverages on the optional premises. Such notice shall contain the specific days and hours on which the optional premises are to be used. This Subsection shall not be construed to permit the violation of any other provision of this Article under circumstances not specified in this Subsection.

(d) After all information pertinent to the application has been provided, the Board of Trustee's decision shall be made by resolution within thirty (30) days. No public hearing shall be required, unless the Board of Trustees, in its discretion, determines that a public hearing is necessary.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-160. Application fee.

An application fee in an amount to be determined by the Town by resolution shall be made to the Town at the time of making an application for a liquor license. This fee shall be used by the Town to defray the expenses incurred by the Town in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason. This fee shall be in addition to the license fees set forth hereinbelow.

Sec. 6-2-170. Initial appearance before Board of Trustees.

(a) The Town Clerk shall place on the agenda of a Board of Trustees meeting the request for a new liquor license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. When the application is presented to the Board of Trustees, either the applicant or his attorney shall attend the meeting. The date the application is received by the Town Clerk shall be deemed the date of filing of the application.

(b) The applicant shall be instructed to, and shall prepare and furnish at the public hearing, a survey map showing the neighborhood and the location and nature of other liquor outlets.

(c) The Board of Trustees shall also set a date for public hearing. The public hearing shall be held not less than thirty (30) days from the date of the Board of Trustees meeting in which the application was presented.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-180. Public notice.

The applicant for a liquor license shall cause to be posted and published a public notice of the hearing:

(1) The sign used for posting such notice shall be of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice president, secretary and manager or other managing officers.

(2) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type set so as to be not less than one (1) column in width nor less than six (6) inches in length.

(3) If the building in which liquor is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of the application, the sign shall be posted upon the premises where the building is to be constructed in such a manner that it shall be conspicuous and plainly visible to the general public.

Sec. 6-2-190. Investigation of applicant.

The rules of procedure to be followed in conducting the public hearing for the liquor license application shall be established by the Mayor.

Sec. 6-2-200. Consideration of factors.

Before entering any decision approving or disapproving the liquor license application, the Board of Trustees shall consider the following:

(1) The facts and evidence of the investigation;

(2) The reasonable requirements of the neighborhood for the type liquor license for which application has been made, including reference to the number, type and availability of liquor outlets in or near the neighborhood under consideration;

(3) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

(4) The use of additional law enforcement resources; and

(5) Other pertinent facts and evidence affecting the qualifications of the applicant.

Sec. 6-2-210. Decision of Board of Trustees.

The decision of the Board of Trustees approving or denying the application for a liquor license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing. A copy of the decision shall be sent by mail to the applicant at the address shown in the application.

Sec. 6-2-220. Business premises prerequisite.

In the case of buildings not yet in existence, where the Board of Trustees votes in favor of the issuance of a liquor license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has substantially complied with the architect's drawings and plans and specifications submitted for such license.

Sec. 6-2-230. Distance from schools.

(a) No liquor license provided for by this Article shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred (500) feet from any public or parochial school or the principal campus of any college, university or seminary.

(b) The provisions of Subsection (a) do not apply to

(1) The renewal or reissuance of any license once granted;

(2) Any licensed premises located or to be located on land owned by a municipality;

(3) A liquor license in effect and actively doing business before the principal campus was constructed; or

(4) Any club located within the principal campus of any college, university or seminary, as defined in Section 12-47-103, C.R.S., which limits its membership to the faculty or staff of such institution.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-240. Transfer.

No liquor license granted under the provisions of this Article shall be transferable, except as provided in this Article. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to the survivors for the balance of the license.

Sec. 6-2-250. Change of location.

If the holder of an existing liquor license changes location, then all of the procedures outlined in this Article shall apply.

Sec. 6-2-260. Rehearing limitation; liquor license.

No application for the issuance of a liquor license shall be considered by the Board of Trustees if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of the new application.

Sec. 6-2-270. Penalty for violation.

(a) Any licensee who violates the terms of this Article may be subject to suspension or revocation of his license pursuant to Section 12-47-601, C.R.S.

(b) Whenever the Board of Trustees' decision to suspend a license for fourteen (14) or fewer days becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the Board of Trustees may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The Board of Trustees may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation, that it deems desirable that:

  (1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purpose;

  (2) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy; and

  (3) The licensee has not had its license suspended or revoked nor had any suspension stayed by payment of a fine during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the license.

(c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the Town. Such fine shall be paid into the general fund of the Town.

(d) The Board of Trustees may grant such conditional or temporary stays as are necessary for it to complete its investigations, to make its findings as specified in Subsection (b) of this Section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the Board of Trustees.

(Ord. 3 §1, 2008; Ord. 1 §1, 2012)

Sec. 6-2-280. License fees.

The annual license fees to be paid in advance to the Town Clerk shall be determined by resolution.

Division 2 3.2 Beer Licenses

Sec. 6-2-410. Application required; filing.

(a) An application for a 3.2 beer license shall be required for the following:

  (1) Sales for consumption off the premises of the licensee;

  (2) Sales for consumption on the premises of the licensee; and

  (3) Sales for consumption both on and off the premises of the licensee.

(b) All new applications for 3.2 beer licenses shall be filed, in duplicate, on forms made available by the office of the Secretary of State, with the Town Clerk and shall be accompanied by the following:

(1) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner along with his name, residence address and telephone number;

(2) In the case of a corporation, a copy of its articles of incorporation, and, if a foreign corporation, evidence of qualification to do business in this State, and a sworn statement setting forth the names, residence addresses and telephone numbers of each stockholder, director and officer of the corporation; and

(3) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building.

(Ord. 3 §2, 2008; Ord. 1 §1, 2012)

Sec. 6-2-420. Fee.

An application fee in the amount of five hundred dollars ($500.00) and a license fee of twenty-five dollars ($25.00) shall be made to the Town at the time of making an application for a 3.2 beer license, and an annual renewal fee of twenty-five dollars ($25.00) shall be collected by the Town. This fee shall be used by the Town to defray the expenses incurred by the Town in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason.

Sec. 6-2-430. Initial appearance before Board of Trustees.

(a) The Town Clerk shall place on the agenda of a Board of Trustees meeting the request for a 3.2 beer license. The meeting shall be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. When the application is presented to the Board of Trustees, either the applicant or his attorney shall attend the meeting. The date the application is received by the Town Clerk shall be deemed the date of filing the application.

(b) The applicant shall be instructed to, shall cause to be prepared and shall furnish at the public meeting a survey map showing the neighborhood as designated by the Town, and further showing on such map the location and nature of other 3.2 beer outlets.

(c) The Board of Trustees shall also set a date for public hearing, which date shall be held not less than thirty (30) days from the date the application is presented at the Board of Trustees meeting.

(Ord. 3 §2, 2008; Ord. 1 §1, 2012)

Sec. 6-2-440. Public notice.

(a) The applicant for a 3.2 beer license shall cause to be posted and published a public notice of hearing. The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice president, secretary and manager or other managing officers.

(b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type set so as to be not less than one (1) column in width nor less than six (6) inches in length.

(c) Where the building in which the 3.2 beer is to be sold is in existence at the time of the application for the license therefor, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public.

(Ord. 3 §2, 2008; Ord. 1 §1, 2012)

Sec. 6-2-450. Investigation of applicant.

(a) The Town Clerk shall make an investigation of the applicant for a 3.2 beer license, and, in the case of a corporation, the board of directors of the applicant, and, in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation a report on the applicant.

(b) Not less than five (5) days prior to the date of the hearing on an application under this Chapter, the written report of the findings based on the investigation by the Town Clerk shall be made available to the applicant and other interested parties.

(Ord. 3 §2, 2008; Ord. 1 §1, 2012)

Sec. 6-2-460. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a 3.2 beer license shall be established by the Mayor.

Sec. 6-2-470. Considerations for approving or denying application.

Before entering any decision approving or denying the application for a 3.2 beer license, the Board of Trustees shall consider the following:

(1) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

(2) The reasonable requirements of the neighborhood;

(3) The character and reputation of the applicant; and

(4) Other pertinent facts and evidence affecting the qualification of the applicant.

Sec. 6-2-480. Approval or disapproval.

The decision of the Board of Trustees approving or denying the application for a 3.2 beer license shall be in writing stating the reasons and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant at the address shown in the application.

Sec. 6-2-490. Issuance of license when building not yet constructed.

In the case of buildings not yet in existence, where the Board of Trustees votes in favor of the issuance of a 3.2 beer license, the license shall not be issued until the building in which the business is to be conducted is ready

for occupancy, and then only after inspection of the premises has been made to determine that the applicant has substantially complied with the architect's drawings and specifications submitted with the application for such license.

Sec. 6-2-500. Change of location.

All of the procedures outlined in this Article shall be applicable to a change of location of an existing 3.2 beer license.

Sec. 6-2-510. Rehearing limitation; beer license.

No application for the issuance of a 3.2 beer license shall be considered by the Board of Trustees if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Sec. 6-2-520. Judicial review.

Any person applying to the courts for a review of any licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is furnished by the licensing authority pursuant to court order.

Division 3 Alcoholic Beverage Tastings

Sec. 6-2-610. Alcoholic beverage tastings.

(a) Pursuant to Section 12-47-301(10), C.R.S., the Town authorizes alcoholic beverage tastings for licensed retail liquor stores and liquor-licensed drug stores within the Town. The Town shall not require a further application prior to allowing retail liquor licensees to conduct alcoholic beverage tastings, and elects not to impose additional limitations on such tastings beyond those limitations set forth in Section 12-47-301, C.R.S., as listed below:

(b) Tastings shall be subject to the following limitations:

(1) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the Liquor Enforcement Division in the Colorado Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of a licensee, and only on a licensee's licensed premises.

(2) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brew pub or winery licensed pursuant to Section 12-47-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol.

(3) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one half (½) ounce of spirituous liquor.

(4) Tastings shall not exceed a total of five (5) hours in duration per day, which need not be consecutive.

(5) Tastings shall be conducted only during the operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m.

(6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed sample.

(7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the sample immediately following the completion of the tasting.

(8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.

(9) The licensee shall not serve more than four (4) individual samples to a patron during a tasting.

(10) Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

(11) Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed one hundred four (104) days per year.

(12) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial and all other responsibility for a tasting.

(13) A violation of a limitation specified in this Subsection (b) or of Section 2-47-801, C.R.S., by a retail liquor store or liquor-licensed drugstore licensee, whether by its employees, agents or otherwise, shall be the responsibility of the retail liquor store or liquor-licensed drugstore licensee who is conducting the tasting.

A retail liquor store or liquor-licensed drugstore licensee conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.

ARTICLE 3 Permits

Sec. 6-3-10. Special event permits.

(a) Pursuant to Section 12-48-107(5)(a), C.R.S., the Local Licensing Authority ("Authority") elects not to notify the state licensing authority to obtain the state licensing authority's approval or disapproval of applications for special event permits.

(b) The Town Clerk shall report to the Colorado Liquor Enforcement Division, within ten (10) days after the Authority issues a special event permit, the name of the organization to which the permit was issued, the address of the permitted location and the permitted dates of alcoholic beverage service.

(c) Upon receipt of an application for a special event permit, the Town Clerk shall, as required by Section 12-48-107(5)(c), C.R.S., access information made available on the state licensing authority's website to determine the statewide permitting activity of the organization applying for the permit. The Authority shall consider compliance with the provisions of Section 12-48-105(3), C.R.S., which restricts the number of permits issued to an organization within a calendar year to fifteen (15), before approving any application.

(d) A special event permit may be issued only upon a satisfactory showing by an organization or a qualified political candidate that:

(1) Other existing facilities are not available or are inadequate for the needs of the organization or political candidate; and

(2) Existing licensed facilities are inadequate for the purposes of serving members or guests of the organization or political candidate, and that additional facilities are necessary by reason of the nature of the special event being scheduled; or

(3) The organization or political candidate is temporarily occupying premises other than the regular premises of such organization or candidate during special events such as civic celebrations or county fairs, and that members of the general public will be served during such special events.

(e) Each application for a special event permit shall be accompanied by an application fee in an amount equal to the maximum local licensing fee established by Section 12-48-107(2), C.R.S.

(f) Pursuant to Section 12-48-107(4) C.R.S, the Town Clerk shall be authorized to issue special event permits administratively. The authority shall cause a hearing to be held if, after investigation and upon review of the contents of the application by the Town Clerk or of any protest filed by affected persons, sufficient grounds appear to exist for denial of a permit. Any protest shall be filed by affected persons within ten (10) days after the date of notice pursuant to Section 12-48-106(2) C.R.S. Any hearing shall be held at least ten (10) days after the initial posting of the notice, and notice thereof shall be provided the applicant and any person who has filed a protest.

(Ord. 4, 2011; Ord. 1 §1, 2012; Ord. 03 §1, 2017)

ARTICLE 4 Medical Marijuana

Sec. 6-4-10. Findings and legislative intent.

The Board of Trustees makes the following legislative findings:

(1) The Board of Trustees finds and determines that the Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S., clarifies state law regarding the scope and extent of Amendment 20 to the Colorado Constitution.

(2) The Board of Trustees finds and determines that the Colorado Medical Marijuana Code specifically authorizes in part that the governing body of a municipality may "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."

(3) The Board of Trustees finds and determines that the Colorado Medical Marijuana Code further specifically authorizes a municipality in part "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses . . . based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."

(4) The Board of Trustees finds and determines, after careful consideration of the provisions of the Colorado Medical Marijuana Code, Article XVIII, Section 14 of the Colorado Constitution, and after evaluating, inter alia, the potential secondary impacts associated with the retail sale, distribution, cultivation and dispensing of medical marijuana through medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses, that such land uses have an adverse effect on the health, safety and welfare of the Town and the inhabitants thereof.

(5) The Board of Trustees therefore finds and determines that, as a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, no suitable location exists within the corporate limits of the Town for the cultivation, manufacture and sale of medical marijuana by the operation of medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses.

(6) The Board of Trustees recognizes and affirms the protections afforded by Article XVIII, Section 14 of the Colorado Constitution and desires to affirm the ability of patients and primary caregivers to otherwise

be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and Section 25-1.5-106, C.R.S.

Sec. 6-4-20. Authority.

The Board of Trustees hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

(1) The Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S.;

(2) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;

(3) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

(4) Section 31-15-103, C.R.S. (concerning municipal police powers);

(5) Section 31-15-401, C.R.S. (concerning municipal police powers); and

(6) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Sec. 6-4-30. Definitions.

For purposes of this Article, the following terms shall have the following meanings:

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution.

Medical marijuana center means a person authorized to be licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana to registered patients or primary caregivers as defined in Article XVIII, Section 14 of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

Medical marijuana-infused products manufacturer means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as a medical marijuana-infused products manufacturing license, and which a municipality is authorized to prohibit as a matter of law.

Optional premises cultivation operation means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business known as an optional premises grow facility in order to grow and cultivate marijuana for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

Patient has the meaning provided in Article XVIII, Section 14(1)(c) of the Colorado Constitution.

Person means a natural person, partnership, association, company, corporation, limited liability company or organization, or a manager, agent, owner, director, servant, officer or employee thereof.

Primary caregiver has the meaning provided in Article XVIII, Section 14(1)(f) of the Colorado Constitution.

Sec. 6-4-40. Medical marijuana centers, optional premises cultivation operations and medical marijuana-infused products manufacturers' licenses prohibited.

It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, optional premises cultivation operation or facility for which a medical marijuana-infused products manufacturers' license could otherwise be obtained within the Town, and all such uses are hereby prohibited in any location within the Town or within any area hereinafter annexed to the Town. (Ord. 03 §1, 2013)

Sec. 6-4-50. Patients and primary caregivers.

Nothing in this Article shall be construed to prohibit, regulate or otherwise impair the use of medical marijuana by patients as defined by the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with the Colorado Constitution and consistent with Section 25-1.5-106, C.R.S., and rules promulgated thereunder.

Sec. 6-4-60. Penalty.

A violation of the provisions of this Article shall be punishable as follows:

(1) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code;

(2) The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate or remove the violation; and

(3) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.

ARTICLE 5 Marijuana

Sec. 6-5-10. Findings and legislative intent.

The Board of Trustees makes the following legislative findings:

(1) The Board of Trustees finds and determines that Article XVIII, Section 16 of the Colorado Constitution specifically authorizes in part that the governing body of a municipality may enact an ordinance to prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores.

(2) The Board of Trustees finds and determines, after careful consideration of the provisions of Article XVIII, Section 16 of the Colorado Constitution, and after evaluating, inter alia, the potential secondary impacts associated with the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores, that such land uses have an adverse effect on the health, safety and welfare of the Town and the inhabitants thereof.

(3) The Board of Trustees therefore finds and determines, that as a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by Article XVIII, Section 16 of the Colorado Constitution, no suitable location exists within the corporate limits of the Town for the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores.

Sec. 6-5-20. Authority.

The Board of Trustees hereby finds, determines and declares that it has the power and authority to adopt this Article pursuant to:

(1) Article XVIII, Section 16 of the Colorado Constitution;

(2) The Local Government Land Use Control Enabling Act, Title 29, Article 20, C.R.S.;

(3) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers);

(4) Section 31-15-103, C.R.S. (concerning municipal police powers);

(5) Section 31-15-401, C.R.S. (concerning municipal police powers); and

(6) Section 31-15-501, C.R.S. (concerning municipal authority to regulate businesses).

Sec. 6-5-30. Definitions.

For purposes of this Section, the following words shall have the following meanings:

Marijuana means all parts of the plant of the genus *Cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana accessories means any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana or ingesting, inhaling or otherwise introducing marijuana to the human body.

Marijuana cultivation facility means an entity licensed to cultivate, prepare and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers.

Marijuana establishment means a marijuana cultivation facility, marijuana testing facility, marijuana product manufacturing facility or retail marijuana store.

Marijuana product manufacturing facility means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

Marijuana testing facility means an entity to analyze and certify the safety and potency of marijuana.

Person means a natural person, partnership, association, company, corporation, limited liability company or organization, or a manager, agent, owner, director servant, officer or employee thereof.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities, and to sell marijuana and marijuana products to consumers.

Sec. 6-5-40. Marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities and retail marijuana stores - licenses prohibited.

It is unlawful for any person to operate, cause to be operated or permit to be operated any marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the Town, and all such uses are hereby prohibited in any location within the Town or within any area hereinafter annexed to the Town.

Sec. 6-5-50. Penalty.

A violation of the provisions of this Article shall be punishable as follows:

(1) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code;

(2) The Town is specifically authorized to seek an injunction, abatement, restitution or any other remedy necessary to prevent, enjoin, abate or remove the violation; and

(3) Any remedies provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law or in equity.

Sec. 6-5-60. Designated representative.

Pursuant to Section 15(5)(e) of Article XVIII of the Colorado Constitution, the Board of Trustees hereby designates the Town Clerk as the representative responsible for the intake, processing and response to any application or inquiry concerning retail marijuana establishments within the Town. Nothing contained in this Section shall be construed to authorize the operation of any marijuana establishment within the Town or within any area hereinafter annexed to the Town.

CHAPTER 7
Rural Residential Property Standards

ARTICLE 1 Administration and Abatement of Nuisances

Sec. 7-1-10. Definitions.

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

Abate means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a violation by such means, in such a manner, and to such an extent as the applicable authorized inspector or Municipal Judge determines is necessary in the interest of the general health, safety and welfare of the community.

Agent means and includes any person acting on behalf of or in place of the owner.

Authorized inspector means any police officer, Building Inspector, Tri-County Health Officer, Code Enforcement Officer, the Town Administrator or any other officer of the Town appointed by the Town to

examine any public or private property within the Town for the purpose of ascertaining the nature and existence of any nuisance.

Blight and property degradation means the condition of a property or group of properties that is so defective, unsightly or in such condition of disrepair that it substantially diminishes the value of surrounding property or is otherwise substantially detrimental to surrounding properties; and the condition of the property would be offensive in the eyes of the public.

Brush means voluntary growth of bushes and such as are growing out of place at the location where growing, and includes all cuttings from trees and bushes and high and rank shrubbery growth which may conceal filthy deposits.

Business vehicle means class 1—5 (under 19,500 pounds) including trailers and marked with the business name, logo or other business information.

Collector's item means a motor vehicle or implement of husbandry that is at least twenty-five (25) years old and is of historic or special interest. In order to be considered a collector's item, a motor vehicle must meet all criteria of a "collector's item" as defined in Section 42-12-101, et seq., C.R.S., in addition to all other applicable statutes and ordinances.

Fully enclosed structure shall conform to all Town zoning and building regulations contained in Chapters 16 and 18 of this Code regarding principal or accessory structures on a residential lot. Tarps, portable, movable or temporary storage or trash or recycling containers are not allowed as a means of enclosing outdoor storage in any residential zoning district.

Garbage means and includes any vegetable or animal refuse, food or food product, matter from a kitchen, offal or carcass of a dead animal which, if deposited within the Town other than in a garbage receptacle, tends to create a danger to public health, safety and welfare or to impair the local environment. The use in this Section is not meant to prohibit properly maintained, odorless compost or manure piles.

Hazard to public health, safety and welfare shall include any activity so recognized by the laws and regulations of the United States, the State or the ordinances of the Town. Such hazards shall also include, but not be limited to, activities likely to cause foul or offensive odors, promote the growth or propagation of disease-carrying insects, pollute the air or ground waters of adjacent property, create loud or offensive sounds, cause drainage and runoff to occur in other than historical patterns or dead trees or vegetation that constitute such a hazard.

Implement of husbandry means every vehicle, farm tractor or machine that is designed, adapted or used for agricultural purposes.

Inoperable vehicle includes any vehicle that:

a. Would be required to be licensed if operated on a public highway, but does not display current, valid license plates;

b. Does not work, move or run;

c. Is not functioning;

d. Is not operable for the function for which it was designed; or

e. Does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law.

Junk shall include any old, used or secondhand materials of any kind including, without limitation, cloth, rags, clothing, paper, rubbish, bottles; rubber, iron, tires, brass, copper or other metal; furniture; refrigerators, freezers, all other appliances; the parts of vehicles, apparatuses and contrivances and parts

thereof which are no longer in use; any used building materials, boards or other lumber, cement blocks, bricks or other second hand building materials; or any discarded machinery, vehicles or any other article or thing commonly known and classified as *junk*.

Noxious weed means an alien plant or parts thereof which is classified as a List A, List B or List C Noxious Weed pursuant to the Colorado Noxious Weed Act, Sections 35-5.5-101 through 119, C.R.S. "List A" includes rare noxious weed species that by law are subject to eradication wherever detected statewide in order to protect neighboring lands and the State as a whole. "List B" includes noxious weed species with discrete statewide distributions that by law are subject to eradication, containment or suppression in portions of the State designated by the Commissioner in order to stop the continued spread of these species. "List C" includes widespread and well-established noxious weed species for which control is recommended but not required by the State, although local governing bodies may require management.

Nuisance: See Section 7-1-20 below.

Other vehicles means class 4—5 (14,000—19,500 pounds) and recreational vehicle classes A, B and C. Other vehicles also include licensed trailers (with or without vehicles on them), ATVs, jet skis and boats.

Passenger vehicle means class 1—3 (weighing under 14,000 pounds). Including, but not limited to, automobiles and motorcycles.

Refuse means and includes any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, rubbish containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including, but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

Rural residential property means any property located within a Rural Residential (RR) zoning district of the Town, including any building or structure located on such property.

Town Administrator shall mean the duly appointed Town Administrator of the Town, or his authorized designee.

Trash means that which is worthless or useless and includes but is not limited to any and every refuse, rubbish, garbage, debris, waste material, paper, cartons, bottles, boxes, crates, barrels, plastic object, wooden object: wood (except stacked firewood and stacked construction materials),; wood or upholstered furniture or bedding; rubber, metals, tin or aluminum cans, metal furniture; chemical compound, petroleum product or compound, paint; automobile part or accessory, tire, wheel; food or food product; solvent, dye, beverage; offal composed of animal matter or vegetable matter or both; dirt, rock, pieces of concrete, bricks, glass, crockery or other minerals or mineral wastes; or any noxious or offensive matter whatsoever. However, such does not include earth and waste from building construction during the period in which a valid building permit issued by the Town is applicable.

Weed means any plant or vegetation which is not intentionally cultivated or is unsightly and economically useless.

Sec. 7-1-20. Nuisance defined.

Nuisance includes:

(1) The conducting or maintaining of any activity in violation of federal law, state statute or Town ordinance;

(2) Any unlawful pollution or contamination of any air, water or other substance or material;

(3) Any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of an agency or officer of the Town, the Tri-County Health Department, the County or the State, continues to exist or be conducted in violation of a statute, ordinance or regulation of the Town, the County or the State;

(4) Any activity, operation, condition, building, structure, place, premises or thing which is injurious to the public health, safety and welfare of the citizens of the Town which contributes to blight or property degradation; or which is indecent or offensive to the senses of an ordinary person, so as to interfere with the comfortable enjoyment of life or property;

(5) For the purposes of this Section, an accumulation of activities, operations, conditions or things that might individually not arise to the level of a nuisance may be deemed a nuisance if, taken together, would be indecent or offensive to the senses of the ordinary person;

(6) Any nuisance defined or declared as such by applicable statute or ordinance;

(7) The existence, without limitation, of any of the following conditions:

a. Outdoor storage.

1. No person shall be permitted to store items or materials in a public right-of-way.

2. The accumulation of junk, trash, stale or odorous matter, including improperly maintained compost or manure piles that emit odor or similar materials that constitute a threat to the health or safety of any person, or that contribute to blight and land degradation, is prohibited.

3. Attractive nuisances generally considered dangerous to children, including abandoned, broken or neglected vehicles, equipment, machinery, refrigerators and freezers, hazardous pools or excavations related to construction sites is prohibited

4. The outdoor storage or accumulation of the following items on private property, other than in a fully enclosed structure or properly screened from view from the public right-of-way and neighboring properties is prohibited:

a) Tools, equipment, inventory and other supplies utilized in the operation of a business and no more than two (2) (of the 10 allowed) business vehicles, whether such business is a home occupation being conducted in accordance with the zoning regulations contained in Chapter 16 of this Code or is conducted off-site. Tools, equipment, inventory and other supplies with current, valid building permits may be stored in small quantities of required supplies during the term of the building permit.

b) The parking or storage of any unlicensed or inoperable vehicle. This Subparagraph is not meant to prohibit outside storage of bona fide collector's items when stored in compliance with Section 42-12-101, et seq., C.R.S., and other applicable ordinances.

c) The parking or storage of any passenger vehicle, other vehicle or other articles of personal property, not owned by the occupant of the property upon which it is parked, stored or used, for longer than a period of ten (10) days.

d) The unscreened parking or storage of more than a total of ten (10) vehicles so long as no more than five (5) of the ten (10) vehicles are "other vehicles" as defined by this Article 1 of Chapter 7. Any additional vehicles, beyond the ten

(10) vehicle limit in this Section must be parked in an enclosed structure or properly screened from view from the public right-of-way and neighboring properties.

e) The parking or storage of any class 6—9 vehicle (weight exceeding 19,501 pounds).

5. No person shall park, store, leave, keep or maintain any vehicle, other vehicle, any items or materials on vacant lots or parcels except when such vehicles or items are being used in connection with an active building permit.

6. Properly screened shall mean behind a fence of sufficient height to screen the vehicle or other vehicle, but in compliance with applicable height limitations; or behind a mature hedge, or similar dense vegetation, of sufficient height to completely screen the vehicle or other vehicle from view of adjacent streets or properties; properly screened shall specifically not mean or include screening by use of a temporary covering such as a tarp, fabric, plastic, or similar covering.

b. Buildings, structures and premises.

1. Buildings or structures that are dilapidated, abandoned, boarded up, partially destroyed, have broken windows or boarded up windows, are left in a state of partial construction, demolition or disrepair; have substantial peeling paint; have broken or missing shutters or fascia; have bent, broken or poorly attached, missing or rusted gutters; or have damaged or missing roof, shingles or support structures for the roof.

2. Buildings, structures or premises that are illuminated in such a manner that is offensive or interferes with the comfortable enjoyment of life or property of others or which is otherwise a detriment to the health, safety or welfare of the inhabitants of the Town.

c. Landscaping and vegetation.

1. Noxious weeds. The presence of or continued spread of any noxious weed as defined in Section 7-1-10 of this Article on any such lot or tract of land, including any public or private easement adjoining such lot or tract of land.

2. Weeds, brush and other vegetation grown in a rank or unsightly fashion. In addition to an owner's property, adjoining rights-of-way along road sides, including ditches and berms, are to be maintained by each property owner. No person, firm or corporation owning or occupying any property within the Town shall permit any grass or any vegetation whatsoever to grow or remain in the rights-of-way adjoining their property so as to exceed a height of twelve (12) inches.

3. Trees, shrubs and other vegetation which:

a) Are dead, broken, diseased or infested by insects so as to endanger the well-being of other trees, shrubs or vegetation or constitute a potential threat or hazard to public health, safety and welfare; or

b) Contribute to blight and property degradation.

4. Vegetation likely to:

a) Harbor animals or insects dangerous to public health;

b) Cause a detriment to neighboring property;

c) Contribute to conditions that cause blight and property degradation; or

d) Grow into the public right-of-way such that it obstructs the view of drivers on public streets or private driveways or blocks the free use of a public trail, sidewalk, street or other public easement.

d. Fences and gates. Fences, gates and similar structures that are sagging, leaning, missing boards, fallen or otherwise in an unsafe condition, constitute an unsightly appearance, have substantial peeling paint or are left in a state of partial construction or disrepair.

e. [Reserved.]

f. Streets, streams and water supply. No person shall throw or deposit or cause or permit to be thrown or deposited trash, junk or other offensive matter upon any street, avenue, alley, sidewalk or public or private grounds. No person shall throw or deposit or cause or permit to be thrown or deposited trash, junk or any other substance that would tend to have a polluting effect, into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created or so near any such place as to be liable to pollute the water.

g. Stagnant ponds. The permitting or maintaining of stagnant water on any lot or piece of ground within the Town limits is hereby declared to be a nuisance. Every owner or occupant of a lot or piece of ground within the Town is hereby required to drain or fill up said lot or piece of ground whenever the same is necessary so as to prevent stagnant water or other nuisances from accumulating thereon.

h. Sewer inlet. No person shall, in the Town, deposit in or throw into any sewer (sanitary or storm), sewer inlet or privy vault that has a sewer connection any article that might cause such sewer, sewer inlet or privy vault to become noxious to others or injurious to public health.

i. Noxious liquids. No person shall discharge or permit to be discharged out of or from or permit to flow from any house or property any foul or noxious liquid or substance of any kind into or upon any adjacent ground or lot or into any street, alley or public place.

j. Miscellaneous. Any other condition or use of a property that gives rise to a reasonable determination by any police officer, Building Inspector, Health Inspector, Code Enforcement Officer, the Town Administrator or any other officer of the Town that such condition or use represents a hazard to public health safety and welfare by virtue of its unsafe, dangerous or hazardous nature, is out of harmony with the standards of properties in the vicinity so as to cause a diminution of the enjoyment and use of property; or contributes to blight or property degradation, shall be deemed a nuisance.

Sec. 7-1-30. Common law nuisances.

Any nuisance which has been declared to be such by state courts or statutes or known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Chapter.

Sec. 7-1-40. Author of nuisances.

Any state of things prohibited by this Article shall be deemed to be a nuisance, and any person who shall hereafter make or cause such nuisance to exist shall be deemed to be the author thereof.

Sec. 7-1-50. Prohibition of nuisances.

(a) It shall be unlawful for any person owning, leasing, renting, occupying or having charge or possession of any property within the Town to maintain the property or to allow the property to be maintained in a manner that any of the previous conditions are found to exist thereon for an unreasonable period of time as determined by any police officer, the Building Inspector, a Tri-County Health Department officer, the Code Enforcement Officer, the Town Administrator or any other officer of the Town, except as may be allowed by any other provision of law. Each prohibited condition shall be deemed a nuisance and unlawful.

(b) No person, being the owner, agent or occupant of or having under his control, any building, lot, premises or unimproved real estate within the limits of the Town, shall maintain or allow any nuisance to be or remain therein.

(Ord. 1 §1, 2012)

Sec. 7-1-60. Ascertaining nuisances.

Whenever the pursuit of any trade, business or the manufacturing or maintenance of any substance or condition of things is, upon investigation, considered by the Town Administrator dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated.

Sec. 7-1-70. Inspection of properties.

(a) Authorized inspector. The Town shall have the power and authority to appoint and authorize any police officer, the Building Inspector, the Code Enforcement Officer, the Town Administrator or any other officer of the Town to inspect and examine any public or private property within the Town for the purpose of ascertaining the nature and existence of any nuisance.

(b) Right of entry, generally. Whenever necessary to make an inspection to enforce any of the provisions of this Section, such inspector may enter such building or premises at all reasonable times with the permission of the owner, occupant or other person having control of the building or premises to inspect the same or to perform any duty imposed on him; provided, however, that if such building or premises are occupied, such inspector shall first present proper credentials and request entry; and if such premises are unoccupied, he shall first make a reasonable effort to locate the owner, occupant or other person having charge or control of the building or premises, and, upon locating the owner, occupant or other person, shall present proper credentials and request entry. If entry is refused, the authorized inspector shall give the owner or occupant or, if the owner or occupant cannot be located after a reasonable effort, he shall leave at the building or premises a written notice of intention to inspect not sooner than twenty-four (24) hours after the time specified in the notice. The notice given to the owner or occupant or left on the premises shall state that the property owner or occupant has the right to refuse entry and that, in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a Municipal Judge or by a judge of any other court having jurisdiction. The requirements of this Section shall not apply to public places or privately owned vacant land, which may be inspected by an authorized inspector at any time without notice.

(c) Search warrants:

(1) After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Court and, upon a showing of probable cause by written affidavit, shall obtain a search warrant entitling him to enter the building or the premises.

(2) Jurisdiction of Municipal Court. Any Municipal Judge of the Town shall have power to issue search warrants upon a showing of probable cause and in accordance with the Colorado Rules of Municipal Court Procedure.

(d) Probable cause for issuance of search warrant. For purposes of this Article, a determination of probable cause will be based upon reasonableness and in accordance with the Colorado Rules of Municipal Court Procedure, and, if a valid public interest and reasonable suspicion of violation justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinarily prudent person to act.

(e) Right of entry; emergencies. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Section, an authorized inspector, upon a presentation of proper credentials or identification, in the case of an occupied building or premises, or possession of the credentials in the case of an unoccupied building or premises, may enter into any building or upon any premises within the jurisdiction of the Town.

(1) In the emergency situation, such person or his authorized representative may use such reasonable force as may be necessary to gain entry into the building or upon the premises.

(2) For purposes of this Subsection, an emergency situation includes any situation where there is imminent danger of loss of or injury or damage to life, limb or property. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by the authorized official acting pursuant to this Section.

(Ord. 6 §1, 2009; Ord. 1 §1, 2012)

Sec. 7-1-80. Enforcement and abatement of nuisances.

(a) Enforcement. No citizen complaint shall be necessary to enforce the provisions of this Article. Complaints of nuisances shall be made verbally or in writing to any Town official or to the Town Clerk. Whenever possible, any complaint shall state the nature of such nuisance, the location, including street address, name of owner, agent or occupant of the building or lot, if known, and the name and address of the complainant. However, the Town may in its discretion investigate an anonymous complaint if the Town determines that the circumstances warrant such a complaint.

(b) Abatement. The Town may elect to abate any nuisance described in this Article in any one (1) or more of the following methods:

(1) Abatement pursuant to Section 7-1-90 of this Article; or

(2) Initiate an action for judicial enforcement in the Municipal Court or a County Court pursuant to section 7-1-100 of this Article.

(c) No remedy provided in this Article shall be exclusive. All remedies shall be cumulative and available concurrently. The taking of any action authorized by this Article or any other provision of this Code, including charge or conviction of violation of this Article, shall not preclude or prevent the taking of other action to abate any nuisance. Any application of this Article that is in the nature of a civil action shall not prevent the

commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

(Ord. 1 §1, 2012)

Sec. 7-1-90. Notice of abatement.

(a) Notice of abatement. An authorized inspector of the Town, upon the discovery of any nuisance on private property in the Town, may notify the owner or occupant of the property to remove and abate from the property the thing or things herein described as a nuisance within the time specified in the notice. However, the abatement process shall not be required for nuisances found on public property.

(1) The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health may be immediate as determined necessary by the Town.

(2) As to other nuisances, the reasonable time for abatement shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

(3) If the owner or occupant shall fail to comply with the requirements for a period longer than that named in the notice, either:

a. The authorized inspector may proceed to have the nuisance described in the notice removed or abated from the property described in the notice without delay. The authorized inspector shall have the authority to call for any necessary assistance; or

b. If the Town elects not to summarily abate the nuisance, it may bring an action in Municipal Court to have the nuisance declared as such by the court and for an order enjoining the nuisance and authorizing its restraint, removal, termination or abatement.

(4) In no event shall the notice described by this Section be required prior to issuance of a summons and complaint.

(b) Service of notice. The written notice to abate shall be served by an authorized inspector by:

(1) Personally delivering a copy of the notice to the owner of the property described in the notice if the owner also resides at the property;

(2) Personally delivering a copy of the notice to the non-owner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner as reflected in the county real estate records; or

(3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice as reflected in the county real estate records if the property is unoccupied, and by posting a copy of the notice in a conspicuous place at the occupied premises.

Service of the notice shall be deemed complete upon the date of personal delivery or three (3) business days after the date of mailing as required herein.

(c) Contents of notice. The notice to abate issued pursuant to the provisions of this Article to the owner or occupant of property upon which a nuisance was discovered shall contain the following:

(1) The address and other description of the property upon which the nuisance was discovered;

(2) The name and address of the owner of the property upon which the nuisance was discovered;

(3) The name and address of the occupant of the property upon which the nuisance was discovered, if known and if different from the owner;

(4) A description of the violation or condition deemed to be a nuisance;

(5) The time in which the violation or condition is to be removed or abated from the property;

(6) A statement advising the owner or occupant that he may protest the determination of the authorized inspector with respect to any matters stated in the notice, by filing a written protest pursuant to this Section with the Town Administrator within the time allowed for the removal or abatement of the nuisance described; and

(7) A statement that, if the owner or occupant fails to comply with directions contained in the written notice or file a written protest thereto in the time allowed, the Town may:

a. Enter the property, abate the nuisance described therein and assess the costs thereof to the owner of the property; or

b. Bring an action in Municipal Court to have the nuisance declared as such by the court and for an order enjoining the nuisance and authorizing its restraint, removal, termination or abatement.

(8) The notice should state that, if the cost of abatement is not paid, a lien may be placed on any property on which the abatement was performed.

(9) If the notice does not substantially comply with this Article, it shall not be grounds for invalidating the notice given.

(d) Protest of notice of abatement.

(1) The owner, his agent or the occupant of the property subject to a notice of abatement, within the time stated in such notice for removal of the violation or abatement of the condition described therein, may protest the findings of the authorized inspector with respect to any matter stated in the notice, by filing a written notice of protest with the Municipal Court. The Municipal Court shall deliver a copy of the protest to the authorized inspector who issued the notice. Upon receipt of a notice of protest, the authorized inspector shall file with the Municipal Court the notice to abate and the written notice of protest.

(2) Within twenty-one (21) days after receipt of the protest by the Town, the Municipal Court shall schedule and conduct a hearing on the protest. At the hearing, the protesting party and representatives of the Town shall appear in person. Both parties may be represented by legal counsel. The parties shall have the right to present evidence and arguments, to confront and cross-examine any witness and to oppose any testimony or statement relied upon by an adverse party. The Municipal Court may receive and consider any evidence that has probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(3) Once the Municipal Court has scheduled a hearing on the protest, written notice of such hearing shall be mailed to the protesting party and given to the authorized inspector who signed the notice of abatement. Such notice of hearing shall be mailed to the protesting party and given to the authorized inspector not less than seven (7) days prior to the scheduled hearing.

(4) Upon the filing of a written protest as provided herein, the period of time for removal of the thing or abatement of the condition described in the original notice of abatement shall be extended until final disposition of the protest by the Municipal Court, plus the amount of time granted in the original notice or as otherwise ordered by the Municipal Court.

(e) Assessment and collection of costs of abatement. The author of the nuisance, the property owner or occupant shall be liable for the actual cost of abatement, plus fifteen percent (15%) of the abatement cost for inspection, and any other additional administrative costs. If the cost of the abatement is not paid, the Town may also assess any unpaid costs and expenses for abatement as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

(f) Penalty.

(1) Violations of this Chapter shall be punishable by a fine not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense. In addition, the Town may seek restitution of all costs associated with any search warrant and enforcement actions in the event a violation is found, abatement and/or prosecution of a nuisance, including but not limited to the actual costs of said search warrant and enforcement actions and any other actual costs incurred by the Town.

(2) The Town may elect to file a summons and complaint without first seeking to abate an alleged nuisance condition for any violations of this Chapter.

(Ord. 6 §1, 2009; Ord. 1 §1, 2012)

Sec. 7-1-100. Judicial enforcement.

(a) The Town may initiate a civil action or criminal prosecution for the judicial enforcement of this Article against any nuisance at any time. Judicial enforcement shall also be available to abate a nuisance following efforts to abate the nuisance through the delivery of a notice and demand as provided in Section 7-1-120.

(b) If the Town elects to initiate judicial enforcement in a court of competent jurisdiction, which includes the Municipal Court or the Arapahoe County District or County Court depending on the nature of the nuisance, no prior notice regarding the nuisance or abatement need be provided to the defendant other than service of a summons and/or complaint in accordance with the applicable court rules.

(c) Upon a finding of a nuisance and violation of any provision of this Article by any defendant, if the proceeding is brought in the Municipal Court, the Court shall impose the following minimum penalty unless the Town, through the Town Attorney, requests or consents to a lesser or different penalty:

(1) Enjoin or otherwise order the defendant to fully abate and remedy the nuisance within a specified and reasonable period of time not to exceed seven (7) days following the entry of the court's order;

(2) Fine the defendant for each violation an amount not to exceed four hundred ninety-nine dollars ($499.00). Each day such violation continues shall be considered a separate offense.

(3) Order the defendant to forthwith pay restitution to the Town for the actual costs or loss caused to the Town by the violation, including but not limited to administrative expenses, costs to protect the public from the nuisance, court costs and attorney fees; and

(4) Authorize the Town to assess any unpaid costs and expenses for abatement imposed by the Court in Paragraph (3) above as a lien against the owner's property and certify such lien to the County Clerk and Recorder for collection in the same manner as real estate taxes against the property. Each such lien shall have priority over other liens except general taxes and prior special assessments.

(d) In addition to the minimum penalty required by this Section, the Court shall be authorized to:

(1) Imprison the defendant for a term not more three hundred sixty-four (364) days for each violation;

(2) Permanently enjoin the defendant from further engaging in the use of the property in a manner that would constitute a nuisance;

(3) Find the defendant in contempt of court and assess a penalty as specified by the Court, including a fine and/or imprisonment for failure to abide by, comply with or conform to any court order or injunction; and/or

(4) Impose any other penalty authorized by law.

(Ord. 1 §1, 2012; Ord. 01 §1, 2019)

Sec. 7-1-110. Other remedies.

No provision of this Article shall be construed to impair any common law or statutory cause of action or legal or equitable remedy therefrom, including injunctive relief, of any person for injury or damage arising from any violation of this Article or from other law.

Sec. 7-1-120. Notice of assessment.

The Town Clerk, as soon as may be after such assessment is made, shall send by certified mail, return receipt requested, addressed to the owner of such lots or tracts of land at the reputed post office address, a notice of such assessment, which notice shall contain a description of the lots or parcels of land, the name of the owner and the amount of the assessment.

Sec. 7-1-130. Payment of assessment.

(a) It shall be the duty of the owner to pay such assessment or object thereto, in writing, within thirty (30) days after the receipt of such notice, or such other time as the Municipal Court may order, and in case of his failure to do so, he shall be liable personally for the amount of the assessment. The same shall be a lien upon the respective lot or parcel of land from the time of such assessment, and the Town shall have all remedies for collection thereof provided by state statutes, for the purpose of having the same placed upon the tax list and collected in the same manner as taxes are now collected. The assessment shall be a lien against each lot or tract of land until it is paid and shall have priority over all other liens except general taxes and prior special assessments.

(b) The amount of such assessment may be paid to the Town Clerk at any time before the tax list is placed in the hands of the County Treasurer, but thereafter only to the County Treasurer.

(Ord. 1 §1, 2012)

Sec. 7-1-140. Objection to assessment; hearing.

In the event any owner desires to object to said assessment, he shall, within thirty (30) days after the receipt of said notice, file a written objection thereto with the Town Clerk, who shall thereupon designate the next regular meeting of the Board of Trustees as the date when said objector may appear and have a hearing before the Town Administrator and Board of Trustees.

Sec. 7-1-150. Certified assessment.

In case the owner fails to pay such assessment or object thereto within the required time as provided above, then it shall be the duty of the Town Clerk to certify the amount of the assessment to the County Assessor, who shall collect the assessment as provided for by state law for the collection of delinquent general taxes.

Sec. 7-1-160. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action hereunder, including charge or conviction of a violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

Sec. 7-1-170. Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable, the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under this Code or any other provision of law.

Sec. 7-1-180. Violations and penalties.

Any violation of the provisions of this Article shall be subject to the penalties as provided for in Section 1-4-20 of this Code.

ARTICLE 2 Animals[1]

Sec. 7-2-10. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Abandon means the leaving of a pet animal without adequate provisions for the animal's proper care by its owner or keeper.

Aggressive dog means a dog which, without intentional provocation, engages in any of the following behaviors:

a. Threatens a person by encroaching onto public property or property of another from a vehicle or from the owner's or custodian's yard through, under or over a fence;

b. Injures another domestic animal while off the owner's or custodian's property;

c. Approaches any person in an apparent attitude of attack or in a terrorizing or menacing manner; or

d. Causes bodily injury to any person.

Animal Services Officer means any person authorized by Arapahoe County to enforce the provisions of this Article and shall also include the Arapahoe County Sheriff and any Arapahoe County Sheriffs Deputy.

At large means a dog that is not under physical control or voice control, as defined in this Article, while on public property, or, means a dog that is on private property without the permission of the property owner or his/her agent; further, with respect to a dog on a County-owned open space, park, or trail, "at large" also means that the dog is in violation of any requirements as stated in Arapahoe County displayed signage applicable to dogs on such property (for example, designated signage may indicate that all dogs must be under physical control, or indicate that certain areas are off limits to dogs).

[1]Editor's note(s)—Ord. No. 06, §1, adopted Aug. 19, 2021, repealed the former Art. 2, §§ 7-2-10—7-2-160, and enacted a new Art. 2 as set out herein. The former Art. 2 pertained to similar subject matter and derived from Ord. 3 §3, 2010; ; Ord. 10 §1, 2010; Ord. 1 §1, 2012; Ord. 02 §1, 2012.

Attack means an assault against a person or domestic animal, whereby physical contact is made in an apparently hostile or terrorizing manner.

Bite means to seize with teeth or jaws so as to enter, grip, wound or cause a puncture to the skin.

Bodily injury means a physical injury to a person or animal resulting in bruising, muscle tears, skin lacerations, or broken bones that may or may not require professional medical treatment, which may include, but is not limited to, sutures or cosmetic surgery. Such injuries may or may not result in permanent disfigurement, protracted loss or impairment of the functions of any part or organ of the body, or death.

Control means:

a. Having a dog on a leash, rope or other means of restraint so that freedom of the dog's movement is restricted within a ten-foot radius;

b. Having a dog exclusively within the private property of the owner, keeper, or possessor of a dog.

c. Accompanying a dog on public property when said dog is at all times within twenty (20) feet of and immediately responsive to the voice commands of the dog's owner, keeper or possessor.

d. Accompanying a dog on private property with permission of the owner of such private property, when said dog is at all times within forty (40) feet of and immediately responsive to the voice commands of said dog's owner, keeper or possessor.

C.R.S. means the Colorado Revised Statutes.

Cruelty to animals means to knowingly, recklessly, or with criminal negligence, overdrive, overload, overwork, torture, torment, deprive of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, needlessly kill, carry in or upon any vehicle in a cruel manner, or otherwise mistreat or neglect any animal or cause or procure it to be done, or having the charge and custody of any animal, fail to provide it with proper food, drink or protection from the weather consistent with the species, breed, and type of animal, or abandon the animal. See Sections 35-42-107(2) and 18-9-202, C.R.S., as amended.

Custody means providing food, shelter, water, other sustenance, or care for a dog.

Dog means any member of the species Canis familiaris.

Owner or *keeper* means any person eighteen (18) years of age or older, an unemancipated child under the age of eighteen (18) years, or the parent or guardian of any child under the age of eighteen (18) years who owns, keeps, harbors, possesses, has custody of, or is responsible for exercising physical or voice control over a dog or other animal.

Person means any natural person or individual, corporation, business trust, estate, trust, partnership, association, business, or any other legal entity, but shall exclude all governments, governmental subdivisions or governmental agencies.

Pet animal means an animal as defined in 30-15-101(3), C.R.S., as amended.

Physical control means a dog is on a leash, rope, or other means of physical restraint by a person physically capable of handling such dog so that freedom of the dog's movement is restricted.

Possessor means a person who, or whose unemancipated child under the age of eighteen (18) years who resides with said person, has voluntarily assumed custody of a dog or the responsibility for the control of a dog, through means other than as an owner or keeper. A person is not a possessor if he, or his unemancipated child under the age of eighteen (18) years who resides with said person, assumes temporary custody of a dog for the sole purpose of summoning animal control authorities or for the sole purpose of seeking emergency aid or medical treatment for a dog.

Running at large or *runs at large* means a dog that is upon public property or upon the private property of a person other than the dog's owner, keeper or possessor, when said dog is not under the control of the dog's owner, keeper or possessor; or a dog that is upon the private property of a person other than the dog's owner, keeper or possessor, without permission from an owner of the private property or his agent, even if said dog is under the control of the dog's owner, keeper or possessor.

Serious bodily injury means an injury to a person or domestic animal caused by a dog which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body or breaks, fractures or injuries that require corrective surgery.

Vicious dog means:

a. A dog whose freedom of movement is not restricted by confinement or by attachment to a leash, rope, or other means of restraint; and which dog, in a dangerous or terrorizing manner, has physical contact with a person or domestic animal, with or without causing bodily injury. Said restriction shall prevent the escape of such dog from its owner, keeper or possessor or from such owner's keeper's or possessor's property; and shall prevent such dog from attacking or injuring a human being or domestic animal.

b. Any dog which has caused bodily injury to a human being or domestic animal during two (2) or more separate episodes.

c. The control provisions of Subparagraphs a. and b. above shall not apply to any dog while actually working livestock or assisting law enforcement officers or while being trained for any of these pursuits. A dog owned, kept or possessed primarily as a domestic pet on residential property shall not be excluded from Subparagraphs a. and b. above and shall not be considered a guard or police dog;

d. Episodes wherein a dog attacked, bit, caused bodily injury, caused serious bodily injury or caused death to a human being or domestic animal, when said human being or domestic animal intentionally provoked such dog's action without justifiable reason, shall be excluded from Subparagraphs a. and b. above.

e. The exclusions provided for in Subparagraphs c. and d. above shall be affirmative defenses.

Voice control means a dog is immediately and reliably obedient to any voice or sound command given by an owner or keeper who is able to prevent the dog from charging, chasing, or otherwise disturbing or interfering with any person, pet animal, livestock, or wildlife, regardless of the distance involved or the presence of any distraction or provocation.

Sec. 7-2-20. Rabies vaccination required.

(a) Any owner or keeper of a dog commits a class 2 petty offense or a municipal offense if such dog is more than four (4) months of age and the owner or keeper is unable to provide proof when requested of a then current rabies vaccination, issued by a licensed veterinarian. A rabies certificate or tag current at the time that it is requested, and supplied by a licensed veterinarian, shall serve as proof of rabies vaccination.

(b) An owner or keeper of a dog is exempt from the requirements of this Section 7-2-20 if the owner or keeper can produce a signed letter from a licensed veterinarian stating that such vaccination would be detrimental to the health and well-being of such dog.

(Ord. 06, §1, 2021)

Sec. 7-2-30. Dogs at large.

(a) Any owner or keeper of a dog commits a class 2 petty offense or a municipal offense if such dog is found to be at large.

(b) The provisions of this Section shall not apply to any dog while working livestock, locating, or retrieving wild game in season for a licensed hunter, assisting law enforcement officers, performing search and rescue functions for an emergency services provider, or while being trained for any of these pursuits.

(c) A violation of this Section 7-3-40 shall not be proven solely by the uncorroborated testimony of a single witness unless the testimony is corroborated by the submission of photographic or video evidence, or unless the witness is an Animal Services Officer.

(d) Repeated offenses shall be cumulative only within a 365-day period, counting from the day of the last violation.

(Ord. 06, §1, 2021)

Sec. 7-2-40. Noisy dogs.

(a) Any owner or keeper of a dog commits a class 2 petty offense or a municipal offense if such dog individually, or in combination with another dog or dogs together, makes any noises or disturbances by barking, howling, yelping, whining or other utterance which is audible beyond the premises on which the dog is kept, in excess of twenty (20) consecutive minutes during the day (7:00 a.m. to 9:00 p.m.) or in excess of ten (10) consecutive minutes during the night (9:01 p.m. to 6:59 a.m.) and/or a cumulative period in excess of one-hundred twenty (120) minutes during any twenty-four (24) hour period.

(b) No citation for a violation of this Section 7-2-40 shall be issued unless at least one (1) written warning, signed by the Animal Services Officer and at least one (1) complainant, has been issued to an owner or keeper of the dog or dogs that have exceeded the noise limits. Such written warning shall contain the date and time when the violation occurred and a brief explanation of the nature of the noise complaint. Once a written warning has been issued, a citation may be issued for any violations that occur seven (7) or more days after the written warning is issued without the necessity of an additional warning.

(c) No citation shall be issued and no conviction shall occur for a violation of this Section 7-2-40 unless there are two (2) complaining witnesses from separate households who have signed such citation; except that only one (1) complaining witness shall be required to sign the citation under either of the following circumstances:

    (1) An Animal Services Officer or Deputy Sheriff has personally investigated the complaint of a single complainant and observed the nature and duration of the noise created by the dog and can testify as to such observations; or

    (2) A complainant has presented to the Animal Services Officer, at the time of the complaint, a video and/or audio recording that corroborates the alleged violation.

(d) Repeated offenses shall be cumulative only within a 365-day period, counting from the day of the last violation.

(Ord. 06, §1, 2021)

Sec. 7-2-50. Cruelty to animals.

An owner or keeper of an animal commits a violation of this Section, which is also a class 1 misdemeanor under § 18-9-202, C.R.S., as amended, if he/she commits cruelty to animals.

Sec. 7-2-60. Approach in an aggressive manner.

Any owner or keeper of a dog commits a class 2 petty offense or a municipal offense if such dog, while off the owner's premises and without provocation, approaches any person in an apparent attitude of attack and demonstrates aggressive behavior, including, but not limited to lunging, snarling, growling, barking, or snapping. Such behavior may restrict the movement of a person, including, but not limited to, cornering or circling, and such behavior by such dog may, but need not, result in actual physical contact from such

Sec. 7-2-70. Pet animal causing injury.

Any owner or keeper of a pet animal commits a class 2 petty offense or a municipal offense if such pet animal, causes injury to another pet animal or livestock.

Sec. 7-2-80. Affirmative defense.

If a dog or other pet animal is provoked into biting or attacking, which results in bodily injury, such provocation shall constitute an affirmative defense. Provocation shall be determined by one (1) or more of the following:

(1) That, at the time of the incident, the victim was committing or attempting to commit a criminal offense against the dog/pet animal owner or the dog/pet animal owner's property; or

(2) That, at the time of the incident, the victim tormented, abused, or inflicted injury upon the dog or pet animal, which resulted in the incident; or

(3) That, at the time of the incident involving the dog or other pet animal, which caused injury to or the death of another animal, the injured and/or deceased animal was at large.

Sec. 7-2-90. Impoundment and disposition of animals.

(a) Any Animal Services Officer may impound into the custody of any licensed shelter or other impound facility any dog found to be at large. An Animal Services Officer may also impound any pet animal at the direction of a law enforcement officer made in accordance with and pursuant to lawful process.

(b) Upon the impoundment of any dog or other pet animal, Arapahoe County shall make a prompt and reasonable attempt to identify the owner or keeper of the dog or other pet animal and, upon identification of the owner or keeper, shall cause written notice to be provided to the owner or keeper of the impoundment and the location of the impoundment facility. As used herein, a reasonable attempt to identify shall mean that the Animal Services Officer checks the dog or other pet animal for any identifying information, including identification tags or imbedded microchip, and a search for social media postings related to the dog or other pet animal. Written notice may be provided by email, text message or other electronic means, personal delivery to the owner or keeper of the dog or other pet animal, or by posting the notice at the residence of the owner or keeper of the dog or other pet animal.

(c) Dogs and other pet animals impounded pursuant to the provisions of this Section 7-2-90 or pursuant to the direction of a law enforcement officer are subject to disposition in accordance with the requirements of applicable state law, including Section 35-80-106.3, C.R.S., and 18-9-202.5, C.R.S., the requirements of the licensed shelter or other impound facility, and of any applicable order of a Court of competent jurisdiction.

Such requirements may include a requirement for the payment of impound fees prior to the return of the dog or other pet animal.

(d) In lieu of impoundment of a dog caught running at large, provided that the Animal Service Officer is able to identify and locate the owner or keeper at the time of capture, the dog may be returned directly to that owner or keeper upon payment of a "return to owner fee" in the amount established as provided in Section 7-2-110 of the Foxfield Municipal Code. Upon capture of a dog at large, the Animal Services Officer shall attempt to identify the owner by checking for an identification tag on or microchip in the dog, and if the owner or keeper is identified, the Animal Service Officer shall first make an attempt to contact the owner or keeper and return the dog in exchange for payment of the of the "return to owner fee," prior to taking the dog to an impound facility.

(Ord. 06, §1, 2021)

Sec. 7-2-100. Enforcement and liability.

The Board of Trustees, the Board of County Commissioners of Arapahoe County, and their officers, agents, employees, or any other persons authorized to enforce the provisions of this Article shall not be held responsible for any accident or subsequent disease that may occur to an animal in connection with the administration of this Article.

Sec. 7-2-110. Fees.

Fees authorized under this Article shall be set in such amounts as approved in a separate resolution by the Board of Trustees.

Sec. 7-2-120. Enforcement/peace officer designation.

The provisions of this Article shall be enforced as designated by Arapahoe County. For purposes of enforcement and pursuant to Section 30-15-105, C.R.S., Arapahoe County Animal Services Officers may issue a citation to enforce this Article.

Sec. 7-2-130. Violations/strict liability.

Violations of any provision of this Article shall be proven by establishing beyond a reasonable doubt that a person voluntarily acted or omitted to perform an act which such person was capable of performing, and that such act or omission was contrary to any provision of this Article constituting a violation. It shall not be necessary to prove a culpable mental state on the part of any person with respect to any material element of any violation. Any violations of this Article are ones of "strict liability," as defined by Title 18, Article 1, C.R.S.

Sec. 7-2-140. Penalties.

(a) Each violation of any provision of this Article which constitutes a class 2 petty offense, or a municipal offense shall be punishable upon conviction by a fine not to exceed one thousand dollars ($1,000.00) or by imprisonment in the County Jail for not more than ninety (90) days, or by both such fine and imprisonment for each separate offense.

(b) Any offense and repeated offenses of Section 7-2-70 of this Article shall require a mandatory court appearance. Each violation of Section 7-2-70 shall be punishable, upon conviction, by a fine not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or by imprisonment in the County jail for not more than ninety (90) days, or by both such fine and imprisonment for each separate offense.

(c) In addition to Subsection (a) above, the penalty assessment procedures as provided for in Title 16, Article 2, Part 2, C.R.S., are herein adopted by reference. If, in the discretion of the Town, such penalty assessment procedures are utilized in relation to class 2 petty offense violations or municipal offenses of this Article, except for violations of Section 7-2-70 of this Article, the following graduated penalty assessment schedule shall be applicable:

(1) First offense: fifty dollars ($50.00).

(2) Second repeated offense: one hundred dollars ($100.00).

(3) Third repeated offense: three hundred dollars ($300.00).

(4) Fourth or more offense: mandatory court appearance.

(5) Each and every incident during which a violation of any section occurs shall be deemed a separate violation.

(Ord. 06, §1, 2021)

Sec. 7-2-150. Incorporation of state statutes.

All provisions of Title 30, Article 15, Part 1, C.R.S., to the extent applicable to the Town of Foxfield, are hereby adopted and incorporated by reference into this Article.

Sec. 7-2-160. Applicability.

The provisions of this Article shall apply to and may be enforced within all areas of the Town.

ARTICLE 3 Discharge of Firearms

Sec. 7-3-10. Discharge of firearms.

(a) This Article is intended to protect the public health, safety and welfare by regulating the discharge of firearms within the Town of Foxfield.

(b) It is unlawful and a violation of this Section 7-3-10 for any person to fire, shoot, or discharge any firearm, except as otherwise provided in this Article. For purposes of this Article, any person who was the proximate cause of the discharge shall be deemed to have discharged the firearm.

(c) It is a violation of this Section if the discharge occurred outdoors and within the jurisdiction of the Town, or if the projectile travels over such jurisdiction.

(d) The discharge of firearms by any member of any law enforcement office, including wildlife officers, in the course of such member's law enforcement training exercises or official duty shall not be deemed to be a violation of this Section.

(e) For purposes of this Section, the term "firearm" includes any pistol, revolver, self- loading pistol, rifle, or shotgun that uses gunpowder or other explosive substance.

(Ord. 07 §1, 2013)

Editor's note(s)—Ord. 07, §§ 1, 2, adopted in 2013, amended § 7-3-10 in its entirety to read as herein set out. Former § 7-3-10, pertained to general provisions and derived from Ord. 07, § 1, adopted in 2013.

Sec. 7-3-20. Defenses.

(a) It is an affirmative defense to a charge of violating Section 7-3-10, "Discharge of Firearms," that the person discharging said firearm was:

(1) Reasonably engaged in lawful self-defense under the statutes of the State of Colorado; or

(2) Reasonably exercising the right to keep and bear arms in defense of the person's or another person's home, person, and property, or in aid of the civil power when legally thereto summoned.

(b) It shall also be a specific defense to the charge of violating Section 7-3-10, "Discharge of Firearms," if the discharge was for the purpose of putting down a distressed animal.

(Ord. 07 §1, 2013)

Editor's note(s)—Ord. 07, §§ 1, 2, adopted in 2013, amended § 7-3-20 in its entirety to read as herein set out. Former § 7-3-20, pertained to similar subject matter and derived from Ord. 07, § 1, adopted in 2013.

Sec. 7-3-30. Exemptions from Article.

Nothing in this Article shall be construed to forbid United States marshals, sheriffs, constables and their deputies; any regular or ex-officio police officer; any other peace officers; or members of the United States Armed Forces, Colorado National Guard, or Reserve Officer Training Corps from discharging such weapons as are necessary in the authorized and proper performance of their official duties.

Editor's note(s)—Ord. 07, §§ 1, 2, adopted in 2013, amended § 7-3-30 in its entirety to read as herein set out. Former § 7-3-30, pertained to exemptions and derived from Ord. 07, § 1, adopted in 2013.

Sec. 7-3-40. Penalties.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

ARTICLE 4 Noise Control

Sec. 7-4-10. Purpose.

Excessive sound and vibration are a serious hazard to the public health, safety, welfare and quality of life, and a substantial body of science and technology exists by which excessive sound and vibration may be substantially abated. Town residents have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health, safety or welfare or degrade their quality of life. Therefore, it is the purpose of this Section to prevent excessive sound and vibration which may jeopardize the health, safety or welfare of Town residents or degrade their quality of life.

Sec. 7-4-20. Definitions.

The following words and phrases, when used in this Article, have the meanings respectively ascribed to them:

Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Holidays means New Year's Day, Martin Luther King Day, President's Day, Memorial Day, July 4th, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and Christmas Day.

Noise means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological effect on humans.

Noise disturbance means any sound which:

a. Endangers or injures the safety or health of humans or animals;

b. Annoys or disturbs a reasonable person of normal sensitivities; or

c. Endangers or injures personal or real property.

Person means any individual, association, partnership or corporation and includes any officer, employee, department, agency or instrumentality of a state or any political subdivision of a state.

Residential property boundary means an imaginary line along the ground surface and its vertical extension which separates the real property owned by one (1) person from that owned by another person.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Vibration means an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity or acceleration with respect to a given reference point.

Sec. 7-4-30. Noise disturbances prohibited.

(a) No person shall make, continue or cause to be made or continued any noise disturbance, except as provided below, across a residential property boundary between the hours of 9:00 p.m. and 7:00 a.m. the following day, Sundays through Thursdays; between the hours of 9:00 p.m. and 8:00 a.m. the following day on Fridays; and between the hours of 9:00 p.m. and 10:00 a.m. the following day on Saturdays and holidays.

(b) Live bands and music. No person shall play, practice or perform, or permit to be played, practiced or performed, any music audible at a residential property boundary, between the hours of 9:00 p.m. until 8:00 a.m. the following day, Sunday through Thursday, and between the hours of midnight until 10:00 a.m. the following day, Friday and Saturday.

(c) Construction noise. Noise generated by construction activities is governed by Section 18-12-60 of this Code.

(d) This Section shall not apply to sound made or controlled by the Town, the federal government or any branch, subdivision, institution or agency of the government of the State, or any subdivision within it; nor shall it apply to any activity of the governmental unit; nor shall it apply to any event sponsored by a governmental unit or others pursuant to the terms of a contract or lease granted by the governmental unit.

(Ord. 05 §1, 2014)

Sec. 7-4-40. Defenses.

It shall be a specific defense to a charge of violating this Section that:

(1) The sound was made by any law enforcement or authorized emergency vehicle when responding to an emergency or acting in time of emergency;

(2) The sound was made within the terms of a parade, fireworks display or temporary street closure permit issued by the Town;

(3) The sound was made by the horn of any motor vehicle as a danger warning signal or by any warning device as required by law; or

(4) The sound was made on property belonging to or leased or managed by a federal, state, county, municipal or special district governmental body and was made by an activity of the governmental body or by another pursuant to a contract lease or permit granted by such governmental body.

Sec. 7-4-50. Violations and penalties.

Any person who violates any of the provisions of this Chapter shall be punished in accordance with the provisions of Section 1-4-20 of this Code.

Sec. 7-4-60. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action hereunder, including charge or conviction of a violation of this Chapter in the Municipal Court, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

Sec. 7-4-70. Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and, when applicable, the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under this Code or any other provision of law.

ARTICLE 5 Trash Collection

Sec. 7-5-10. Definitions.

For purposes of this Article 5 of Chapter 7, the following terms shall have the following meanings:

Hazardous materials means wastes that are hazardous by reason of their pathological, explosive, radiological or toxic characteristics, and any waste whose storage, treatment, incineration or disposal requires a special license or permit from any federal, state or local government entity, body or agency and any substance that, after the effective date of this agreement, is determined to be hazardous or toxic by any judicial or governmental entity, body or agency having jurisdiction to make that determination.

Provider means any person or entity authorized to provide trash collection services within the Town.

Residential unit means any residence within the Town that is not an industrial or commercial establishment.

Trash means household waste, garbage, waste matter, grass clippings, leaves, trees, bush trimmings and Christmas trees, including recycling materials collected as part of any recycling program, but excluding any unacceptable trash as defined herein.

Unacceptable trash means highly flammable substances, hazardous materials, liquid wastes, special wastes, certain biological wastes, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, to be dangerous or threatening to health or the

environment, or which cannot be legally accepted at a disposal facility used by the Town's residential trash collection provider.

Sec. 7-5-20. Unacceptable trash.

It shall be unlawful for any occupant of a residential unit to provide to any provider of trash disposal and/or recycling services unacceptable trash for pick-up by such provider.

Sec. 7-5-30. Penalties

(a) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(b) A provider may, in its sole discretion, reject any unacceptable trash provided by the occupant of a residential unit.

(c) The penalties set forth herein shall not be exclusive of any other charge or action, and when necessary to make whole a provider who has incurred costs to remove unacceptable trash from its vehicle or premises or the waste stream, penalties may also include an assessment as restitution or otherwise of the provider's actual costs in so removing such unacceptable trash.

(Ord. 03, § 1, 2015)

CHAPTER 8
Vehicles and Traffic

ARTICLE 1 Model Traffic Code

Sec. 8-1-10. Adoption.

Pursuant to Parts 1 and 2 of Article 16 of Title 31 and part 4 of Article 15 of Title 30, C.R.S., there is hereby adopted by reference the 2010 edition of the *Model Traffic Code*, promulgated and published by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700, Denver, CO 80222, as modified in Section 8-1-30 below. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town. The purpose of this Article and the code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State and the Nation.

Sec. 8-1-20. Copy on file.

One (1) copy of the Model Traffic Code adopted herein is now filed in the office of the Town Clerk and may be inspected by appointment during regular business hours.

Sec. 8-1-30. Amendments.

The 2010 edition of the Model Traffic Code is adopted as if set out at length, save and except the following additions, deletions or modifications:

(1) Section 105 is hereby deleted in its entirety.

(2) Subsection 110(4) is modified to read as follows:

"The appropriate local court shall have jurisdiction over violations of traffic regulations enacted or adopted by the Board of Trustees."

(3) In Subsection 223(1), all references to "section 235(1)(a)" are modified to read "section 42-4-235(1)(a), C.R.S."

(4) In Subsection 225(3), the reference to "section 205(5.5)(a)" is modified to read "section 43-4-205(5.5)(a), C.R.S."

(5) In Subsection 228(5)(c)(III), the reference to "section 235(1)(a)" is modified to read "section 42-4-235(1)(a), C.R.S."

(6) In Subsection 229(4), the reference to "section 219" is modified to read "section 42-3-219, C.R.S."

(7) In Subsection 236(1)(a), the reference to "Code 6" is modified to read "Article 6."

(8) In Subsection 237(3)(g), the reference to "section 235(1)(a)" is modified to read "section 42-4-235(1)(a), C.R.S."

(9) In Subsection 238(1), the reference to "section 42-1-102(6)" is modified to read "section 42-1-102(6), C.R.S."

(10) Subsection 239 is modified as follows:

a. Subsection (2) is modified to read as follows:

"A person under eighteen (18) years of age shall not use a wireless telephone while operating a motor vehicle. This subsection (2) does not apply to acts specified in subsection (3) of this section."

b. Subsection (3) is modified to read as follows:

"A person shall not use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission while operating a motor vehicle."

c. In Subsection (5), all references to "section 42-4-1701(3)" are modified to read "section 42-4-1701(3), C.R.S."

d. Subsection (6) is modified to read as follows:

"(6)(a) An operator of a motor vehicle shall not be cited for a violation of subsection (2) of this section unless the operator was under eighteen (18) years of age and a law enforcement officer saw the operator use, as defined in paragraph (c) of subsection (1) of this section, a wireless telephone.

(6)(b) An operator of a motor vehicle shall not be cited for a violation of subsection (3) of this section unless a law enforcement officer saw the operator use a wireless telephone for the purpose of engaging in text messaging or other similar forms of manual data entry or transmission, in a manner that caused the operator to drive in a careless and imprudent manner, without due regard for the width, grade, curves, corners, traffic, and use of the streets and highways and all other attendant circumstances, as prohibited by section 42-4-1402, C.R.S."

(11) In Subsection 504(4), the reference to "section 42-4-510" is modified to read "section 42-4-510, C.R.S."

(12) Section 602 is hereby deleted in its entirety.

(13) In Subsection 604(1)(a)(III), the reference to "section 42-4-802" is modified to read "section 42-4-802, C.R.S."

(14) In Subsection 608(1), the reference to "section 42-4-903" is modified to read "section 42-4-903, C.R.S." and the reference to "section 42-4-609" is modified to read "section 42-4-609, C.R.S."

(15) In Subsection 613, the reference to "Code 4" is modified to read "Article 4."

(16) Subsection 614(1)(a) is modified to read as follows:

"If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a state highway, the department of transportation may designate such portion of the highway as a highway maintenance, repair, or construction zone. Any person who commits the equivalent to certain State violations listed in section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701(4)(c), C.R.S."

(17) Subsection 614(1)(b) is modified to read as follows:

"If maintenance, repair, or construction activities are occurring or will occur within four hours on a portion of a roadway that is not a state highway, the public entity conducting the activities may designate such portion of the roadway as a maintenance, repair, or construction zone. A person who commits the equivalent to certain State violations listed in section 42-4-1701(4), C.R.S., in a maintenance, repair, or construction zone that is designated pursuant to this section is subject to the increased penalties and surcharges imposed by section 42-4-1701(4)(c), C.R.S."

(18) In Subsection 615(1), the reference to "section 1701(4)(d)" is modified to read "section 42-4-1701(4)(d), C.R.S."

(19) In Subsection 705(3)(b), the reference to "section 42-4-1402" is modified to read "section 42-4-1402, C.R.S."

(20) In Subsection 805(5), the reference to "section 111" is modified to read "section 42-4-111, C.R.S." and the reference to "section 111(2)" is modified to read "section 42-4-111(2), C.R.S."

(21) In Subsection 1010(1), the reference to "section 42-4-902" is modified to read "section 42-4-902, C.R.S."

(22) Subsection 1010(3) is modified to read as follows:

"Local authorities may by ordinance consistent with the provisions of section 43-2-135(1)(g), C.R.S, with respect to any controlled-access highway under their respective jurisdictions, prohibit the use of any such highway by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. After adopting such prohibitory regulations, local authorities, or their designees, shall install official traffic control devices in conformity with the standards established by section 601 at entrance points or along the highway on which such regulations are applicable. When such devices are so in place, giving notice thereof, no person shall disobey the restrictions made known by such devices."

(23) Subsection 1012(2.5)(c) is modified to read as follows:

"Local authorities, with respect to streets and highways under their respective jurisdictions, shall provide information via official traffic control devices to indicate that ILEVs and, subject to subparagraph (I) of paragraph (a) of this subsection (2.5), hybrid vehicles may be operated upon high occupancy vehicle lanes pursuant to this section. Such information may, but need not, be added to existing printed signs, but as existing printed signs related to high occupancy vehicle lane use are replaced or new ones are erected, such information shall be added. In addition, whenever existing electronic signs are capable of being reprogrammed to carry such information, they shall be so reprogrammed."

(24) In Subsection 1012(3)(b), the reference to "section 1701(4)(a)(I)(K)" is modified to read "section 42-4-1701(4)(a)(I)(K), C.R.S."

(25) Subsection 1101(1) shall be modified by deleting therefrom the existing Subsection 1101(1) and substituting in its place the following:

"No person shall drive a vehicle on a street or highway within this municipality at a speed greater than is authorized in this section 1101, and in no event greater than seventy (70) miles per hour."

(26) Subsection 1101(4) shall be modified by deleting therefrom the existing Subsection 1101(4) and substituting in its place the following:

"(4) The speed limits specified in Subsection 1101(2) hereof shall be considered maximum lawful speed limits and not prima facie speed limits."

(27) Subsection 1105(7)(c) is modified to read as follows:

"The failure of the owner of the immobilized motor vehicle to request removal of the immobilization device and pay the fee within fourteen days after the end of the immobilization period ordered by the court or within the additional time granted by the court pursuant to paragraph (d) of this subsection (7), whichever is applicable, shall result in the motor vehicle being deemed an 'abandoned vehicle,' as defined in section 1802(1)(d) and section 42-4-2102(1)(d), C.R.S., and subject to the provisions of part 18 of this Code and part 21 of article 4 of Title 42, C.R.S., whichever is applicable. The law enforcement agency entitled to payment of the fee under this subsection (7) shall be eligible to recover the fee if the abandoned motor vehicle is sold, pursuant to section 1809(2)(b.5) or section 42-4-2108(2)(a.5), C.R.S."

(28) Subsection 1105(8)(b) is modified to read as follows:

"No person may remove the immobilization device after the end of the immobilization period except the law enforcement agency that placed the immobilization device and that has been requested by the owner to remove the device and to which the owner has properly paid the fee required by subsection (7) of this section. Nothing in this subsection (8) shall be construed to prevent the removal of an immobilization device in order to comply with the provisions of part 18 of this Code or part 21 of Article 4 of Title 42, C.R.S."

(29) Section 1204 shall be modified by the addition of Subsection 1204(1)(l) to read as follows:

"(1) Within emergency access lanes designated pursuant to powers designated to the Town under state law, so as to obstruct designated and marked emergency access lanes anywhere within the municipality of the Town of Foxfield. This prohibition against stopping, standing or parking a vehicle within said designated emergency access lanes shall be applicable to all property, whether public or private within the Town of Foxfield, and shall prohibit the parking, stopping or standing of any vehicle within said emergency access lanes except emergency vehicles (i.e., police cars, fire department vehicles, ambulances, EMT vehicles, etc.) during the answering of an emergency call."

(30) Section 1208 shall be modified by deleting therefrom the existing Section 1208 and substituting in its place the following:

"1208. Parking for persons with mobility handicaps.

"a. Any motor vehicle with distinguishing license plates or an identifying placard obtained by a person with a mobility handicap as prescribed by law, may be parked in a parking space identified as being reserved for use by the handicapped, whether on public property or private property

available for public use; or in any public parking area along any public street in one and two-hour time limit zones or at parking meters during hours parking is permitted regardless of any time limitation imposed upon parking along such streets.

"b. It shall be unlawful for persons with mobility handicaps to be parked along public streets, or in designated parking spaces on public or private property:

"1. During such times when all stopping, standing or parking of all vehicles is prohibited;

"2. When only special vehicles may be parked;

"3. When parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

"c. The owner of private property available for public use may install signs prescribed by the traffic engineer identifying parking spaces designated to specifications of the traffic engineer and reserved for use by the handicapped. Such installations shall be a waiver of any objection the owner may assert concerning enforcement of this section by officers, or parking control persons, and said persons are hereby authorized and empowered to enforce this section of the code.

"d. It shall be unlawful for any person who does not have a mobility handicap to exercise the parking privilege defined in this section.

"e. It shall be unlawful for any motor vehicle without distinguishing license plates or any identifying placard obtained by a person with mobility handicap as prescribed by law to be parked in a parking space identified as being reserved for use by the handicapped. Notwithstanding any other provision of the Model Traffic Code, the penalty resulting from conviction of a violation of this section 1208 or any subpart thereof shall be a fine of not less than fifty dollars ($50.00) nor more than four hundred ninety-nine dollars ($499.00). In enforcing this section 1208, the municipal court shall not have the authority to suspend all or any part of any fine or violation hereof so as to result in a fine of less than fifty dollars ($50.00), it being the intent of the Board of Trustees of the Town of Foxfield that section 1208 of this Code be strictly and diligently enforced so as to provide adequate parking of persons with mobility handicaps free from the interference of those not so handicapped."

(31) In Subsection 1210(1), the reference to "section 42-1-102(64)" is modified to read "section 42-1-102(64), C.R.S."

(32) In Subsection 1401(1), the reference to "section 127" is modified to read "section 42-2-127, C.R.S."

(33) In Subsection 1402(1), the reference to "section 127" is modified to read "section 42-2-127, C.R.S."

(34) In Subsection 1406(5)(b)(II), the reference to "section 1701(4)(a)(I)(N)" is modified to read "section 42-4-1701(a)(I)(N), C.R.S."

(35) In Subsection 1408(1), the reference to "Code 1" is modified to read "Article 1" and the reference to "Code 20" is modified to read "Article 20."

(36) In Subsection 1409(4)(a), all references to "section 42-4-1701(3)(a)(II)(A)" are modified to read "section 42-4-1701(3)(a)(II)(A), C.R.S."; and all references to "section 42-3-113(2) and (3)" are modified to read "section 42-3-113(2) and (3), C.R.S."

(37) In Section 1412, all references to "section 111" are modified to read "section 42-4-111, C.R.S."; the reference to "Code 10" is modified to read "Article 10"; and all references to "section 127" are modified to read "section 42-2-127, C.R.S."

(38) In Section 1415, the reference to "section 42-4-1701(3)(a)(II)(A)" is modified to read "section 42-4-1701(3)(a)(II)(A), C.R.S."

(39) Section 1701 is deleted in its entirety. Any references to section 1701 in the Model Traffic Code shall be deemed to refer to Section 8-1-60 below.

(40) Subsection 1702(2) is modified to read as follows:

"Violations of sections 238, 607(2)(b), 1402(2), and 1409 of this Code are class 1 traffic misdemeanors."

(41) Subsection 1702(3) is modified to read as follows:

"Violations of sections 107, 233, 507 508, 509, 510, 1105, 1401, 1402(1), 1407, 1412, 1413, 1704, 1716(2) and 1903(1)(a) of this Code are class 2 traffic misdemeanors."

(42) Subsection 1702(6) is modified to read as follows:

"The Board of Trustees may adopt a fine and surcharge schedule for penalty assessment violations."

(43) In Section 1709 all references to "section 42-2-127" are modified to read "section 42-2-127, C.R.S." and all references to "section 42-4-1701" are modified to read "section 42-4-1701, C.R.S."

(44) Subsection 1709(4) is deleted in its entirety.

(45) In Section 1805, all references to "section 42-4-1804(4)" are modified to read "section 42-4-1804(4), C.R.S."; all references to "section 42-4-1810(1)(b)" are modified to read "section 42-4-1810(1)(b), C.R.S."; the reference to "part 1 of Code 6 of this title" is modified to read "part 1 of article 6 of title 42, C.R.S."; and the reference to "Code 6 of title 12, C.R.S." is modified to read "article 6 of title 12, C.R.S."

(46) In Section 1809, all references to "section 42-4-1805" are modified to read "section 42-4-1805, C.R.S." and all references to "section 42-4-1802(1)" are modified to read "section 42-4-1802(1), C.R.S."

(47) In Section 1814, the reference to "section 42-13-106" is modified to read "section 42-13-106, C.R.S."

Sec. 8-1-40. Application.

This Article shall apply to every street, alley, sidewalk area, driveway, park and every other public way, place or parking area, either within or outside the corporate limits of the Town, the use of which the Town has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402, 1413 and Part 16 of the adopted code respectively concerning reckless driving, careless driving, eluding a police officer and accidents and accident reports shall apply not only to public places and ways but also throughout the Town.

Sec. 8-1-50. Interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to conform with the State's uniform system for the regulation of vehicles and traffic. Article and section headings of this Article and the adopted code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section thereof.

Sec. 8-1-60. Penalties.

It shall be unlawful for any person to violate any of the provisions stated or adopted in this Article.

(1) Except as provided in Paragraph (2) below, failure to comply with the terms of this Article shall constitute a civil traffic infraction punishable by a civil penalty of not more than four hundred ninety-nine dollars ($499.00) to be determined and assessed at the discretion of the Municipal Judge, which discretion may be based upon a fine schedule adopted by Resolution of the Board of Trustees.

(2) Any violations of Section 239(3), Misuse of a Wireless Telephone; Section 1105, Speed Contests - Speed Exhibitions; Section 1401, Reckless Driving; and Section 1413, Eluding or Attempting to Elude Police Officer, of the Model Traffic Code shall constitute a misdemeanor traffic violation, punishable as provided by Section 1-4-20 of this Code; provided, however, that nothing contained herein shall empower the court to subject any person under the age of eighteen (18) to any imprisonment as a portion of a penalty for violation of the provisions of this Article.

(3) Except for persons who are charged with one of the offenses specified in Paragraph (2) above regarding penalties, if a person fails to appear at a hearing before the Court at the date and time specified in the summons and complaint, or at such other time as the court may order, the Municipal Court shall enter a default judgment, assess an appropriate civil penalty and assess applicable court costs. A default judgment shall have the same legal effect as a plea of guilty or a conviction at trial. The Municipal Court shall report its entry of a default judgment, a plea of guilty or no contest, a conviction or a forfeiture of bail against every person concerning any charge specified in this Section, to the Colorado Department of Revenue, Motor Vehicles Division, and the Motor Vehicles Division may thereafter assess penalty points against such person's driving privileges. Following such a report by the Municipal Court, the provisions of Section 42-4-1709(7), C.R.S., shall control any outstanding obligations to the Municipal Court.

(4) Any person found guilty or who pleads guilty or nolo contendere to a violation of Section 239(3), Misuse of Wireless Telephone, shall be subject to the following criminal penalty:

(a) Except as provided in Subsection (2) below, a minimum mandatory fine of not less than three hundred dollars ($300.00).

(b) If the person's actions are the proximate cause of bodily injury or death to another, a minimum mandatory fine of not less than three hundred dollars ($300.00) or imprisonment for a period often ten (10) days to three hundred sixty-four (364) days, or both such fine and imprisonment.

Sec. 8-1-70. Speed limits.

The speed limit for the Town streets shall be thirty (30) miles per hour unless otherwise established by the Board of Trustees.

Sec. 8-1-80. Weight limitations.

(a) Excess weight; weight limitation. Notwithstanding the specific weight limits set forth in Part 5 of the adopted code, no truck shall be moved or operated or be permitted to be moved or operated on any street, bridge or highway within the Town when the empty weight thereof exceeds seven thousand (7,000) pounds.

(b) Exceptions. The terms of this Section shall not apply to the following:

(1) Vehicles which are traveling within the Town to make a delivery within the corporate limits of the Town;

(2) Authorized emergency vehicles;

(3) Public transportation vehicles operated by municipalities or other political subdivisions of the State;

(4) County road maintenance and construction equipment;

(5) Town road maintenance and construction equipment;

(6) Vehicles registered at an address within the corporate limits of the Town; and

(7) Colorado State Highway 83 or Arapahoe Road.

(c) Penalties. Any violations of this Section shall be traffic infractions punishable by civil penalties of not more than four hundred ninety-nine dollars ($499.00) per violation or count to be determined and assessed at the discretion of the Court. Excess weight violations shall be considered traffic infractions and shall constitute civil matters.

(Ord. 14 §1, 2000; Ord. 4 §1, 2003; Ord. 1 §1, 2012)

Sec. 8-1-90. Driving under restraint prohibited.

Any person who drives a motor vehicle or off-highway vehicle upon any street or highway in the Town of Foxfield with knowledge that the person's license or privilege to drive, either as a resident or nonresident, is under restraint for an outstanding judgment is guilty of a civil traffic infraction punishable pursuant to Section 8-1-60 above.

CHAPTER 11
Streets, Sidewalks and Public Property

ARTICLE 1 Sidewalks

Sec. 11-1-10. Repair and maintenance.

The owner, occupant, lessee or person in possession or control of any premises or property shall maintain the sidewalks adjoining such premises or property in good repair and in a safe, unobstructed condition, free of weeds and debris.

Sec. 11-1-20. Snow and ice removal from sidewalks.

The owner, occupant, lessee or person in possession or control of any premises or property shall maintain the sidewalks adjoining such premises or property, and shall remove and clear away, or cause to be removed or cleared away, snow and ice from sidewalks in all business districts within the Town by four (4) business hours after the cessation of any fall of snow, sleet or freezing rain or by the beginning hours of the next business day following such fall, whichever period is shorter, and from all other sidewalks in the Town within twenty-four (24) hours of the cessation of any fall of snow, sleet or freezing rain.

Sec. 11-1-30. Penalties.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

ARTICLE 2 Newly Paved and Constructed Streets

Sec. 11-2-10. Definitions.

For purposes of this Article, *excavation* means digging into, moving, or otherwise penetrating any part of a paved right-of-way.

Sec. 11-2-20. Prohibition regarding excavation.

For newly paved and constructed streets, no excavation in the pavement shall be permitted within two (2) years of the completion of the repaving or construction except as set forth in this Section, or in the case of an emergency that in the discretion of the Town required immediate excavation to protect the health, safety and welfare of the citizens of the Town.

Sec. 11-2-30. Exemption.

In rare circumstances, the Town may grant an exemption from this Article in accordance with the following procedures.

(1) An application for exemption shall be in writing on a form acceptable to the Town and shall contain at a minimum the following information.

a. A detailed an dimensional engineering plan that identified and accurately represents all public rights-of-way and other property that will be impacted by the proposed work and the method of construction.

b. The location, width, length and depth of any type of facility to be installed at the proposed excavation.

c. A statement as to how any of the criteria set forth in this Section applies to the proposed work.

(2) Criteria for approval. In determining whether an exemption should be granted, the Town shall at a minimum consider the following criteria:

a. Whether alternative utility alignments that do not involve excavating in the street are available.

b. Whether the proposed excavation can reasonable be delayed until after the two-year period has elapsed.

c. Whether duct, conduit or other facilities are reasonable available from another user of the public right-of-way.

d. Whether the proposed work involves joint trenching or joint use and the number of users to share in the trenching or use.

e. Whether the proposed work is to be by horizontal boring, tunneling or open trenching.

f. Whether applicable law requires the applicant to provide service to a particular customer and whether denial of the exemption would prevent the applicant from providing such service.

g. Whether the purpose of the proposed work is to provide service to a particular building, or a customer within a building who has requested such service, and whether denial of the exemption would prevent the applicant from providing such service.

Sec. 11-2-40. Penalty.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code. The Town further reserves the right to seek restitution for any actual pecuniary damages arising from a violation of this Article. However, nothing in this Article shall be construed to impair any common law or statutory cause of action, or legal or equitable remedy therefrom, including injunctive relief, or any person for injury or damage arising from any violation of this Article from other law.

ARTICLE 3 Excavations

Sec. 11-3-10. Standards, regulations and specifications.

The Public Works Department, in consultation with the Town Administrator and the Public Works Director, shall develop standards, regulations and specifications governing access, utilization and restoration of all streets, alleys and rights-of-way within the corporate limits of the Town, which standards, regulations and specifications shall not constitute a barrier to the use and excavation of Town facilities, but shall preserve the integrity of the facilities at the least possible cost to Town taxpayers.

Sec. 11-3-20. Penalties.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

ARTICLE 4 Access, Approaches, Driveways, Mailboxes and Right-of-Way Permits

Sec. 11-4-10. Purpose.

The Town's streets and right-of-ways are held by the Town primarily for the purpose of pedestrian, bicycle, equestrian and vehicular passage, for the provision of essential public safety services, including police, fire and emergency medical response services, the provision of utilities and public health services, including municipal water service and storm drainage and consistent with and pursuant to the power vested in the Town by Section 31-15-702, C.R.S. The provisions of this Section shall apply to all properties and public streets. The purpose of this Section is:

(1) To provide clear visibility, unobstructed by structures or vegetation in sight triangles at intersections.

(2) To provide clear visibility and safe passage, unobstructed by structures or vegetation, for citizens traveling along the streets and right-of-ways within the Town.

(3) To provide for open, unobstructed roadsides and ditches.

(4) To preserve opportunities to construct planned trails and other future trails.

(5) To prevent damage to streets and paved surfaces.

(6) To provide further guidance for what citizens may do on Town property.

(7) To promote the health, safety and welfare of the public and to prevent the creation of nuisances.

Sec. 11-4-20. Permit required.

(a) A right-of-way use permit shall be required for the construction, installation and maintenance of any street, sidewalk, driveway, curb cut, bore or trench. A permit is also required for any substantial modification of existing features or uses of any street or Town right-of-way. Depending upon the type of work to be done, one (1) or more of the following permits may be required:

(1) Public right-of-way license, in accordance with Section 11-4-30 below; or

(2) Public right-of-way use permit, in accordance with Article 5 of this Chapter; or

(3) Overlot grading permit. Application for such permits shall be submitted to the office of the Town Clerk.

(b) It shall be unlawful and deemed a violation of this Chapter to commence construction in or alteration of streets or Town rights-of-way without an approved permit, and any such violation shall be subject to the penalties set forth in Section 11-2-40 of this Chapter.

(Ord. 1 §1, 2012)

Sec. 11-4-30. Right-of-way license.

(a) The Town may grant a right-of-way license to an adjoining property owner to allow a structure in the Town right-of-way that would otherwise have been prohibited by this Section. Right-of-way licenses are granted at the discretion of the Town and may be revoked at any time; concurrently the Town may also require removal of the structure. Application for such license may be submitted to the office of the Town Clerk. The Revocable License Agreement can be found in Appendix 11-B to this Chapter.

(b) In general, construction in the Town right-of-way is discouraged; however, a right-of-way license may be granted for structures based upon consideration of the following conditions:

(1) The structure would break away easily if struck by a vehicle.

(2) The structure does not obstruct the vision of drivers or pedestrians.

(3) The structure does not obstruct any existing or anticipated future equestrian, pedestrian or bicycle trails or paths.

(4) The property owner adjoining the Town right-of-way where the structure is located agrees to provide adequate liability insurance for said structure for as long as said structure is located in the Town right-of-way and agrees to execute the Revocable License Agreement.

(5) The property owner adjoining the Town right-of-way agrees to indemnify the Town against all liability or claims related to the structure.

(Ord. 1 §1, 2012)

Sec. 11-4-40. Town right-of-way.

(a) Defined. The Town owns in fee simple the Town rights-of-way. Most Town rights-of-way are platted sixty (60) feet wide, although some are fifty (50) feet wide. The width of the paved street surface within the Town right-of-way is generally twenty-four (24) feet. It is important to note that property lines do not extend to the edge of the street pavement. The Town right-of-way includes the twenty-four-foot-wide paved surface and approximately an additional thirteen (13) to eighteen (18) feet of land on each side of the paved surface (see Figure 11-1). Not all paved surfaces are centered within the Town right-of-way. It is the resident's obligation to check the survey of the property and property boundary markers to determine correct property boundary lines.

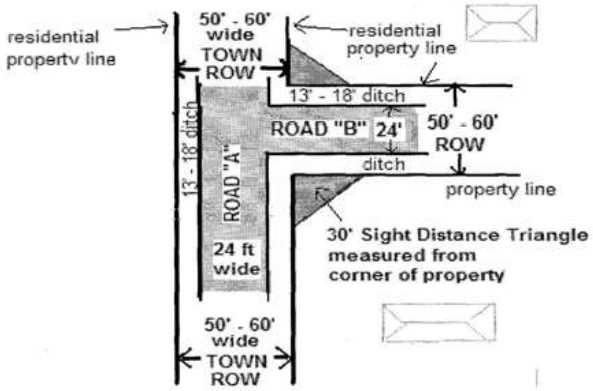


Figure 11-1
Right-of-Way

(b) The following are allowed in the Town right-of-way:

(1) Roadside mailboxes in accordance with Section 11-4-50(a) below.

(2) Custom mailboxes in accordance with Section 11-4-50(b) below.

(3) Driveways and culverts with an approved public right-of-way use permit.

(4) Signs in accordance with Section 16-3-100 of this Code.

(5) Structures erected by a governmental agency or public utility.

(6) Structures for which the Town has granted a right-of-way license.

(7) Native grass.

(8) Landscaping that does not obstruct sightlines for vehicular or pedestrian traffic, stone, rock, mulch, brick and railroad ties, may be used adjacent to a driveway to protect a culvert or driveway edge, provided that such use:

a. Is located within ten (10) feet of either end of a Town approved driveway culvert;

b. Does not exceed the elevation of the adjoining street; and

c. Does not alter or impede drainage in a culvert or ditch.

(c) The following are prohibited in the Town right-of-way. The following are prohibited in the Town right-of-way; however, the Town may consider a right-of-way use application (Article 5 of this Chapter) or right-of-way license applications (Section 11-4-20) for structures or activities that would otherwise have been prohibited by this Section. In no case shall the following be permitted without an approved permit or right-of-way license:

(1) Landscaping, including stone, rock, mulch, brick and railroad ties, except to protect a culvert or driveway edge, unless such use: 1) is located within ten (10) feet of either end of a Town-approved driveway culvert; 2) does not exceed the elevation of the adjoining street; and 3) does not alter or impede drainage in a culvert or ditch. Otherwise, only native grass is permitted in the Town rights-of-way along roadsides.

(2) Monuments or entry features.

(3) Custom mailboxes, except in accordance with Section 11-4-50(b).

(4) Fences or walls.

(5) Storage of vehicles, equipment or materials.

(6) Use of street as staging area for construction material or equipment.

(7) Routine parking of vehicles.

(8) Excavation.

(9) Fill.

(10) Altering or impeding drainage.

(11) Cutting of curbs or street pavement.

(12) Any alteration of the Town right-of-way that would impact a planned trail as defined in the Comprehensive Plan as amended from time to time.

(13) Installation, alteration or construction of any structure, other than a structure permitted by this Code.

(14) Removal or alteration of any structure erected by the Town or other governmental agency or public utility.

(Ord. 1 §1, 2012)

Sec. 11-4-50. Residential mailboxes.

(a) Roadside mailbox requirements.

(1) Roadside mailboxes shall consist of a mail receptacle meeting the specifications of the United States Postal Service ("USPS").

(2) Roadside mailboxes shall be mounted on a breakaway support of adequate strength and size to properly support the box. The use of heavy metal posts, concrete posts and miscellaneous items of farm equipment, such as milk cans filled with concrete, are prohibited. The support should be an assembly which, if struck, will bend or fall away from the striking vehicle instead of severely damaging the vehicle and injuring its occupants. A support for a mailbox shall be no larger than a 4" x 4" wood post or a metal post with strength no greater than a two-inch diameter schedule 40 steel pipe and which is buried no more than twenty-four (24) inches deep. A metal post shall not be fitted with an anchor plate; however, an anti-twist attachment is acceptable. Breakaway supports shall not be set in concrete.

(3) The post-to-box attachment shall be of sufficient strength to prevent the box from separating from the post if a vehicle strikes the post.

(4) The bottom of a roadside mailbox shall be forty (40) to forty-eight (48) inches above the mail stop surface or as defined by USPS installation requirements.

(5) The face of a roadside mailbox shall be offset behind the edge of pavement or curb a distance of eight (8) to twelve (12) inches or as defined by USPS installation requirements.

(6) The adjoining property owner shall be responsible for the maintenance of the roadside mailbox.

(b) Custom mailbox requirements.

(1) A custom mailbox constructed using materials that do not meet the standards for a roadside mailbox and breakaway support as defined in Subsection (a) above may be installed only if: 1) a permit application for a custom mailbox is submitted to the Town; 2) the application is approved by both the Board of Trustees and the Town Engineer; and 3) a revocable license agreement has been issued.

(2) A custom mailbox must conform to the following requirements and any additional rules set forth in the application approval:

a. The structure supporting the custom mailbox shall be at least twelve (12) inches from the back of curb or edge of pavement.

b. The entire custom mailbox structure shall not exceed the dimensions of two (2) feet in width, two (2) feet in depth and five (5) feet in height and shall be hollow.

c. The custom mailbox structure shall be located on a thick concrete pad measuring two and one-half (2½) feet wide by two and one-half (2½) feet deep by four (4) inches thick. (2'6" wide x 2'6" deep x 4" thick concrete pad.) The custom mailbox structure shall not be permanently affixed to the concrete pad so that it shall yield, break away or slide off its base if struck by a vehicle.

d. The adjoining property owner shall be responsible for the maintenance of the custom mailbox.

(Ord. 1 §1, 2012)

Sec. 11-4-60. Safety requirements.

No street, sidewalk, driveway, curb cut, bore or trench shall be constructed or maintained which creates a threat to the safety of persons or vehicles in the vicinity of the street, driveway or curb cut. No permit for the construction of a street, driveway or curb cut shall be issued unless the Town Engineer determines that the proposed street, driveway or curb cut will not create a threat to the safety of persons or vehicles in the vicinity of

the proposed street, driveway or curb cut. In making this determination, the Town Engineer shall consider the following factors:

(1) Whether the street to which access is sought is residential or commercial in character.

(2) Whether the proposed street, driveway or curb cut would cross a sidewalk/trail.

(3) Whether drivers of vehicles using the proposed street, driveway or curb cut would have difficulty in seeing pedestrians or other vehicles in the vicinity.

(4) Whether pedestrians or the drivers of other vehicles would have difficulty in seeing vehicles using the proposed street, driveway or curb cut.

(5) Whether the proposed street, driveway or curb cut would result in increased noise, dirt, smoke or fumes in the vicinity of the proposed street, driveway or curb cut.

(6) Whether the property for which a street, driveway or curb cut is proposed is already served by an existing street, driveway or curb cut.

(7) Whether parking is permitted on the street to which access is proposed.

(8) The width of the street to which access is sought.

(9) The posted speed limit on the street to which access is sought.

(10) The distance of the proposed street, driveway or curb cut from the curb line, or edge of asphalt where curb does not exist, of the nearest street, which intersects the street to which access is proposed.

(11) The proximity of the proposed street, driveway or curb cut to residential neighborhoods and schools.

Sec. 11-4-70. Construction specifications; location of access points.

(a) A residential property with less than one hundred (100) feet of frontage shall be limited to one (1) access point. Residential properties with more than one hundred (100) feet can have additional access points where there is sufficient frontage to provide for minimum and maximum requirements. In the event a property has more than one (1) access point, the primary use driveway shall be established by use as the access point to the primary garage. This primary use driveway may have a maximum of two (2) access points to the public right-of-way when meeting the minimum requirements for lot frontage and separation distances. All other access points shall be designated as secondary use access and shall not affect the spacing requirements for the adjoining property or properties across the street.

(b) In business and commercial areas, no street or curb cut shall be closer than fifteen (15) feet to a property line of an adjacent property except where there is shared access with the adjacent property.

(Ord. 1 §1, 2012; Ord. 09 §1, 2014)

Sec. 11-4-80. Residential driveways and culverts in the Town rights-of-way.

(a) Permit requirements:

(1) The section of new driveways, culverts and temporary construction driveways from the property line to the edge of the existing roadway pavement requires review by the Town Engineer and approval of a public right-of-way use permit in accordance with the provisions of this Chapter.

(2) Improvements to the section of existing driveways from the property line to the edge of the existing roadway pavement, including but not limited to: a change in surface material, asphalt replacement, asphalt overlays, and concrete work shall require approval of a public right-of-way use permit in

accordance with the provisions of this Chapter. The applicant shall pay a permit fee as established in a fee resolution adopted by the Board of Trustees. The application will initially be subject to the completed work inspection as defined in Subsection 11-5-130(1)(2) of this Chapter. Additional inspections, re-inspections or additional engineering review fees, if required, shall be paid by the applicant in accordance with the provisions of this Chapter.

(3) A public right-of-way use permit is not required for a chip-seal or similar surface application.

(b) Properties in the Large Lot Rural Residential District (RR) shall be limited to one (1) access point per one hundred (100) feet of lot frontage or part thereof.

(c) The minimum separation distance between any two (2) residential driveways, either on the same side of the street or on opposite sides of a street, should be thirty-five (35) feet where possible.

(d) The width of a residential driveway within the Town right-of-way shall be a minimum of twelve (12) feet to a maximum of twenty-two (22) feet (or twenty-four [24] feet with flares).

(e) The minimum separation distance required between a residential driveway and a major arterial street, such as Arapahoe or Parker Road, is two hundred ten (210) feet.

(f) The minimum separation distance required between a residential driveway and a residential street intersection is fifty (50) feet.

(g) The portion of a residential driveway from the property line to the edge of the existing roadway pavement shall be constructed of:

(1) A minimum of eight-inch thick compacted class 6 aggregate base material, or

(2) A minimum three-inch thick asphalt pavement over six-inch thick class 6 aggregate base material, or minimum four (4) inches of full depth asphalt., or

(3) A minimum of four (4) inches of CDOT Class B concrete material, with three thousand (3,000) psi compressive strength.

(h) New residential driveways that cross over a roadside drainage ditch will have a culvert in a size and location as determined by the Town Engineer. Existing culverts will be deemed to be adequate except culverts that impede the flow of water may be required to be repaired or replaced in accordance with the provisions of this Chapter.

(i) It is prohibited to place irrigation lines, electrical lines, cables or other features inside culverts.

(j) Construction entrances on residential lots shall have the same requirements as a residential driveway.

(Ord. 05 §1, 2017)

Editor's note(s)—Ord. No. 05, § 1, adopted Sep. 7, 2017, repealed the former § 11-4-80 and enacted a new section as set out herein. The former § 11-4-80 pertained to residential driveways and culverts and derived from Ord. 1, § 1, adopted in 2012; and Ord. 9, § 2, adopted in 2014.

Sec. 11-4-90. Construction adjacent to rights-of-ways.

To prevent encroachment, the Town may require a stamped or sealed improvement location certificate or a stamped or sealed survey from a professional licensed surveyor prior to construction of any structure, fence, monument or landscaping feature proposed to be located on private property adjacent to an easement or Town right-of-way.

Sec. 11-4-100. Drainage.

The construction of streets, driveways and curb cuts shall be accomplished so as not to cause water to enter onto the traveled portion of the street and so as not to interfere with the drainage system of the street right-of-way.

Sec. 11-4-110. General provisions.

(a) Any structure constructed in the Town right-of-way before the effective date of this Chapter will be required to comply with the provisions set forth herein.

(b) The Town shall have the authority pursuant to this Chapter and Section 31-15-702, C.R.S., to order the repair, alteration or removal of any structure, vegetation or landscaping feature located in a street or right-of-way that constitutes a hazard to life or property, is a nuisance or does not comply with the requirements of this Section.

(c) The Town shall have the authority to order the repair, alteration or removal of any structure located in a sight triangle, as defined in Subsection 16-3-30(a), that constitutes a hazard to life or property or that does not comply with the requirements of this Section.

(d) No provision of this Chapter shall be construed to impair any common law or statutory cause of action or legal or equitable remedy therefrom, including injunctive relief, of any person for injury or damage arising from any violation of this Chapter or from other law.

(Ord. 1 §1, 2012)

Sec. 11-4-120. Inspection.

The Town Engineer shall be responsible for the inspection, monitoring and final acceptance of the construction of all streets, driveways and curb cuts in accordance with the access permits issued by the Town Engineer.

ARTICLE 5 Work Permits in the Public Right-of-Way

Sec. 11-5-10. Purpose and objectives.

(a) Purpose. The purpose of this Article is to establish principles, standards and procedures for the placement of facilities, construction, excavation, encroachments and work activities within or upon any public right-of-way and to protect the integrity of the Town's street system.

(b) Objectives. Public and private uses of public rights-of-way should, in the interests of the general welfare, be accommodated; however, the Town must ensure that the primary purpose of the public right-of-way, passage of pedestrian and vehicular traffic, is protected. The use of the public rights-of-way by private users is secondary to these public objectives. This Article has several objectives:

(1) To minimize public inconvenience.

(2) To protect the Town's infrastructure investment by establishing repair standards for the public rights-of-way.

(3) To standardize regulations and thereby facilitate work within the rights-of-way.

(4) To maintain an efficient permit process.

(5) To conserve and fairly apportion the limited physical capacity of public rights-of-way held in public trust by the Town.

(6) To establish a public policy for enabling the Town to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

(7) To promote cooperation among permitees and the Town in the occupation of the public rights-of-way and work therein, in order to: eliminate duplication of facilities that is wasteful, unnecessary or unsightly; lower the permittees' and the Town's costs of providing services to the public; and minimize street cuts.

(8) To protect the public health, safety and welfare.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-20. Definitions.

For purposes of this Article, the following words shall have the following meanings:

Access structure means any structure providing access to facilities in the public right-of-way.

Construction and Excavation Standards means the document entitled Town of Foxfield Construction and Excavation Standards for Public Rights-of-Way, as adopted by resolution of the Board of Trustees and amended from time to time, attached as Appendix 11-A to this Chapter.

Contractor means a person, partnership, corporation or other legal entity which undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, excavate or add to any improvements or facilities in the public right-of-way, or that requires work, workers and/or equipment to be in the public right-of-way in the process of performing the above named activities.

Developer means the person, partnership, corporation, or other legal entity improving a parcel of land within the Town and being legally responsible to the Town for the construction of infrastructure within a subdivision or as a condition of a building permit.

Emergency means any event which may threaten public health or safety, or that results in an interruption in the provision of service, including but not limited to damaged or leaking water or gas conduit systems, damaged, plugged or leaking sewer or storm drain conduit systems, damaged electrical and communications facilities.

Excavate or *excavation* means to dig into or in any way remove or penetrate any part of a public right-of-way, including trenchless excavation such as boring, tunneling and jacking.

Facilities means any pipe, conduit, wire, cable, amplifier, transformer, fiber optic cable, antenna, pole, street light, duct, fixture, appurtenance or other like equipment used in connection with transmitting, receiving, distributing, offering and providing utility and other services, whether above or below ground.

Infrastructure means any public facility, system or improvement including water and sewer mains and appurtenances, storm drains and structures, streets, alleys, traffic signal poles and appurtenances, conduits, signs, landscape improvements, sidewalks and public safety equipment.

Landscaping means grass, ground cover, shrubs, vines, hedges, trees and nonliving materials commonly used in landscape development, as well as attendant irrigation systems.

Major installation means work involving an excavation in the public right-of-way exceeding five hundred (500) feet in length.

Permit means an authorization for use of the public rights-of-way granted pursuant to this Article.

Permittee means the holder of a valid permit issued pursuant to this Article.

Public right-of-way means any public street, way, place, alley, trail, sidewalk, easement, park, square or plaza that is dedicated to public use and under the jurisdiction and/or control of the Town.

Work means any labor performed within a public right-of-way and/or any use or storage of equipment or materials within a public right-of-way, including but not limited to: excavation; construction of streets, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus loading pads, street lights and traffic signal devices; construction, maintenance and repair of all underground facilities such as pipes, conduit, ducts, tunnels, manholes, vaults, cable, wire, or any other similar structure; maintenance of facilities; and installation of overhead poles, used for any purpose. Notwithstanding the foregoing, work shall not include routine maintenance. For purposes of this definition of work, routine maintenance shall include that labor that does not involve excavation, installation of new facilities, lane closures, sidewalk closures or damage to any portion of the public right-of-way.

Sec. 11-5-30. Police power.

(a) A permittee's rights hereunder shall at all times be subject to the police power of the Town, which includes the power to adopt and enforce ordinances, including amendments to this Article, necessary for the safety, health and welfare of the public.

(b) The Town reserves the right to exercise its police power, notwithstanding anything in this Article or any permit to the contrary. Any conflict between the provisions of any permit and any other present or future lawful exercise of the Town's police power shall be resolved in favor of the latter.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-40. Permit required.

(a) No person except an employee or official of the Town or a person exempted by contract with the Town shall undertake or permit to be undertaken any work in a public right-of- way without first obtaining a permit from the Town as set forth in this Article. Copies of the permit and associated documents shall be maintained on the work site and available for inspection upon request by any officer or employee of the Town.

(b) No permittee shall perform work in an area larger or at a location different, or for a longer period of time than that specified in the permit. If, after work is commenced under an approved permit, it becomes necessary to perform work in a larger or different area or for a longer period of time than what the permit specifies, the permittee shall notify the Town immediately and within twenty-four (24) hours shall file a supplementary application for the additional work.

(c) Permits shall not be transferable or assignable without the prior written approval of the Town.

(d) Any person conducting any work within the public right-of-way without having first obtained the required permit shall immediately cease all activity and obtain a permit before work may be resumed, except for emergency operations performed pursuant to Section 11-5-230.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-50. Developer ownership of infrastructure.

In the Town, the construction of infrastructure in new developments is the responsibility of the developer. Once a public right-of-way has been dedicated to the Town, all work in that public right-of-way, including the installation of new infrastructure by a developer, shall be subject to this Article.

Sec. 11-5-60. Permit application.

(a) An applicant for a public right-of-way permit shall file a written application on a form furnished by the Town which includes the following information:

(1) The date of the application;

(2) The name, address and telephone number of the applicant and any contractor or subcontractor which will perform any of the work;

(3) A plan showing the work site, the public right-of-way boundaries, all infrastructure in the area and all landscaping in the area;

(4) The purpose of the proposed work;

(5) A traffic control plan in accordance with the Construction and Excavation Standards;

(6) The dates for beginning and ending the proposed work and proposed hours of work and the number of actual work days required to complete the project; and

(7) The applicable permit fees as set forth in the Construction and Excavation Standards.

(b) For any work in the public right-of-way which includes excavation, in addition to the information required by Subsection (a), the application shall include the following information:

(1) An itemization of the total cost of construction, including labor and materials but excluding the cost of any facilities being installed; and

(2) Copies of all permits and licenses (including required insurance, deposits, bonds and warranties) required to do the proposed work, whether required by federal or state law or Town resolution, ordinance or regulation.

(c) An applicant for a public right-of-way permit for a major installation shall, in addition to the information required by Subsections (a) and (b), submit the following information:

(1) Locates of all existing facilities located within seven (7) feet of the proposed facility, which shall be compiled and submitted according to the Construction and Excavation Standards and Section 11-5-160; and

(2) Engineering construction drawings or site plans for the proposed work.

(d) An applicant shall update a permit application within ten (10) days after any material change occurs.

(e) Applicants may apply jointly for permits to work in public rights-of-way at the same time and place. Applicants who apply jointly for permits may share in the payment of the permit fees. Applicants must agree among themselves as to the portion each shall pay and, if no agreement is reached, payment in full shall be required of all applicants.

(f) In all cases, the applicant for a public right-of-way permit and the eventual permittee shall be the owner of the facilities to be installed, maintained or repaired, rather than the contractor performing the work.

(g) By signing an application, the applicant is certifying to the Town that the applicant is in compliance with all other permits issued by the Town and that the applicant is not delinquent in any payment due to the Town for prior work. This certification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant, if the applicant and the Town are negotiating in good faith to resolve the dispute.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-70. Town review and approval.

(a) An application for a public right-of-way permit shall be reviewed by the Town for completeness within five (5) working days of submission. If the application is not complete, the Town shall notify the applicant of all missing information within the five-day time period.

(b) Once an application is deemed complete by the Town, the Town shall review the application to determine whether the application complies with this Article and the Construction and Excavation Standards. The time for such review shall be as follows:

(1) For a public right-of-way permit which does not include excavation, within five (5) working days.

(2) For a public right-of-way permit which includes excavation but is not a major installation, within fifteen (15) working days.

(3) For a public right-of-way permit for a major installation, within twenty (20) working days.

(c) At the conclusion of the review period, the Town shall approve the permit, approve the permit with conditions or deny the permit.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-80. Permit fees.

Before a public right-of-way permit is issued, the applicant shall pay to the Town a permit fee, which shall be determined in accordance with the fee schedule contained in the construction and excavation standards. In addition to the application fee, applications for work permits in the public right-of-way must comply with the requirements for cost reimbursement agreements as described in Subsection 16-5-100(b) of this Code.

Sec. 11-5-90. Insurance.

(a) Unless otherwise specified in a franchise agreement between a permittee and the Town, prior to the granting of any permit, the permittee shall carry and maintain in full effect at all times the following insurance coverage:

(1) Commercial general liability insurance, including broad form property damage, completed operations contractual liability, explosion hazard, collapse hazard, underground property damage hazard, commonly known as XCU, for limits not less than one million dollars ($1,000,000.00) each occurrence for damages of bodily injury or death to one or more persons; and five hundred thousand dollars ($500,000.00) each occurrence for damage to or destruction of property.

(2) Workers' compensation insurance as required by state law.

(b) The permittee shall file with the Town proof of such insurance coverage in a form satisfactory to the Town.

(c) Upon prior written approval of the Town, a permittee may provide self-insurance or, if the permittee is not using a separate contactor and is doing such work for the benefit of the permittee's own property, the

permittee may name the Town as an additional insured for purposes of general liability coverage with the minimum coverage limits set forth in Subsection (a).

(Ord. 6 §2, 2001; Ord. 1 §1, 2012; Ord. 02, §2, 2015)

Sec. 11-5-100. Indemnification.

(a) Each permittee, for itself and its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, shall hold the Town harmless and defend and indemnify the Town, its successors, assigns, officers, employees, agents and appointed and elected officials from and against all liability or damage and all claims or demands whatsoever in nature and reimburse the Town for all its reasonable expenses, as incurred, arising out of any work or activity in the public right-of-way, including but not limited to the actions of the permittee, its employees, representatives, agents, contractors, related entities, successors and assigns, or the securing of and the exercise by the permittee of any rights granted in the permit, including any third party claims, administrative hearings and litigation; whether or not any act or omission complained of is authorized, allowed or prohibited by this Article or other applicable law. A permittee shall not be obligated to hold harmless or indemnify the Town for claims or demands to the extent that they are due to the negligence or willful and wanton acts of the Town or any of its officers, employees or agents.

(b) Following the receipt of written notification of any claim, the permittee shall have the right to defend the Town with regard to all third party actions, damages and penalties arising in any way out of the exercise of any rights in the permit. If at any time, however, a permittee refuses to defend the Town and the Town elects to defend itself with regard to such matters, the permittee shall pay all expenses incurred by the Town related to its defense, including reasonable attorney fees and costs.

(c) If a permittee is a public entity, the indemnification requirements of this Section shall be subject to the provisions of the Colorado Governmental Immunity Act.

(d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the Town, the conflicting provision of this Section shall not apply to the franchisee and the franchisee shall instead honor the provision of the franchise agreement.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-110. Performance bonds and letters of credit.

(a) Before a public right-of-way permit is issued, the applicant shall file with the Town a bond or letter of credit, at the applicant's choice, in favor of the Town in an amount equal to the total cost of construction, including labor and materials but excluding the cost of any facilities being installed, or twenty thousand dollars ($20,000.00), whichever is greater. The bond or letter of credit shall be executed by the applicant as principal and by at least one (1) surety upon whom service of process may be had in the state. The bond or letter of credit shall be conditioned upon the applicant fully complying with all provisions of Town ordinances, resolutions and regulations and upon payment of all judgments and costs rendered against the applicant for any violation of any Town resolution, regulation or ordinance or state law arising out of any negligent or wrongful acts of the applicant in the performance of work pursuant to the permit.

(b) The Town may bring an action on the bond or letter of credit on its own behalf or on behalf of any person so aggrieved as beneficiary.

(c) The bond or letter of credit shall be approved by the Town prior to the issuance of the permit. The Town may waive the requirements of any such bond or letter of credit or may permit the applicant to post a bond

without surety thereon upon finding that the applicant has financial stability and assets located in the state to satisfy any claims intended to be protected against by the security required by this Section.

(d) A letter of responsibility, in a form acceptable to the Town, shall be accepted in lieu of a performance bond or letter of credit from all special districts operating within the Town.

(e) A permittee not using a separate contactor and doing work in the public right-of-way for the benefit of the permittee's own property may name the Town as an additional insured on the personal liability component of permittee's homeowner's insurance policy, and the certificate naming the Town as an additional insured may be accepted in lieu of a performance bond or letter of credit.

(f) A blanket bond of sufficient amount to cover all proposed work during the upcoming year may be filed with the Town on an annual basis in lieu of the project-specific performance bonds or letters of credit required by Subsection (a). The form and amount of the blanket bond shall be subject to the prior review and approval of the Town. Should the blanket bond be deemed insufficient by the Town at any time, the Town may require additional, project-specific performance bonds or letters of credit pursuant to Subsection (a).

(g) The performance bond, blanket bond, letter of credit or letter of responsibility shall remain in force and effect for a minimum of two (2) years after completion and acceptance of the street cut, excavation or lane closure.

(h) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the applicant and the Town, the conflicting provision of this Section shall not apply to the franchisee and the franchisee shall instead honor the provision of the franchise agreement.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012; Ord. 02, §3, 2015)

Sec. 11-5-120. Warranty.

(a) A permittee, by acceptance of the permit, expressly warrants and guarantees complete performance of the work in a manner acceptable to the Town, warrants and guarantees all work done for a period of two (2) years after the date of probationary acceptance and agrees to maintain upon demand and to make all necessary repairs during the two-year period. This warranty shall include all repairs and actions needed as a result of defects in workmanship, including settling of fills or excavations.

(b) The warranty period shall begin on the date of the Town's probationary acceptance of the work. If repairs are required during the warranty period, those repairs need only be warranted until the end of the initial two-year period starting with the date of probationary acceptance.

(c) At any time prior to completion of the warranty period, the Town may notify the permittee in writing of any needed repairs. Such repairs shall be completed within twenty-four (24) hours if the defects are determined by the Town to be an imminent danger to the public health, safety and welfare. Non-emergency repairs shall be completed within thirty (30) days after notice.

(d) The warranty shall cover only those areas of work performed by the permittee which provided the warranty and not directly impacted by the work of any other permittee or the Town. If a portion of work warranted by a permittee is subsequently impacted by work of another permittee or the Town during the warranty period, the other permittee or the Town, as applicable, shall assume responsibility for repair to the subsequently impacted portion of the public right-of-way.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-130. Inspections.

(a) The following three (3) inspections shall take place, at a minimum:

(1) Pre-construction inspection. The permittee shall request that the Town conduct a pre-construction inspection, to determine any necessary conditions for the permit.

(2) Completed work inspection. The permittee shall notify the Town immediately after completion of work. The Town shall inspect the work within twenty-one (21) days of the permittee's notification. Probationary acceptance shall be made if all work meets all standards set forth in this Article and any other applicable Town regulation, ordinance or resolution. Written notice of probationary acceptance shall be delivered to the permittee in person, via e-mail or sent to the permittee's last known address by first-class mail, postage prepaid.

(3) Warranty inspection. Approximately thirty (30) days prior to the expiration of the two-year warranty period, the Town shall conduct a final inspection of the work. If the work is still satisfactory, the bond or letter of credit shall be returned or allowed to expire, with a letter of final acceptance, less any amounts needed to complete work not completed by the permittee.

(b) Upon review of the application for a permit, the Town shall determine how many additional inspections, if any, may be required. The total number of required inspections shall be listed on the permit. For a permit which does not include excavation, the Town may waive any or all of the above-listed inspections.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-140. Time of completion.

(a) All work covered by the permit shall be completed by the date stated on the application, unless an extension has been granted by the Town in writing, in which case all work shall be completed by the date stated in the written extension.

(b) Permits shall be void if work has not commenced within thirty (30) days after issuance, unless an extension has been granted by the Town in writing.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-150. Joint planning and construction.

(a) Permittees shall make reasonable efforts to attend and participate in meetings of the Town, of which the permittee is notified, regarding public right-of-way issues that may impact its facilities, including planning meetings to anticipate joint trenching and boring.

(b) Each permittee owning, operating or installing facilities in public rights-of-way shall meet annually with the Town, at the Town's request, to discuss the permittee's planned major excavations in the Town. As used in this Subsection, the term *planned major excavations* means any future excavations planned by the permittee that will affect any public right-of-way for more than five (5) days, provided that the permittee shall not be required to identify future major excavations planned to occur more than three (3) years after the date that the permittee's planned major excavations are discussed. Between the annual meetings to discuss planned major excavations, the permittee shall use its bests efforts to inform the Town of any substantial changes in the planned major excavations discussed at the annual meeting.

(c) Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, a permittee shall meet and cooperate with other providers, licensees, permittees and franchisees so as to reduce so far as possible the number of street cuts within the Town and the amount of pedestrian and vehicular traffic that is

obstructed or impeded. Should two (2) permittees refuse to joint trench or share bores or street cuts, the Town may require each permittee to submit written evidence detailing why such sharing would be impossible or impractical. Should the permittee fail to provide evidence satisfactory to the Town, the Town may deny a permit application on that basis.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-160. Locate information.

(a) Any person owning facilities in the public right-of-way shall provide field locate information to the Town and any other permittee with a valid right-of-way permit which authorizes locate pothole excavation or other excavation work. Within seven (7) days of receipt of a written request from the Town or such a permittee, the facility owner shall field locate facilities in the public right-of-way in which the work will be performed.

(b) In locating facilities in the public right-of-way, a permittee shall compile all information obtained regarding its facilities or any other known facilities in the public right-of-way related to a particular permit.

(c) For major installations, a permittee shall obtain a public right-of-way permit for the location of all parallel facilities within seven (7) feet of the permittee's proposed facility alignment. The location of parallel facilities shall be field-verified in a manner approved by the Town. The location of other existing facilities which may affect the proposed facility alignment shall also be field-verified in a manner approved by the Town.

(d) Before beginning excavation in any public right-of-way, a permittee shall contact the Utility Notification Center of Colorado (UNCC) and, to the extent required by Section 9-1.5-102, et seq., C.R.S., make inquiries of all ditch companies, utility companies, districts, local governments and all other agencies that might have facilities in the area of work to determine possible conflicts. The permittee shall contact the UNCC and request field locates of all facilities in the area pursuant to UNCC requirements. Field locates shall be marked prior to commencing work.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-170. Minimal interference with other property.

(a) Work in the public right-of-way or on or near other public or private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Facilities shall be constructed and maintained in such manner as not to interfere with sewers, water pipes or any Town property, or with any other pipes, wires, conduits, pedestals, structures or other facilities that may have been laid in the public rights-of-way by the Town or its authority.

(b) Facilities shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with new improvements the Town may deem proper.

(c) Facilities shall not unnecessarily hinder or obstruct the free use of the public rights-of-way or other public property, shall not interfere with the travel and use of the public rights-of-way by the public during the construction, repair, operation or removal thereof and shall not obstruct or impede traffic.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-180. Underground construction and use of poles.

(a) When required by Town ordinance, resolution or regulation or applicable state or federal law and in locations where all existing facilities are located underground, all of a permittee's facilities shall be installed underground at no cost to the Town.

(b) In areas where existing facilities are above ground, the permittee may install aboveground facilities.

(c) For aboveground facilities, a permittee shall use existing poles wherever possible.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-190. Use of trenches and bores by Town.

Should the Town desire to place its own facilities in trenches or bores opened by a permittee, the permittee shall cooperate with the Town in any construction by the permittee that involves trenching or boring, provided that the Town has first notified the permittee in writing that it is interested in sharing the trenches or bores in the area where the permittee's construction is occurring. The permittee shall allow the Town to place its facilities in the permittee's trenches and bores, provided that: the Town incurs any incremental increase in cost of the trenching and boring; the Town's installation does not unreasonably delay the permittee's work; and the Town's facilities are used solely for noncommercial, Town purposes. The Town shall be responsible for maintaining its respective facilities buried in the permittee's trenches and bores. If requested by the permittee, the Town shall have separate access structures and shall not use the permittee's access structures.

Sec. 11-5-200. Construction and excavation standards.

(a) Each permittee shall comply with the Construction and Excavation Standards for all work in the public right-of-way, including the location of the work and facilities within the public right-of-way.

(b) Except as otherwise provided in this Article, the permittee shall be fully responsible for the cost and actual performance of all of its work in the public rights-of-way.

(c) All restoration shall result in a work site condition equal to or better than that which existed prior to the work.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-210. Relocation of facilities.

(a) If at any time the Town requests a permittee to relocate its facilities in order to allow the Town to make any public use of rights-of-way, or if at any time it shall become necessary because of a change in the grade or for any other purpose by reason of the improving, repairing, constructing or maintaining of any public rights-of-way, or by reason of traffic conditions, public safety or by reason of installation of any type of structure of public improvement the Town or other public agency or special district and any general program for the undergrounding of such facilities, to relocate facilities within or adjacent to public rights-of-way in any manner, either temporarily or permanently, the Town shall notify the affected permittee, at least ninety (90) days in advance, except in the case of emergencies, of the Town's intention to perform or have such work performed. The permittee shall thereupon, at no cost to the Town, accomplish the necessary relocation within a reasonable time from the date of the notification, but in no event later than three (3) working days prior to the date the Town has notified the permittee that it intends to commence its work or immediately in the case of emergencies.

(b) Should the permittee fail to perform the relocation, the Town may perform such relocation at the permittee's expense and the permittee shall reimburse the Town as provided in Section 11-5-240.

(c) Following relocation, the permittee shall, at the permittee's own expense, restore all affected property to, at a minimum, the condition which existed prior to the work. A permittee may request additional time to complete a relocation project and the Town may grant an extension if, in its sole discretion, the extension will not adversely affect the Town's project or the public use of the affected public rights-of-way.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-220. Abandonment and removal of facilities.

(a) Notification. A permittee that intends to discontinue use of any facility within the public right-of-way shall notify the Town in writing of the intent to discontinue use. Such notice shall describe the facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than fifteen (15) days from the date such notice is submitted to the Town, and the method of removal and restoration.

(b) The permittee may not remove, destroy or permanently disable any such facilities during said fifteen-day period without written approval of the Town. After fifteen (15) days from the date of such notice, the permittee shall remove and dispose of such facilities as set forth in the notice, as the same may be modified by the Town and shall complete such removal and disposal within one hundred eighty (180) days, unless additional time is requested from and approved by the Town.

(c) Abandonment of facilities in place. Upon prior written approval of the Town, a permittee may either:

(1) Abandon the facilities in place and immediately convey full title and ownership of such abandoned facilities to the Town. The only consideration for the conveyance shall be the Town's permission to abandon the facilities in place. The permittee shall be responsible for all obligations and liabilities until the conveyance to the Town is completed.

(2) Abandon the facilities in place, but retain ownership and responsibility for all liabilities associated therewith.

(d) If any provision of this Section conflicts with any provision of a valid, effective franchise agreement between the permittee and the Town, the conflicting provision of this Section shall not apply to the franchisee and the franchisee shall instead honor the provision of the franchise agreement.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-230. Emergency procedures.

(a) Any person maintaining facilities in the public right-of-way may proceed with repairs upon existing facilities without a permit when emergency circumstances demand that the work be done immediately. The person doing the work shall apply to the Town for a permit on the first working day after such work has commenced. All emergency work shall require prior telephone notification to the Town Police Department and the South Metro Fire Rescue Authority.

(b) If any damage occurs to an underground facility or its protective covering, the contractor or permittee shall notify the facility's owner promptly. When the facility's owner receives a damage notice, the facility's owner shall promptly dispatch personnel to the damage area to investigate. If the damage results in the escape of any inflammable, toxic or corrosive gas or liquid or endangers life, health or property, the contractor responsible shall immediately notify the facility's owner and 911 and take immediate action to protect the public and nearby properties.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-240. Reimbursement of Town costs.

(a) The Town may make any repairs necessary to eliminate any safety hazard without notice to any permittee, at the responsible permittee's expense.

(b) For any work not performed by a permittee as directed but not constituting a safety hazard, the Town shall provide written notice to the permittee, ordering that the work be corrected within ten (10) days of the date of the notice. If the work is not corrected within the ten-day period, the Town may correct the work at the permittee's expense.

(c) Any work performed by the Town pursuant to this Section shall be billed to the permittee. The permittee shall pay all such charges within thirty (30) days of the statement date. If the permittee fails to pay such charges within the prescribed time period, the Town may, in addition to taking other collection remedies, seek reimbursement through the performance bond or letter of credit. Furthermore, the permittee may be barred from performing any work in the public right-of-way, and under no circumstances will the Town issue any further permits of any kind to said permittee until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the permittee and being negotiated in good faith with the Town) have been paid in full.

(d) If a permittee is not using a separate contactor and is doing such work for the benefit of the permittee's own property, and the permittee has failed to reimburse the Town for its costs as set forth in this Section 11-5-240, the Town may certify the amount of the unpaid amounts to the Arapahoe County Assessor pursuant to Colorado law and in accordance with the procedure set forth in Article 1 of Chapter 7 of the Foxfield Municipal Code.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012; Ord. 02, §4, 2015)

Sec. 11-5-250. Permit revocation and stop work orders.

(a) A public right-of-way permit may be revoked or suspended by the Town for any of the following:

(1) Violation of any condition of the permit or any provision of this Article or the Construction and Excavation Standards.

(2) Violation of any other Town ordinance or state law relating to the work.

(3) Existence of any condition or performance of any act which, in the Town's determination, constitutes or causes a condition endangering life or property.

(b) Stop work orders. A stop work order may be issued by the Town to any person performing or causing any work to be performed in the public right-of-way for:

(1) Performing work without a permit except for routine maintenance or emergency repairs to existing facilities as provided for in this Article.

(2) Performing work in violation of any provisions of this Article, or any other Town resolution, ordinance or regulation, or state law relating to the work.

(3) Performing any act which, in the Town's determination, endangers life or property.

(c) A suspension, revocation or stop work order shall take effect immediately upon delivery of written notice to the person performing the work, or upon mailing first-class mail, postage prepaid, to the permittee's last known address.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012)

Sec. 11-5-260. Penalties.

(a) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(b) In addition to or in lieu of the penalties set forth in Subsection (a) above, the Town may impose the following monetary penalties:

(1) For any occupancy of a travel lane or any portion thereof beyond the time periods or days set forth in the traffic control plan approved by the Town:

a. During the hours of 6:30 a.m. through 8:30 a.m. and 3:30 p.m. through 6:00 p.m., Monday through Friday: fifty dollars ($50.00) for each fifteen (15) minutes, or portion thereof, for a maximum of one thousand dollars ($1,000.00) per day.

b. At any time other than the times specified in Subsection (a): twenty-five dollars ($25.00) for each fifteen (15) minutes, or portion thereof, for a maximum of five hundred dollars ($500.00) per day.

(2) For commencing work without a valid permit: two hundred fifty dollars ($250.00), plus twice the applicable permit fee.

(3) For any other violation of a permit: one hundred twenty-five dollars ($125.00) per violation, with no maximum amount.

(c) The penalties set forth in this Section shall not be the Town's exclusive remedy for violations of this Article and shall not preclude the Town from bringing a civil action to enforce any provision of a public right-of-way permit or to collect damages or recover costs associated with any use of the public rights-of-way. Furthermore, the exercise of one (1) penalty shall not preclude the Town from exercising any other penalty.

(Ord. 6 §2, 2001; Ord. 1 §1, 2012; Ord. 01 §11, 2014)

ARTICLE 6 Vacation of Public Rights-of-Way

Sec. 11-6-10. Purpose.

The purpose of this Article is to establish a uniform procedure for the vacation of interests in rights-of-way owned or otherwise held by the Town and to supplement the procedures for vacation of rights-of-way provided by Title 43, Article 2, Part 3, C.R.S.

Sec. 11-6-20. Definitions.

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

Interested person means the owner of property contiguous to or served by a right-of-way. Right-of-way includes any platted or designated public street, alley, lane, parkway, avenue, road, easement including utility easements and pedestrian or equestrian trail easements, or other public way, whether or not it has been used as such, owned by the Town.

Sec. 11-6-30. Board of trustees authority.

(a) The Board of Trustees is authorized to vacate all or any portion of a right-of-way in accordance with this Article. The vacation of a right-of-way shall be a legislative and discretionary decision of the Board of Trustees.

(b) The Board of Trustees may impose reasonable conditions upon the vacation of any right-of-way, including but not limited to:

(1) The payment of consideration by the landowners receiving benefit from the vacation;

(2) The approval of a subdivision plat in accordance with Chapter 17 of this Code documenting the vesting of the ownership interests resulting from the vacation of a right-of-way; and/or

(3) The imposition of a deed restriction or other form of covenant upon the vacated right-of-way as may be deemed necessary or desirable by the Board of Trustees to protect the public health, safety or welfare.

(c) The Board of Trustees may reserve, except or otherwise create and retain one (1) or more easements within any right-of-way vacated pursuant to this Article.

(Ord. 02, §5, 2015)

Sec. 11-6-40. Procedure.

(a) The Town may initiate vacation of a right-of-way or any interested person may request the vacation of a right-of-way. The Town may require that the interested person agree to pay all reasonable costs associated with the vacation process, including survey, appraisal, and other professional services required to process a proposed right-of-way vacation.

(b) If the Board determines to consider the vacation of a right-of-way, the Town Clerk shall schedule an ordinance for consideration at a public hearing before the Board of Trustees. Notice of the public hearing shall be provided as set forth in Section 16-5-90(c) of the Foxfield Municipal Code.

(d) After the public hearing, the Board of Trustees shall reject the ordinance or approve the ordinance as presented or with amendments. The Board of Trustees may, in its discretion, continue the public hearing and postpone a final decision if it determines that additional information would assist in its deliberations.

(e) No ordinance vacating a right-of-way shall be approved unless the Board of Trustees finds the following:

(1) For the vacation of any right-of-way, that the vacation serves the public interest; and

(2) For the vacation of a right-of-way that provides vehicular access to property, that the vacation will not leave any property without an established public road or private access easement connecting with another established public road.

(Ord. 2, §5, 2015)

Sec. 11-6-50. Effect of vacation of right-of-way.

For any right-of-way vacated in accordance with this Article, the ownership of the Town's vacated interest in a right-of-way shall vest as follows:

(1) For a roadway as such term is defined by Section 43-2-301(3), C.R.S., ownership of the Town's vacated interest shall vest in accordance with the provisions of Section 43-2-302, C.R.S.; or

(2) For an easement not within the definition of Section 43-2-301(3), C.R.S., ownership of the Town's vacated interest shall vest with the then-current owners of the underlying fee simple estate, as their ownership interests may appear.

ARTICLE 7 Single Service Residential Waste Provider

Sec. 11-7-10. Use of services.

Commencing July 1, 2002, all residential waste services in the Town of Foxfield shall be provided by a single waste provider to be determined by the Board of Trustees as provided by law. For purposes of this ordinance,

"residential waste services" means the collection and transportation of ashes, trash, waste, rubbish, garbage or industrial waste products, or any other discarded materials from sources other than industrial or commercial establishments or multifamily residences of eight (8) or more units.

Sec. 11-7-20. User fees.

The fees for use of such residential waste services shall be determined by the Town, and collected by the selected waste service provider. Said fees shall be determined by the Town by Resolution.

Sec. 11-7-30. Penalty.

(a) The failure of any resident of the Town of Foxfield to use the Town's provider of residential waste services, as those services are defined in C.R.S. § 30-15-401(7.5)(d), shall be four hundred ninety-nine dollars ($499.00).

(b) Each instance of collection of residential waste by any provider of residential waste services other than the Town's provider shall be a separate offense.

(c) The fine established by this section shall be imposed on the resident, rather than the provider of residential waste services.

(d) Nothing in this section shall apply to any resident hauling and disposing of his or her own residential waste in full compliance with applicable regulations.

(Ord. 07 §1, 2015)

ARTICLE 8 Public Property

Sec. 11-8-10 Unauthorized camping on public property prohibited.

(a) *Legislative intent.*

(1) To protect the public health, safety and welfare of the Town and its residents by prohibiting undesirable activities or conduct on public property which may substantially interfere with the public's use and enjoyment of such public places.

(2) To allow for the removal of personal property reasonably believed to be the result of unauthorized camping upon reasonable and adequate notice and providing an opportunity for individuals to retrieve removed personal property upon request to the Town.

(b) In this Section, the following words and phrases shall have the meanings respectively ascribed to them as follows:

Camp means to reside or dwell temporarily in a place, with shelter. The term "shelter" includes, without limitation, any tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. The term "reside or dwell" includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions.

Personal property means any item that is reasonably recognizable as belonging to a person and that has apparent utility, including, without limitation, personal identification, eyeglasses, money or jewelry.

Public place means any street, alley, sidewalk, bike path, trail, greenway, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, or other recreational facility; or any other grounds, buildings, or other facilities owned or leased by the Town or by any other public

owner, regardless of whether such public property is vacant or occupied and activity used for any public purpose.

(c) It shall be unlawful for any person to camp upon any public property, except in a location where camping has been expressly allowed pursuant to a permit or as otherwise authorized by the Town.

(d) No agent or officer of the Town shall issue a citation, make an arrest or otherwise enforce this Section against any person unless:

(1) The agent or officer orally requests or orders the person to refrain from the alleged violation of this Section and, if the person fails to comply after receiving the oral request or order, the agent or officer tenders a written request or order to the person warning that if the person fails to comply the person may be cited or arrested for a violation of this Section; and

(2) The agent or officer attempts to ascertain whether the person is in need of medical or human services assistance, including, but not limited to, mental health treatment, drug or alcohol rehabilitation, or homeless services assistance. If the agent or officer determines that the person may be in need of medical or human services assistance, the agent or officer shall make reasonable efforts to contact and obtain the assistance of a designated human service outreach worker, who in turn shall assess the needs of the person and, if warranted, direct the person to an appropriate provider of medical or human services assistance in lieu of the person being cited or arrested for a violation of this Section. If the agent or officer is unable to obtain the assistance of a human services outreach worker, if the human services outreach worker determines that the person is not in need of medical or human services assistance, or if the person refuses to cooperate with the direction of the human services outreach worker, the agent or officer may proceed to cite or arrest the person for a violation of this Section so long as the warnings required by paragraph (1) of this subsection have been previously given.

(e) *Cleanup of unauthorized camping sites.* Upon violation of this Section, the Town may remove and store all unclaimed personal property found at an unauthorized camping site. Illegal items, such as illicit drugs and any items that reasonably appear to be evidence of a crime will be turned over to the appropriate law enforcement agency. Any items otherwise not regarded as having apparent utility or that are in an unsanitary condition will be immediately discarded. Removal of personal property under this Section shall be executed pursuant to the following procedure:

(1) At least seventy-two (72) hours prior to the proposed cleanup date, the Town will post a notice stating the date and time of the cleanup. The notice will be posted in the general vicinity of the personal property to be removed.

(2) In the event of the existence of a condition posing an imminent danger of damage or injury to or loss of life, limb, property or health, the Town shall provide a notice of cleanup no more than twenty-four (24) hours prior to the proposed cleanup date.

(3) Personal property removed from illegal camp sites shall be stored in a secure location and shall be held for a period of at least thirty (30) days from the date the cleanup occurred.

(4) An individual may claim ownership of an item of personal property within thirty (30) days from the last date that the cleanup occurred.

(5) After the thirty (30) day storage period elapses, unclaimed personal property will be disposed of by either discarding, recycling, or otherwise disposing of such items as determined by the Town.

(Ord. 01 §1, 2020)

Sec. 11-8-20. Destruction or damage to public property.

A. It shall be unlawful for any person knowingly to damage, deface, destroy or injure the real or personal property of the Town, including, by way of example, any street sign, traffic control or warning device erected or placed in or adjacent to any street.

(Ord. 02, §1, 2021)

APPENDIX 11-A Construction and Excavation Standards and Permit Fees for Work in Public Rights-of-Way

I. Purpose

This document establishes the minimum design and technical criteria for the placement, maintenance and construction of all work in the public right-of-way. All proposed work submitted for approval within the Town of Foxfield ("Town") shall conform to the criteria set forth herein.

II. Right-of-way Permit Fees

Public right-of-way permit fees are divided into three separate categories: pavement restoration fee, management/inspection fee, and other fees. All permits are subject to a management/inspection fee. If work approved by the permit consists of any pavement disturbance, the permit may also be subject to a restoration fee. Applicable permit fees shall be as follows:

A. Permit /Inspection Fee: Permit/Inspection fees shall include administrative costs associated with managing public right-of-way permits which includes, but is not limited to: application processing, inspections, review meetings, outside consultant or agency review, mapping and general inquiries related to use of the public right-of-way. The formula used to calculate Permit/Inspection fees shall be as follows:

Administrative Fee: ($)[1] + Inspection Fee ($)[2] + Deposit Fee[3] = Permit Fee ($)

Minimum Fee: $553.50

B. Pavement Restoration Fee: The pavement restoration fee shall include construction costs associated with restoration of the pavement to minimize the impact to the useful service life of the roadway. The fee shall be applied to all permits that result in the disturbance of the pavement. Such restoration fee is in addition to the requirement for the permittee to patch and/or repair the disturbed area of pavement. The pavement restoration fee shall be calculated as follows:

Asphalt Pavement Disturbance Restoration:

Unit Cost: ($/SY)[4] x Area (SY)[5] = Fee ($)

Minimum Fee: $8.40/SY x 26.8 SY = $225.12

Locate Pothole Restoration:

Unit Cost ($/SY)[4] x Area (SY)[6] = Fee ($)

Minimum Fee: $8.40/SY x 6.7 SY = $56.28

If the calculated restoration area exceeds 20% of the total area of pavement bound by the limits of any multiple pavement cuts or if cuts are within fifty (50) lineal feet, then the restoration area shall include the total area.

C. Other Fees: Other fees shall include additional costs associated with administrative work, which shall be calculated as follows:

Inspections outside of regular business hours[7]:

Inspector rate ($/HR) x1.5 x Inspection Time (HR) + mileage = Fee ($)

(1½ hour minimum + mileage)

($254.25 minimum. Additional Time over 1½ hour minimum: $157.50)

Canceling inspections without 24 hours' notice: $100.00 per cancellation

Starting work without scheduling inspection with 24 hours' notice: $100.00 per violation

A re-inspection fee for failed inspections is $175.50.

D. Right-of-Way Permit Fee Reference Notes

[1] Administration Fee: This fee is the minimum fixed administrative processing fee of $150.00 to be applied to all permits. There may be an additional fee if the Town determines that the scope of the permit requires additional time.

[2] Inspection Fee: This fee is based on the Town Engineer permit review time (hours) + initial inspection time (hours + mileage) + final inspection time (hours + mileage). Review time shall be one-half (1/2) hour multiplied by the Town Engineer's hour rate. Initial inspection time shall be one and one-half (1 ½) hours multiplied by the Town Engineer's hourly rate + mileage. Final inspection time shall be one and one-half (1 ½) hours multiplied by the Town Engineer's hourly rate plus mileage. Any additional permit review time and/or inspection time, if required, may be determined at the time of application and added to the Deposit Fee.

[3] Deposit Fee: This fee is based on any additional costs incurred for processing, reviewing, inspecting, etc. of Right-of-way Permits to be determined by the Town at the time of application. When a deposit is required, the applicant will be required to execute a Town Chargeback Agreement prior to issuance of the permit. An initial minimum deposit shall be $500.00 for any permit application. Any unused Deposit Fee will be returned to the applicant at the time of final acceptance of construction within the Town's right-of-way (typically one (1) year from the end of construction).

[4] The unit cost is based on the current mill and overlay unit cost multiplied by 15% adjustment factor (5% inflation, 10% contract administration).

[5] Area is calculated by the total width of each lane(s) disturbed multiplied by the length of the disturbance plus five feet (5'). The minimum length shall be twenty feet (20').

[6] Area is calculated by the total width of each lane(s) disturbed multiplied by the length of the disturbance plus two feet (2'). The minimum length shall be five feet (5').

[7] Regular inspection hours are Monday - Friday, 8:00 a.m. to 4:00 p.m.

[8] The overtime inspection fee is based on current year labor rates.

III. Location of Facilities

A. General

1. Location of all facilities within the public right-of-way shall comply with the details and specifications shown on the construction plans approved by the Town.

2. It is Town policy to discourage placement of utility lines and other facilities within landscaped median areas unless there is no other reasonable location for placement of such lines and facilities. No applicant shall receive a permit for work in a landscaped median within the public right-of-way unless the applicant provides the Town with evidence that, prior to commencing construction, it has submitted plans and specifications and a proposed schedule of its work to the Town which owns and maintains median landscaping material for the Town's review and approval.
3. The utility alignment shall not vary greater than eighteen inches (18") from the approved design alignment without prior written Town approval.
4. If conflicts of the designed alignment conflicts with other facilities not shown on the approved plans, permittee shall submit an alignment modification request and the change shall be approved by the Town prior to proceeding.
5. All underground cables and wires shall be placed within a conduit sleeve, with a locator tracer.
6. Ail underground installations shall have a minimum of three feet (3') of cover below the roadway surface.
7. Within the proposed utility boundary area (which extends two feet [2'] on either side of the proposed facility), the proposed facility shall be placed at the lowest elevation in relation to other existing facilities within the boundary area such that a minimum two feet (2') vertical clearance is provided. The separation distance shall be increased to five feet (5') in relation to wet utilities such as water, sewer and gas.

B. Aboveground structures

1. A detailed plan shall he required for all aboveground structures placed in the public right-of-way. The plan shall show dimensions of the cabinet, base and proposed location.
2. A Permittee shall use its best efforts to locate all aboveground structures outside the public right-of-way within a private easement on the property being served.
3. All aboveground structures shall be screened with landscaping, as approved by the Town.
4. All facilities shall be placed underground when the technology exists.
5. The location of aboveground structure shall not interfere with sight distance requirements for intersecting streets and access drives.
6. Aboveground structures shall be located to minimize aesthetic impact to the landscaping within the public right-of-way.

C. Underground access structures (vaults and hand-holes)

1. Underground access structures shall be placed in line with the utility alignment. Horizontal adjustments to accommodate underground access structures are discouraged and shall only be permitted when conditions warrant at the Town's sole discretion. Placement of each access structure shall require field approval prior to placement.
2. Minimum separation between access structures shall be five hundred feet (500').
3. Access structures shall be placed a minimum of one hundred fifty feet (150') from any intersection, unless otherwise approved by the Town.

4. Maximum size of an access structure and access lid shall be the minimum necessary for the facilities being installed, as determined by the Town.
5. Access lids located in landscaped areas shall be buried in mulch, rock beds or sod, unless otherwise approved by the Town.
6. Access lids placed in trails or sidewalks shall be flush with the existing surface and capable of being filled with like material.
7. All access lids within travel lanes shall be placed outside of wheel tracks determined by the Town.
8. Access lids shall be placed at an elevation of +0 inch to -⅜ inch relative to the surrounding pavement surface.

IV. Construction Standards

A. General. All work shall be in accordance with these standards and/or the Metropolitan Government Pavement Engineering Council (MGPEC), the stricter standard shall apply. Whenever reference is made to established standards such as AASHTO, ASTM, MUTCD, ATSSA or other standards established by CDOT, MGPEC or similar organizations, such reference shall include amendments to such standards or their equivalents which are in effect at the time the proposed work is submitted for approval. If conflicting standards are applicable to any proposed work, the Town Engineer shall select the appropriate standard based upon an evaluation of the proposed work and its impacts on the Town.

1. Testing, in compliance with the MGPEC standards, shall be performed by an independent testing company acceptable to the Town and results shall be provided to the Town Engineer within two (2) working days of completion of testing and prior to the next phase of construction (for example, a subgrade test is required prior to asphalt placement).
2. Any damage not documented during the pre-construction inspection shall be repaired by the permittee at permittee's sole expense.
3. Utility markings shall be limited to the boundaries of the construction area and shall be removed by a method approved by the Town within forty-five (45) days of the completion of work.
4. Permittee shall advise the Town at least forty-eight (48) hours in advance of the date work will be started and shall notify the Town at least twenty-four (24) hours in advance if this date is changed or cancelled. Inspections required on the permit shall be scheduled by permittee at least twenty-four (24) hours in advance.
5. Permittee shall maintain the work site so that:
    a) Trash and construction materials are contained and not blown off the worksite.
    b) Trash is removed from a work site often enough so that it does not become a health, fire or safety hazard.
    c) Trash dumpsters and storage or construction trailers are not placed in the street without specific prior written approval of the Town.
    d) No construction staging areas shall be located on any Town pavement without specific prior written approval of the Town.
6. Each permittee shall utilize its best efforts to eliminate the tracking of mud or debris upon any street, trail or sidewalk. Streets, trails and sidewalks shall be cleaned of mud and debris at the end of each day. All equipment and trucks tracking mud and debris into a public right-of-way shall be cleaned of mud and debris at the end of each day or as otherwise directed by the Town.

7. Backhoe equipment outriggers and similar supports shall be fitted with rubber pads or other devices sufficient to prevent an indentation or damage to the paved surface whenever outriggers are placed on any paved surface. Tracked vehicles that may damage pavement surfaces shall not be permitted on paved surfaces unless specific precautions are taken to protect the surface. The permittee shall be responsible for any damage caused to the pavement by the operation of such equipment and shall repair such surfaces at its own expense. Should the permittee fail to make such repairs to the satisfaction of the Town, the Town may use the permittee's performance bond or letter of credit to repair any damage.
8. As work progresses, all public rights-of-way and other property shall be thoroughly cleaned of all rubbish, excess dirt, rock and other debris, at the sole expense of permittee.
9. No permittee shall disturb any surface monuments, property marks or survey hubs and points found on the line of work unless prior written approval is obtained from the Town. Any monument, hub or point which is disturbed by permittee shall be replaced by a Colorado Registered Land Surveyor at permittee's sole expense.
10. A permittee shall provide employee and construction vehicle parking so that parking in the neighborhood adjacent to a work site is not impacted. There shall be no parking on trails or sidewalks.
11. Permittee shall provide necessary sanitary facilities for workers, the location of which shall be approved by the Town in the permit.
12. Permittee and its contractors shall warrant all pavement repairs and concrete flatwork against defects, other than normal wear and tear, for a period of two (2) years after completion of all work at the site. Permittee or its contractors will maintain a bond, which may include a general bond covering other work by the bonded entity, for the entire warranty period.

B. Pavement removal

1. All pavement cuts shall be in straight lines. Irregular shaped cuts with more than four (4) sides or cuts within existing patches shall not be allowed. All cuts shall be rectangular in shape, and edges shall be parallel or perpendicular to the flow of traffic.
2. In order to provide straight edges, all pavement cuts shall be cut by saw cutting, rotomilling or an approved method, which assures a straight edge for the required depth of the cut.
3. Pavement cuts shall be such that no longitudinal joint lies within the wheel track as determined by the Town.
4. Concrete shall be removed and replaced from joint to joint.

C. Excavation and Backfill

1. Excavation

a) All trench excavation shall be made by open cut to the depth required to construct the facility and provide adequate bracing of trench walls. All excavation, trenching, shoring and stockpiling of excavated materials shall be in strict compliance with the applicable OSHA roles and regulations. The permittee shall furnish, place and maintain all supports and shoring required for the sides of the excavation, as to prevent damage to the work or adjoining property. If the permittee is not expected to fully complete the work within any excavated area in a reasonable length of time as determined by the Town, the Town may

require the permittee to backfill the excavation and re-excavate when the work can be completed expeditiously.

b) The length of an open trench shall be limited to the amount of pipe that can be placed and backfilled in a single day. However, in no case shall the length of the open trench exceed three hundred feet (300) unless otherwise approved by the Town. No open trench shall be left unprotected overnight.

c) A maximum of two (2) excavations shall be open at any one (1) time for access structure installation and conduit splicing, unless otherwise approved by the Town.

d) Excavated materials shall be stockpiled directly into haul trucks for removal to minimize the impact to the public right-of-way. Material or equipment shall not be placed within the right-of-way.

e) All open excavations shall be properly barricaded to protect vehicles and pedestrians.

f) Current field moisture and density test results (taken within forty-eight [48] hours of the scheduled construction date) for top one foot (1') of subgrade shall be provided to the Town prior to placing forms. If any lift of the top one foot (1') of subgrade does not meet moisture or density requirements, then the material shall be scarified, wetted and re-compacted accordingly. If subgrade requires stabilization, the method shall be approved by the Town prior to proceeding.

2. Boring

a) To minimize the impact to traffic and right-of-way infrastructure, the Town encourages boring rather than open trenching.

b) Upon completion of the boring, the permittee shall verify that all storm and sanitary sewer service lines to adjacent properties have not been damaged by the boring by videoing the line or present the Town with a written release from the facility owner or property owner.

c) If the permittee's boring results in disturbance to other utilities in the public right-of-way not described on the approved plan, the Town shall issue a stop work order directing permittee to immediately repair such damage. Prior to the re-commencement of work, permittee shall provide the Town with written verification of the cause of disturbance and method to ensure the situation will not occur again.

d) Waste material from boring shall be contained within the work site and shall not be allowed to discharge onto private property, curb and gutter, roadside ditches or the roadway.

e) When the alignment criteria apply to a permit, permittee shall provide "as-built" information to the Town Engineer on a daily basis.

f) All "as-built" information shall be provided to the Town prior to occupancy or use of the facility.

3. Backfilling

a) Controlled Low Strength Material (CLSM)

1. All excavations less than one hundred cubic yards (100 CY) within the roadway pavement shall be backfilled with controlled low strength material (flowable fill) unless otherwise approved by the Town.

2. Controlled low strength material shall consist of a controlled low strength, self-leveling material composed of various combinations of cement, fly ash, aggregate, water and chemical admixtures. It shall have a design compressive strength between 50 to 150 psi at 28 days when tested in accordance with ASTM 4832. The mix shall result in a product having a slump in the range of seven inches (7") to ten inches (10") at the time of placement. Prior to use, permittee shall submit a mix design in writing for approval by the Town.

3. The maximum layer thickness for CLSM shall be three feet (3'). Additional layers shall not be placed until the backfill has lost sufficient moisture to be walked on without indenting more than two inches (2").

b) Native Backfill

1. In cases where CLSM is not required, backfill of suitable material shall be placed in maximum eight-inch (8") loose lifts. Density and moisture control shall be per Colorado Department of Transportation Standard Specifications for Road and Bridge Construction, current edition, (CDOT Standard Specifications) Section 2.03.

2. The permittee shall provide compaction testing for all backfill work per MGPEC standards. Each lift not tested in accordance with the testing frequency and lifts required may be rejected by the Town.

3. Excavation and backfill shall be accomplished on the same day in order to minimize impact to the public right-of-way. In instances where the Town determines that this cannot be accomplished, the permittee shall submit a plan for Town approval showing how traffic will be handled around the work zone.

c) Bridging plates

1. Substantial bridging, properly anchored and capable of carrying the legal limit loading, in addition to adequate trench bracing, shall be used to bridge across benches at street crossings where trench backfill and temporary patches have not been completed during regular working hours. Permittee shall provide safe and convenient passage for pedestrians and access to all properties.

2. Bridging plates shall be secured to pavement with anchored pins so that it does not slip. Bridging plates shall extend over supporting pavement by a minimum of one foot (1') on all sides. Cold mixed asphalt shall be ramped a minimum of two feet (2') in the travel direction.

3. The use of bridging plates shall not be allowed from September through April. Use of bridging plates shall only be allowed upon prior written approval of the Town.

4. Permittee's design engineer shall certify in writing the suitability of the plates for the specific use by permittee.

D. Repairing streets

1. Asphalt pavements

a) The minimum patch dimensions shall be three feet x three feet (3' x 3').

b) Any cut exceeding one-half (½) of the pavement width shall provide full pavement width asphalt replacement.

c) Any longitudinal cut greater than fifty (50) feet in length shall provide full pavement width asphalt replacement.

d) Prior to placing the permanent patch, the existing pavement shall be saw cut to a neat, straight line, square to the travel lane. The longitudinal edges of the patch shall not fall within wheel tracks determined by the Town.

e) A tack coat shall be applied to all edges of the existing pavement prior to placing the patch.

f) Asphalt mix shall be CDOT, S mix (¾ inch) for non-residential streets and SX mix (½ inch) for residential streets. Patch back areas greater than one hundred twenty square feet (120 SF) shall require the submittal and approval of a mix design to the Town prior to placement.

g) Compaction shall be between 92 and 96 percent of AASHTO T 209. Average compaction of less than 92 percent of AASHTO T 209 shall be cause for rejection.

h) Compaction equipment shall compact corners and edges of patch.

i) Hot bituminous patches shall be placed in maximum three inch (3") compacted lifts to a depth of the existing pavement plus two inches (2").

j) Patches shall have a cross slope section consistent with the design of the existing roadway.

k) A cold mix asphaltic material may only be used as a temporary patch and the cold mix material shall be approved by the Town.

l) Whenever permanent patches are not constructed immediately following trench backfilling operations, temporary pavement patches consisting of a minimum of three inches (3") of hot or cold plant mix or steel plates must be utilized to provide the required number of paved travel lanes. Plates may be left for the short duration approved by the Town. Temporary pavement patches may be left in place for a maximum of five (5) working days following completion of backfilling operations unless otherwise approved by the Town. The Town may require a delay in completion of operations if the Town determines a delay is advisable due to weather conditions.

m) Permittee shall monitor temporary patches on a daily basis and temporary patches exhibiting ruts, humps or depressions shall be repaired or replaced immediately.

n) A permanent hot patch of material meeting the Town's standards shall be made within five (5) days after the area is open to traffic, weather permitting.

o) If final patching is not completed within the specified time, no non-emergency permits shall be granted to the permittee under any circumstances until outstanding work is completed.

p) Upon completion of the permanent patch, the surface shall be thoroughly compacted, smooth, and free from ruts, humps, depressions, or irregularities. When a straightedge ten feet (10') long is laid across the permanent patch parallel to the centerline of the street and in a direction transverse to the centerline, the surface shall not vary more than^{3}/16 inch from the lower edge of the straight edge. Patches exhibiting deviations greater than^{3}/16 inch shall be replaced prior to acceptance of the patch. If the existing street exceeds the above tolerances, then the patch shall be equal or better than the condition of the surrounding pavement.

2. Restoration of Locate Potholes

    a) Locate potholes shall not be located within wheel tracks as determined by the Town. Failure to comply with this provision shall result in the assessment of a restoration fee to cover asphalt resurfacing.

    b) All locate potholes in the pavement section shall be cored with a circular coring saw with a maximum diameter of ten inches (10"). The plug shall be carefully removed without causing damage.

    c) Excavations for potholes shall be backfilled with squeegee or controlled low strength material (flowable fill) only. Native material removed shall not be used to backfill the hole.

    d) Removed pavement surface shall be replaced in one of the following methods as directed by the Town:

        1. The removed original core shall be grouted with a high strength; quick set epoxy or mortar as approved by the Town, or

        2. The pavement shall be patched with asphalt of similar aggregate size to the surrounding asphalt and compacted in maximum three inch (3") lifts with a "pogo stick" compactor capable of fitting into the core hole. At the Town's discretion, localized infrared treatment may be required to blend the top mat of the asphalt together.

    e) Where possible, locate potholes shall be located under existing pavement marking and such marking replaced at the completion of the repair to camouflage pavement disturbance.

3. Concrete flatwork

    a) Concrete material and placement shall be CDOT Class B, with 3,000 psi compressive strength.

    b) Weather protection shall be provided in compliance with CDOT Standard Specifications Section 601.

    c) Permittee shall schedule a form inspection at least twenty-four (24) hours in advance and obtain approval prior to pouring.

    d) Damaged concrete pavement shall be removed and replaced as a full panel section with dowels set into adjacent panels in compliance with CDOT M&S Standards.

    e) Damaged flatwork and curb and gutter shall be replaced in full sections from existing contraction joints. Partial section replacement shall not be permitted.

    f) Concrete removed adjacent to asphalt pavements shall be saw cut along the abutting edge prior to removal in order to remove without damage to the pavement. The saw cut edge shall be protected and used as a form for the new concrete. The top edge of the replaced concrete section shall be straight and true without warping or irregularity. Failure to replace the concrete in this manner or damage caused to the edge of the asphalt pavement shall result in the assessment of a restoration for asphalt resurfacing.

    g) Subgrade elevation shall be brought up to +/- 0.1 foot of final grade per plans, with approved materials prior to placing forms.

    h) No water shall be placed on concrete surface to assist finishing.

i) Variations of concrete surface shall not exceed ⅛ inch in ten feet (10').

j) Liquid membrane curing compound shall be placed in compliance with CDOT Standard Specifications Section 412 at a rate to completely coat all exposed concrete surfaces.

E. Landscape areas

1. Excessive, unnecessary disturbance to landscaping and other existing improvements shall result in a stop work order until repairs are made to the satisfaction of the Town.

2. Landscape restoration shall be completed within two (2) weeks of completion of work at each site, unless otherwise approved by the Town because of weather conditions or other conditions beyond the control of permittee.

3. Irrigation shall be maintained throughout construction to ensure no landscaping is affected during the construction phase.

4. Permittee shall work with the adjacent property owners to coordinate any construction activity that disrupts the owners' landscaping.

5. Prior to probationary acceptance by the Town, permittee shall provide a letter from each property owner adjacent to the work site stating that all landscaping has been restored. The Town may waive this requirement if permittee has made a good faith effort to obtain such a letter and the property owner fails to respond to a reasonable request within a reasonable time.

6. Any additional landscaping required for screening above-ground structures shall be coordinated with and reasonably acceptable to the adjacent property owner responsible for landscape maintenance.

F. Traffic control

1. When it is necessary to obstruct roadways or pedestrian ways, permittee shall submit traffic control plans, in compliance with the Manual of Uniform Traffic Control Devices (MUTCD), showing all work. Traffic control plans shall include:

a) Each lane closure scenario, including work zones for locate pothole work.

b) Lane configurations and access locations specific to the actual work zone.

c) Any upstream intersections within five hundred feet (500') of the work zone, showing all impacted inbound lanes to the intersection.

d) Pedestrian route detours showing the nearest crossing intersections at each end of the work area.

e) Proposed hours of operation of each traffic control setup.

2. All traffic control plans shall be prepared under the supervision of a certified work site traffic control supervisor. Documentation of certification shall be submitted with traffic control plans.

3. Lane closures are permitted only between 8:30 a.m. and 3:30 p.m. on weekdays, 8:00 am to 7:00 p.m. on Saturdays and 10:00 a.m. to 7:00 p.m. on Sundays, unless otherwise noted on the permit.

4. When conditions warrant, to minimize impact to the public, the Town may require permittee perform work during the morning, evening, night or on weekends.

5. When planning construction phasing and developing traffic control plans, permittee shall make every effort to minimize the impact to the motoring public and maintain capacity of the roadway system. The Town may require traffic control plan(s) be modified to comply with this requirement.
6. When the traffic control plan requires modification of any traffic signal timing plans, permittee shall be responsible to notify the governing authority's signal maintenance contractor to coordinate re-timing of the signal. All costs associated with work shall be borne by permittee.
7. If any vehicles or equipment brought into Town exceed weight standards then in effect for vehicles on Town roads, permittee shall obtain the Town Engineer's prior written approval of a traffic plan which specifies routes to be taken through Town by all overweight vehicles and the approximate number of trips such vehicles will make through Town.
8. All signs and devices shall conform to the Manual on Uniform Traffic Control Devices. The devices and signs shall be clean, legible, properly mounted and meet a quality standard rating of "acceptable" per the requirements of American Traffic Safety Services Association (ATSSA) Quality Standard for Work Zone Traffic Control Devices. All signs and devices used for night operation shall meet retro reflective requirements of CDOT Standard Specifications Section 713.04.
9. When the traffic control plan requires major traffic impacts, the Town may require that permittee place Variable Message Boards in advance of the work to notify the traveling public of upcoming construction impacts. All costs for this work shall be borne by permittee.
10. If closure of a street is required for completion of work, permittee shall provide all notifications to emergency agencies, government entities, school and bus districts, newspapers and adjacent businesses and homeowner's associations in a format approved by the Town.
11. No permittee shall block access to private property, fire hydrant, fire station, utility structure or any other vital equipment unless permittee provides the Town with prior written approval from the affected agency and/or property owner.
12. When necessary for public safety and when required by the Town, the permittee shall employ flag persons whose duties shall be to control traffic around or through the work site.
13. Permittee shall be responsible for maintaining all work area signing and barricading required throughout the duration of work. During non-work hours, all signs that are not appropriate shall be removed, covered or turned around so that they do not face traffic.
14. Any deficiencies noted by the Town shall be corrected immediately by permittee. If permittee is not available or cannot be found, the Town may make the required corrections and charge the cost thereof to permittee.
15. The phasing of construction and length of the active work zone shall be submitted by permittee to the Town for review and approval. Permittee shall make every effort to minimize the impact to the use of the public right-of-way and adjacent properties. The Town may require that permittee modify the proposed construction phasing in order to minimize the impact during construction.
16. No vehicles larger than one (1) ton pickups with 10,000 pound gross vehicle weight shall be allowed on trails or sidewalks. Permittee shall be responsible for all damage to trails or sidewalks unless such damage was pre-existing and documented with a pre-construction inspection. Pedestrian access shall be maintained throughout the period of work.

(Ord. 1 §1, 2012)

APPENDIX 11-B Revocable License Agreement

THIS AGREEMENT is made this ___ day of _____ , 20__, by and between the Town of Foxfield, Colorado (the "Town") and _____ ("Licensee").

For and in consideration of the sum of ten dollars ($10.00) paid by the Licensee to the Town, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. THE LICENSE

Licensee owns the property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, and desires to obtain a License to occupy and use the property more particularly described and depicted in Exhibit B, attached hereto and incorporated herein by this reference (the "Property"). Subject to all the terms and conditions hereto, the Town hereby grants to Licensee a license to occupy and use the Property for the purpose set forth in Section 2 herein.

SECTION 2. TERMS OF AGREEMENT

The Property may be used and occupied by the Licensee for the purpose of maintaining a fence/driveway/structure/monument over and on a portion of the public right-of-way.

SECTION 3. TERMINATION

Either party may terminate this Agreement by giving written notice to the other party specifying the date of termination, such notice to be given not less than thirty (30) days prior to the date specified therein.

SECTION 4. MAINTENANCE

Licensee shall, at its own expense, keep and maintain in good repair any fixtures or structures constructed, placed, operated or maintained on the Property and, within thirty (30) days of termination of this Agreement, shall remove such fixtures.

SECTION 5. DAMAGE TO PROPERTY

Licensee shall be responsible for all damage to the Property arising out of or resulting from the use of the Property by the Licensee, its agents, employees, visitors, patrons and invitees. The Town shall notify Licensee immediately upon discovery of any damage to the Property. Licensee shall correct and repair the damage within one (1) week of notification or knowledge of the damage unless otherwise directed by the Town.

SECTION 6. INDEMNIFICATION

Licensee agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands arising out of the placement, use and operation of the Property. Licensee agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims or demands at his sole expense, or, at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with any such liability, claims or demands. Licensee also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

SECTION 7. INSURANCE

Licensee agrees to procure and maintain an insurance policy which includes and covers the Property that is the subject of this Agreement, and to name the Town of Foxfield as an additional insured thereon for the duration of this Agreement. Such insurance policy shall at a minimum include liability and property damage insurance, with a combined single limit for bodily injury and property damage of one hundred fifty thousand dollars ($150,000.00)

per person and six hundred thousand dollars ($600,000.00) per occurrence. A Certificate of Insurance showing the Town as an additional insured thereon shall be provided to the Town within thirty (30) days of execution of this Agreement. The failure to provide the Certificate of Insurance or the failure to maintain the insurance policy required by this Agreement shall be grounds for immediate revocation of this License Agreement. In addition, Licensee agrees to notify any successor in interest to the Property of the existence of this Agreement and shall also provide notice to the Town of any sale of the Property or any other conveyance that creates a successor in interest to this Agreement.

SECTION 8. NOTICES

Any notice given pursuant to this Agreement by either party to the other shall be in writing and mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the Town: Town of Foxfield

To Licensee: ;hg;_____

_____

_____

SECTION 9. MISCELLANEOUS

A. Agreement Binding. This Agreement shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto, subject to any other conditions and covenants contained herein.

B. Applicable Law. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement.

C. Amendment. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

E. Assignment. Licensee may not assign or transfer this Agreement, except upon the express written authorization of the Town.

IN WITNESS WHEREOF, the parties have duly executed this Agreement, effective the day and year first above written.

ATTEST:

_____

_____, Town Clerk

STATE OF COLORADO)

) ss.

COUNTY OF _____)

TOWN OF FOXFIELD, COLORADO

By: _____

_____, Mayor

LICENSOR

_____

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ___ day of _____, 20__, by _____ as the _____ of _____.

My commission expires: _____.

_____
Notary Public

(SEAL)

(Ord. 1 §1, 2012)

CHAPTER 16
Zoning

ARTICLE 1 General Provisions

Sec. 16-1-10. Ordinance and authority.

(a) An ordinance of the Board of Trustees of the Town of Foxfield, Colorado, establishing land use classifications, dividing the Town into districts, imposing regulations, prohibitions, procedures and restrictions, governing the use of land for residential and nonresidential purposes, regulating and limiting lot occupancy, determining the size of yards and other open spaces, establishing standards of performance and design, adopting a map of said land use districts, prescribing procedures for changes and modifications of districts, uses by special review, variances and other permits, allowing for nonconforming uses, structures and land, providing regulations for accessory uses and buildings, providing for the adjustment, amendment and enforcement thereof, defining certain terms, providing a means of appeal, prescribing penalties for violations of its provisions and repealing existing Town zoning resolutions, regulations and amendments thereof.

(b) The Town of Foxfield Zoning Ordinance (the "Zoning Ordinance") is authorized by Section 31-23-301, et seq., C.R.S., and is declared to be in accordance with all provisions of the applicable statutes.

(c) The Town has the authority to plan for and regulate the use of land and to administer and regulate areas and activities of special interest as might be delineated in the Comprehensive Plan under authority of Title 31, Article 23, Part 2, C.R.S.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-20. Effective date.

To the extent that the provisions of this Chapter are the same in substance as the previously adopted provisions that they replace in the Town's Zoning Ordinance, they shall be considered as continuations thereof and not as enactments unless otherwise specifically provided. Any situation that did not constitute a lawful, nonconforming building, use or site under a previously adopted Zoning Ordinance does not achieve lawful nonconforming status under this Chapter.

Sec. 16-1-30. Purpose.

This Chapter shall be for the purpose of promoting the health, safety, convenience order, prosperity and welfare of the present and future residents of the Town by lessening of congestion on the streets and roads or reducing the waste of excessive amounts of roads, securing safety from fire and other dangers, providing adequate light and air, classifying land uses and the distribution of land development and utilization, protecting and enhancing the tax base, securing economy in governmental expenditures, protecting urban and non-urban

development and providing for the implementation of the goals and policies of the Comprehensive Plan or other policies approved by the Board of Trustees.

Sec. 16-1-40. Relationship to Comprehensive Plan.

It is the intent of the Planning Commission and Board of Trustees that this Chapter implements the planning policies adopted by the Planning Commission and Board of Trustees as reflected in the Comprehensive Plan and other related plans and planning documents. The Planning Commission and Board of Trustees reaffirm their commitment that this Chapter and any amendment to it be in conformity with the adopted planning policies. The Town hereby expresses its intent that neither this Chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document. The Comprehensive Plan shall be used as guide in decision-making and may be reasonable grounds for denial or reconsideration of the application.

Sec. 16-1-50. Jurisdiction.

This Chapter shall apply to all properties within the incorporated area of the Town of Foxfield, Colorado.

Sec. 16-1-60. Application of Chapter.

(a) Application of Developments in Process. Any application for development initiated on and after December 31, 2009, shall be reviewed pursuant to the review process and standards set forth in this Chapter.

(b) New applications initiated after December 31, 2009.

(1) No building or structure shall be erected and no existing building or structure shall be moved, altered or extended, nor shall any land, building or structure be used for any purpose other than as provided for among the uses hereinafter listed in the district regulations for the zone district in which such land, building or structure is located.

(2) No building or structure shall be erected, nor shall any existing building or structure be moved, altered or extended, nor shall any open space surrounding any building or structure be encroached upon or reduced in any manner, except in conformity with the dimensional regulations, district development standards and supplementary regulations or other provisions hereinafter provided in the district regulations for the zone district in which such building, structure or open space is located.

(3) The provisions of this Chapter shall apply to all uses as follows:

a. New buildings and uses of land.

b. Additions involving expansion of the gross floor area of any structure by twenty percent (20%) or more above that in existence prior to the effective date of the ordinance codified herein.

c. A change of use. Prior to issuance of a building permit or granting of a change in use, the applicant shall demonstrate that the property will comply with all applicable regulations in this Chapter.

(4) All buildings, parking areas, landscaping, signs and other improvements addressed by the development standards in this Chapter shall be constructed and installed in accordance with the approved plans filed with the Town prior to issuance of a certificate of occupancy for the building or use.

(5) The Town Planner may allow certain improvements to be constructed or installed within an agreed-upon time allowing for seasonal changes. Such arrangements may involve performance bonds or other methods as deemed appropriate by the Town Planner to assure eventual compliance with this Chapter.

(6) Every building shall be located and maintained on a lot as defined in this Chapter.

(7) No parcel of land which has less than the minimum width, depth and area requirements for the zone in which it is located may be divided from a larger parcel of land for the purpose, whether immediate or future, of building or development as a lot.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-70. Overlapping regulations.

Except with respect to approved official development plans and final development plans for land zoned Planned Development (PD), whenever a provision of this Chapter and any other provision of this Chapter, other law ordinance, resolution, rule or regulation of any kind contains any restrictions which cover the same subject matter, the more restrictive requirements shall govern.

Sec. 16-1-80. Violations.

Land in the Town shall not be used, nor any building or structure erected, constructed, enlarged, altered, maintained, moved or used, in violation of this Chapter or amendments thereto. The Board of Trustees, through the Town Attorney and courts of appropriate jurisdiction, which includes the Municipal Court, may initiate legal or other appropriate action to prevent, abate or remove such unlawful use, maintenance, erection, construction, reconstruction or alteration, in addition to any other remedies provided by law. Any such violation of this Chapter shall be considered unlawful.

Sec. 16-1-90. Enforcement.

(a) Issuance of Permits. All officials, employees and consultants of the Town vested with the duty or authority to issue permits shall not issue any permit, certificate or license in conflict with the provisions of this Chapter. Any such permit, certificate or license issued in conflict with the provisions of this Chapter shall be null and void.

(b) Enforcement Responsibilities.

(1) It shall be the duty of the Board of Trustees to enforce the provisions of this Chapter pertaining to the use, maintenance, erection, construction, reconstruction, alteration, moving, conversion or addition to any building or structure.

(2) No permits shall be issued by any officer of the Town for the construction of any building or other improvements requiring a permit, upon any unplatted land, unless and until the requirements hereof have been complied with.

(3) No building or construction permit shall be issued prior to approval of the plot plan or site development plan unless the property has been specifically exempted from the development process by definition or by official action of the Board of Trustees, after Planning Commission review.

(4) No plot plan or site development plan shall be approved by the Board of Trustees unless such property is classified in the appropriate zoning district as defined in this Chapter.

(5) Any person engaging in development, change of use, modification or enlargement of use of any land, building or structure that is subject to this Chapter who does not obtain any necessary permits, approvals or variances as prescribed by this Chapter, who does not comply with permit, approval or variance requirements, who acts outside the authority of the permit, approval or variance or who otherwise violates any of the provisions of this Chapter, may be enjoined by the Town from engaging in such activity and may be subject to the procedures and penalties described below.

a. No building or structure shall be erected, moved or structurally altered unless a building permit has been issued by the Building Official or his authorized representative. All building permits shall be issued in conformance with the provisions of this Zoning Ordinance, and all other applicable regulations and shall be valid for a period of time not exceeding one (1) year from the date of issue.

b. No land or building shall hereafter be changed in use, nor shall any new structure, building or land be occupied or used, unless the owner shall have obtained a certificate of occupancy from the Building Official. After inspection by the Building Official and provided that the use shall be in conformance with the provisions of this Chapter and all other applicable regulations, a certificate of occupancy shall be issued. A copy of all certificates of occupancy shall be filed by the Building Official and shall be available for examination by any person with either proprietary or tenancy interest in the property or building.

c. The Town is empowered, pursuant to Article 5 of this Chapter, to order in writing the remedy of any violation of any provision of this Chapter. After any such order has been served, no work on or use of any building, other structure or tract of land covered by such order shall proceed, except to correct such violation or comply with said order.

d. Building permits for new nonresidential construction may be referred to the Town Planner and Town Engineer for review of necessary public improvements.

e. The Town shall not accept any land use application for property currently being used or occupied in violation of this Chapter unless said application seeks to obtain an approval by the Town that would cause the property to be in compliance with the regulations of the Town.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-100. Penalties.

Any violation of the provisions of this Chapter shall be subject to the penalties provided for in Section 1-4-20 of this Code.

Sec. 16-1-110. Severability.

If any part, subpart, section, paragraph, sentence, clause or phrase of this Chapter is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Chapter.

Sec. 16-1-120. Repeal and effective date.

(a) All amendments, extensions or initial legislation to this Chapter are hereby declared null and void and superseded by this Chapter.

(b) Such repeal shall not affect or prevent the prosecution or punishment of any person for the violation of any Regulation repealed hereby, for any offense committed prior to the repeal.

(c) This Chapter is effective as of thirty (30) days after final publication hereof.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-130. Correction of obvious errors.

Nothing in this Chapter shall be construed as a limitation upon the power of the Board of Trustees, Town Administrator, Town Attorney or Town Planner to correct obvious typographical or compositional errors, provided that:

(1) Such corrections shall not change the legal effect of this Chapter or any part thereof.

(2) Such corrections will be reported to the Board of Trustees.

(3) An errata supplement shall be attached to all copies of this Chapter distributed subsequent to the making of such corrections.

Sec. 16-1-140. Amendment.

The process for the amendment of this Chapter shall be as specified in Section 16-5-60 of this Chapter.

Sec. 16-1-150. Definitions.

Definitions are included as Article 6 of this Chapter.

Sec. 16-1-160. Vested property rights.

(a) Intent. This Article is intended to define a site specific development plan for the Town pursuant to Section 24-68-103, C.R.S., and to establish a procedure to govern the creation of vested rights in accordance with Section 24-68-101, et seq., C.R.S. Nothing in this Article is intended to create a vested property right, but only to implement the provisions of Section 24-68-101, et seq., C.R.S.

(b) Definition of Site Specific Development Plan. For purposes of this Article, *site specific development plan* means:

(1) For multi-family residential units, apartments and condominiums, the final plat.

(2) For commercial and single-family residential construction, the site development plan.

(c) Creation of Vested Rights.

(1) No vested rights shall be created except by the approval of a site specific development plan by the Board of Trustees or by a development agreement between the Town and the applicant or landowner. Such agreement shall be construed in accordance with the terms and conditions of said agreement and not limited nor expanded by the provisions of this Article.

(2) If the applicant seeks approval of a site specific development plan to create vested property rights, the plan shall include a statement that it is being submitted for designation as a site specific development plan. Failure to include such statement shall result in no vested property rights being created by the approval of the site specific development plan.

(d) Other Regulations. Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions or requirements of the Town pertaining to the development and use of the property adopted before the approval of a site specific development plan.

(e) Waiver or Forfeiture.

(1) Failure to abide by any terms or conditions imposed by the Town on the approval of any site specific development plan shall constitute a forfeiture of any vested right created by the plan unless otherwise expressly agreed to by the Town in writing.

(2) A petition for annexation to the Town shall describe all vested property rights approved by any local government in effect at the time of the petition, if any, and be accompanied by all site specific development plans approved by any local government. Failure to so identify any previously approved vested property right and provide all approved site specific development plans shall constitute a waiver of the vested property right created by any other local government upon annexation to the Town, unless expressly provided otherwise in the annexation ordinance adopted by the Town.

(3) A site specific development plan submitted by a landowner and approved by the Town as provided in this Article shall supersede any prior vested property rights for that property, and the landowner waives any right to claim a vested property right by a site specific development plan previously approved by the Town or any other local government for the property.

(f) Notice. It shall be the applicant's responsibility to comply with the publication requirements of Section 24-68-103(1)(c), C.R.S., following approval of a site specific development plan by the Town.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-170. Expiration of land use approvals.

(a) Approval by the Board of Trustees of any final development plan, subdivision plat, special review use, grading permit or any other land use approval that does not constitute an amendment to the Zoning Map shall remain in effect for one (1) year. Any approval of such an application for which a grading permit or building permit has not been applied for or for which the use has not been otherwise commenced within one (1) year after approval has been obtained shall be null and void. An extension of time of up to six (6) months may be granted by the Board of Trustees upon a finding of good cause. If such an approval expires, the applicant shall be required to resubmit a new application and fee for the same project.

(b) Nothing in this Article shall be construed to prevent an applicant from obtaining vested rights pursuant to Section 16-1-160 for a site specific development plan within the meaning of Section 24-68-102(4), C.R.S.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-1-180. Permit revocation.

A zoning, sign, building, special review use, other permit or any certificate of occupancy issued under the provisions and procedures of this Chapter may be revoked by an authorized representative of the Town if the permit recipient fails to develop, improve or maintain the property in accordance with the approved plans, the requirements of this Chapter or any additional requirements lawfully imposed by the Town.

ARTICLE 2 Zoning Districts

Sec. 16-2-10. Districts established.

(a) Districts Established. The Town is hereby divided into the following zoning districts:

(1) RR - Large Lot Rural Residential.

(2) VC - Village Commercial.

(3) PD - Planned Development.

(b) Characteristics and Objectives. This Article describes the locational, natural and built characteristics and attributes which shall be applied to each zoning district classification for particular land parcels. In addition, this Article describes the desired characteristics, functions and attributes of appropriate uses for the zone

district, carrying out the intent of the Town's Comprehensive Plan. Appropriate uses shall be located and designed to fulfill the desired characteristics and objectives of the zone district in which they fall.

(c) Use Regulations. Each zone district includes the following categories.

(1) Permitted principal uses are uses by right, which are permitted anywhere within the particular zone district in which they are identified. Permitted principal uses, other than a single-family dwelling unit, require site development plan approval. Single-family dwelling units require plot plan approval. All structures require building permit approval.

(2) Permitted accessory uses are a use by right that are customarily incidental to the identified permitted principal uses, provided that they meet any applicable regulations. Permitted accessory uses require plot plan approval and building permit approval.

(3) Special review uses are uses that may be allowed in the zoning district indicated subject to any applicable regulations. Special review uses may be permitted if it can be demonstrated that the location and the site proposed for the use are appropriate, facilitating the use in a manner which supports the purposes of the zone district and which is compatible with the surrounding area. Additional uses which are not listed, but which are consistent with the purpose and objectives of the zone district and are similar in character and level of impacts as identified in the permitted principal and accessory uses for the zone district, may also be permitted subject to review. Special review uses require the issuance of a permit approved by resolution of the Board of Trustees after public hearing.

(d) Dimensional Requirements. Dimensional requirements are minimum restrictions which apply to the siting and massing of buildings and structures on the lot, from which no variance will be permitted, except as provided under variances and appeals, planned developments and nonconforming uses, structures, lots and parking. Dimensional requirements include:

(1) Minimum lot area and or maximum gross density.

(2) Minimum lot width.

(3) Front yard setbacks.

(4) Side yard setbacks.

(5) Rear yard setbacks.

(6) Minimum open space.

(7) Maximum impervious coverage.

(8) Maximum building height.

(9) Minimum separation between structures.

(e) Development Standards. Development standards are minimum standards that development and uses within the zone district must meet to obtain site development plan or plot plan approval. Development standards specific to each zone district are listed within each zone district. General regulations and standards pertaining to all zone districts are found in Article 3 and apply to both residential and nonresidential development.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 02 § 1, 2017)

Sec. 16-2-20. Zoning map.

(a) Zoning Map Adopted. The location and boundaries of the zone districts established by this Chapter are shown on the Zoning District Map of the Town. The Zoning District Map, together with all data shown thereon and all amendments thereto, is by reference made part of this Chapter. The Zoning District Map shall be identified by the signature of the Mayor and attested by the Town Clerk and shall bear the seal of the Town and the date of adoption. The Zoning District Map shall be located in the office of the Town Clerk and shall be available for inspection upon reasonable notice.

(b) District Boundaries. Except where otherwise indicated, zone district boundaries shall follow municipal corporation limits, section lines, lot lines, right-of-way lines or extensions thereof. In property where a zone district boundary divides a lot or parcel, the location of such boundary, unless indicated by legal description with distance and bearing or other dimensions, shall be determined by using the graphic scale of the Zoning District Map. In interpreting the Official Zoning Map, unless otherwise specified on the Official Zoning Map, zone district boundary lines are intended to be property ownership lines or lot lines; centerline of streets, alleys, channelized waterways or similar rights-of-way; the centerline of blocks; section or township lines; municipal corporate boundaries; the centerline of stream beds; or other lines drawn approximately to scale on the Official Zoning Map.

(c) Boundary Clarification.

(1) In the event that a zone district boundary is unclear or is disputed, it shall be the responsibility of the Town Planner to determine the intent and actual location of the zone district boundary.

(2) Any appeal of the determination of the zone district boundary made by the Town Administrator shall be heard by the Board of Adjustment in accordance with the procedures outlined in Article 5. The Town Planner shall have the final determination.

(d) Amendments to Map. Changes in the boundaries of any zone district shall be made only upon amendment to this Chapter and shall promptly be entered on the Zoning District Map with an entry on the map giving the number of the amending ordinance and the date with the signature of the Mayor, attested by the signature of the Town Clerk.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-2-30. Minimum sizes for new districts.

Unless contiguous to the same zone district, all newly created zone districts shall be at least five (5) acres in size. PD Zone Districts shall be a minimum of seven and one-half (7.5) acres in size. When contiguous to an existing district of the same designation, these minimums shall not apply.

Sec. 16-2-40. Listing of permitted uses.

No use shall be allowed in any zone district unless it is specifically enumerated as an allowed principal use or accessory use in the particular zone district or a special review use has been approved. Designations in lists of uses shall be determined as follows:

(a) Permitted principal uses are uses by right and are permitted anywhere within the zone districts indicated. All principal and accessory uses require a building permit approval.

(b) Permitted principal uses, other than a single-family dwelling unit, which only require a plot plan, require a site development plan.

(c) Uses indicated as accessory uses are permitted only if they meet specific criteria contained in this Chapter and can demonstrate that they are clearly accessory to the principal use. No accessory uses are allowed if not associated with a principal use and are not allowed if the principal use has not been established.

(d) A special review use may be allowed in the district indicated if it can be demonstrated that the location and the site proposed for the use is appropriate, facilitates the use in a manner which support the purposes of the zone district and is compatible with adjacent properties and uses. Special review uses require the issuance of a permit after a public hearing has been held before the Board of Trustees.

(e) Uses not listed as permitted accessory uses require determination by the Town Planner. The Town Planner will determine if a use not listed in this Article for the district in which the use is proposed is similar in character and impact to those listed. If it is determined by the Town Planner to be a substantially different use, then it will be considered and deemed to be prohibited in that zone district.

Editor's note(s)—Ord. 02, § 2, adopted Feb. 16, 2017, repealed the former § 16-2-40 and enacted a new section as set out herein. The former § 16-2-40 pertained to similar subject matter and derived from Ord. 5, § 1, adopted in 2009; and Ord. 1, § 1, adopted in 2012.

Sec. 16-2-45. Medical marijuana and marijuana establishments - prohibited.

(a) The use of property as a medical marijuana center, an optional premises cultivation operation or a facility for which a medical marijuana-infused products manufacturers' license could otherwise be obtained within the Town are all uses prohibited in any zone district.

(b) The use of property as a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store are all uses prohibited in any zoning district in the Town.

(c) The use of property as a marijuana club is a use prohibited in any zoning district in the Town. For purposes of this Section, the term *marijuana club* means an organization that allows members and their guests to consume marijuana or marijuana products on the premises in a non-residentially zoned area.

(Ord. 04 §1, 2013)

Sec. 16-2-50. Large Lot Rural Residential District (RR).

(a) Characteristics and Objectives. The Large Lot Rural Residential District is designed to accommodate very low-density single-family residential uses on large lots. The purpose of the RR Zone District is to promote the continuance of single-family neighborhoods by:

(1) Allowing for larger lot development that assists in retaining the rural residential character of the Town;

(2) Allowing for limited home occupations; and

(3) Ensuring that new development retains the natural conditions of the environment and preserves the openness of the land.

(b) Use Regulations.

(1) Permitted principal uses:

a. Single-family detached dwelling units.

b. Property owned by the Town of Foxfield, or another governmental entity and used as open space.

(2) Permitted accessory structures and uses:

a. Structures and uses, subordinate and incidental to the permitted principal structure or use, located on the same lot. Any structure less than one hundred twenty (120) gross square feet shall not be deemed an accessory structure within the meaning of this Article; however, all structures, regardless of size, must meet the dimensional requirements specified in Subsections (c)(l) through (c)(7) below. All enclosed structures must also meet the requirement of Subsection (c)(8) below. There shall be a maximum of two (2) enclosed structures that are each less than one hundred twenty (120) gross square feet.

b. Parking for the principal use.

c. Home occupations, as specified in Section 16-4-10 of this Chapter.

d. Keeping of animals as specified in Section 16-4-20 of this Chapter. Kennels, as defined in Section 16-6-10 of this Chapter, are prohibited in the RR Zone District.

e. Private garages.

f. Shelter for agricultural implements and tools used to maintain premises.

g. Stables and barns.

h. Greenhouses (products to be for use or consumption of lot residents only) not to exceed two hundred (200) square feet GFA.

i. Sporting courts, tennis courts, swimming pools and other similar structures, provided that they are located in the side or rear yard of the zoning lot.

j. Roof- or ground-mounted solar arrays and solar voltaic systems that serve a single residence or structure. Ground-mounted solar arrays shall not exceed twelve (12) feet in height.

k. Small wind energy conversion systems that are noncommercial and do not exceed fifteen (15) feet in height.

l. Other uses which are clearly accessory or incidental to the primary permitted uses.

(3) Special review uses:

a. Public buildings, civic facilities, schools (except public schools exempt from municipal land use control pursuant to state law) and places of worship.

b. An owner-occupied or nonprofit group home for the aged and homes for the developmentally disabled, handicapped and mentally ill, as these terms are defined by Section 31-23-303, C.R.S., may be permitted if it serves as a permitted principal use and is for no more than eight (8) persons, is not located within seven hundred fifty (750) feet of another such group home and the owner or operator resides and maintains primary residency within the group home. Where nine (9) or more persons are to occupy a group home or if the group home is not defined in Section 31-23-303, C.R.S., such group home shall be permitted only upon approval of a special review use.

c. Alternative energy technology, other than solar arrays as defined in subsection (j) above and wind energy conversion systems in excess of the requirements as defined in subsection (k) above, or not otherwise defined in this Chapter.

d. Grading of a site that increases or decreases the original elevation by more than four (4) feet.

e. Public utilities.

f. Temporary structures over one hundred twenty (120) gross square feet that comply with the provisions of Section 16-3-120 of this Chapter.

g. Commercial mobile radio service facilities.

(c) Dimensional Requirements.

(1) Minimum lot area: One (1) dwelling unit per one hundred five thousand (105,000) square feet, except that any lot in excess of eighty-five thousand (85,000) square feet but less than one hundred five thousand (105,000) square feet that was a parcel of record at the time of the adoption of these Regulations shall be considered a legal zoning lot.

(2) Minimum lot width: one hundred twenty-five (125) feet.

(3) Maximum impervious coverage: twenty-five percent (25%).

(4) Front yard setback: fifty (50) feet for principal and accessory structures.

(5) Side yard setback: twenty-five (25) feet for principal and accessory structures.

(6) Rear yard setback: twenty-five (25) feet for principal and accessory structures.

(7) Maximum building height: thirty-one (31) feet principal structure; twenty-one (21) feet accessory structure, except that small, ornamental rooftop appurtenances such as weathervanes may project five (5) feet above the roofline. The maximum height of the structure shall be reduced by the average height of any fill that increases the existing grade under or immediately surrounding the structure.

(8) Minimum separation between enclosed structures: twenty-five (25) feet.

(d) Development Standards Specific to the RR Zone District.

(1) Residential development in the RR (Large Lot Rural Residential) Zoning District may be served by public or private water and sanitary sewer systems; provided, however, that, in the event connection is sought to a public sewer system, connection to the public water system shall be required as a condition of connection to the public sewer system. Any development not consisting of solely single-family residences approved in the RR Zoning District shall be served by approved public water and sanitary sewer. Any development that is required to be served by the Town's public water system or any property or development that chooses to be served by the Town's public water system may still use any properly permitted wells for exterior irrigation use only.

(2) The parking or storage of vehicles, materials and equipment shall be limited to vehicles and equipment intended for the personal use of the owner or occupant of the residence. A business vehicle provided to a resident for personal use is permitted.

(3) Exterior lights, whether building-mounted or freestanding, shall comply with the provisions of Section 16-3-80 of this Chapter. Building-mounted exterior lights shall not protrude above the eave line. Freestanding lights shall not exceed twenty-five (25) feet in height.

(4) No accessory structure shall contain residential living quarters.

(5) Accessory structures and uses are not permitted unless and until the principal permitted use has been established on the property.

(6) The total building gross floor area (GFA) of all enclosed accessory structures may not exceed two thousand (2,000) square feet, and there shall be a maximum of two (2) enclosed accessory structures.

(7) Accessory structures shall have a maximum side wall height of fourteen (14) feet from finished grade measured from the foundation. The roof shall have a minimum pitch of 4 in 12.

(8) Any roof overhang constructed on an accessory structure may not encroach into a required front, rear or side yard setback or into the required separation distance between structures.

(9) Architectural renderings, elevation drawings, materials and site plans for all proposed accessory structures must be submitted to the Town Planner.

(10) The exterior finish and design of an enclosed accessory structure shall meet the following minimum requirements. Greenhouses, pergolas, gazebos or similar unenclosed structures are exempt from this Paragraph.

a. There shall be eaves or overhangs that have a horizontal depth of at least eight (8) inches.

b. For structures up to one thousand (1,000) square feet, there shall be at least one (1) door for human or vehicular passage and/or one (1) window on each of at least two (2) sides of the structure, one (1) of which fronts upon a street. Where a window is nominated to meet the requirements of this paragraph, it shall satisfy the criteria for emergency egress as defined by the International Residential Code as adopted in Chapter 18 of this Municipal Code.

c. For structures over one thousand (1,000) square feet, there shall be a combination of at least two doors for human or vehicular passage and/or windows on each of at least two sides of the structure, one of which fronts upon a street. Where a window is nominated to meet the requirements of this paragraph, it shall satisfy the criteria for emergency egress as defined by the International Residential Code as adopted in Chapter 18 of this Municipal Code.

(Ord. 01 § 1, 2017)

Editor's note(s)—Ord. 01, § 1, adopted Feb. 16, 2017, repealed the former § 16-2-50 and enacted a new section as set out herein. The former § 16-2-50 pertained to similar subject matter and derived from Ord. 5, § 1, adopted in 2009; Ord. 1, § 1, adopted in 2012; Ord. 06, § 1, adopted in 2013; and Ord. 04, §§ 2, 3, adopted in 2014.

Sec. 16-2-60. Village Commercial District (VC).

(a) Characteristics and Objectives. Village Commercial Zone Districts shall be established in those areas which have direct access to Parker Road, Arapahoe Road or South Lewiston Way. The VC Zone District is intended to provide shopping goods and services for surrounding neighborhoods, such as small-scale retail, professional services and restaurants. The intent of this zone district is to encourage a mix of complementary sales tax-generating commercial uses that share ingress and egress with clustered on-site parking and that are linked by pedestrian walkways, corridors and plazas. The intent is to develop a broad mixture of uses within a compact pedestrian-oriented environment and to facilitate small business development and vitality.

(b) Use Regulations. Any of the following uses are permitted.

(1) Permitted principal uses:

a. Establishments for the retail sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental and related to the sale of such goods or merchandise, excluding grocery stores, pawn shops, sexually oriented businesses, used merchandise or thrift stores, and stores where goods are displayed for sale and the merchandise is later delivered.

b. Commercial establishments engaged in providing personal services provided that no more than twenty percent (20%) of the Gross Floor Area (GFA) on any particular platted lot within the zone district is comprised of this permitted principal use.

c. Eating and drinking establishments.

(2) Permitted accessory uses: Accessory uses, not exceeding ten percent (10%) of the Gross Floor Area (GFA) and wholly included within the principal building.

(3) Special review uses: Drive-through restaurant.

(c) Dimensional Requirements.

(1) Minimum lot area: Twenty thousand (20,000) square feet.

(2) Minimum lot width: Thirty (30) feet of frontage on a public street or easement.

(3) Maximum impervious coverage: Eighty-five percent (85%).

(4) Minimum open space: Fifteen percent (15%).

(5) Maximum building height shall be thirty-five (35) feet.

(6) Setbacks:

a. Front lot setback: Zero (0) feet.

b. Side and rear lot setback: Fifty (50) feet if the lot line is adjacent to property in the Large Lot Rural Residential zone district. Zero (0) feet if the lot line is adjacent to any other zone district or across a street from property in the Large Lot Rural Residential zone district.

(d) Development Standards for the VC Zone District.

(1) All buildings and structures must also adhere to the general regulations and standards in Article 3 of this Chapter.

(2) Entrances to buildings shall be designed to ensure smooth and safe pedestrian circulation and ease of snow removal.

(3) Loading and unloading facilities shall be located in the rear of buildings and shall be screened from public view.

(4) Buildings will be designed so as to minimize snow shedding and runoff onto pedestrian areas and public ways.

(5) Within the VC District, driveways crossing sidewalks on arterial streets may serve parking and loading only, but may not serve any drive-in, drive-through or auto service facility.

(6) All activities within the VC District shall be wholly contained within buildings except for access, parking, loading and, if screened by sight impervious fencing or plantings, storage and refuse containers.

(7) New development shall minimize unused or unusable public or private areas in the side or rear yards.

(8) All development within the VC District shall be designed to:

a. Reduce the number of access points onto an arterial or collector street.

b. Minimize adverse impacts on any existing or planned residential uses.

c. Improve pedestrian or vehicle safety within the site and egressing from it.

d. Reduce the visual intrusion of parking areas, screened storage areas and similar accessory areas and structures.

e. Reduce the number of removed trees measuring four (4) inches in diameter and taller than five (5) feet above ground level.

(9) Parking and loading areas within the VC Zone District that are adjacent to residential properties must be screened from view, by use of a combination of fences, berms and landscaping.

(10) All development including buildings, walls and fences shall be so designed and sited to:

a. Complement existing development in scale and location;

b. Provide sidewalks at least five (5) feet in width or an off-road system of pedestrian and bicycle trails of greater than five (5) feet in width; and

c. Create pocket parks or green spaces that are accessible to the public and at a minimum provide seating and landscaping.

(11) An exterior front wall of a building (street grade) shall not exceed an increment of twenty-five (25) feet without being differentiated by providing structural bays, clearly expressed columns or other architectural elements to add interest at the sidewalk edge.

(12) All development within the VC Zone District must be served by approved public water and sanitary sewer systems.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §4, 2014; Ord. 01, §1, 2015)

Sec. 16-2-70. Planned Development District (PD).

(a) Purpose and Objectives. Planned developments are intended to facilitate the purposes and objectives of this Chapter and the Town's Comprehensive Plan and to permit the application of additional site, land planning and design concepts in land development than may be possible under the application of standard zone districts of Large Lot Rural Residential or Village Commercial. Developments, however, must demonstrate that flexibility from the provisions of the existing zoning will result in higher quality development. An applicant for a PD Zone District designation must demonstrate that one (1) or more of the following purposes can be achieved:

(1) The provision of necessary commercial, recreational and educational facilities conveniently located to housing;

(2) The encouragement of innovations in residential, commercial and limited industrial development and renewal so that the growing demands of the area population may be met by greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;

(3) A better distribution of induced traffic on the streets and highways;

(4) Conservation of the value of the land; and

(5) Preservation of the site's natural characteristics.

(b) Conditions. The use of the PD Zone District must be in accordance with the Town's Comprehensive Plan and is dependent upon the submission of an acceptable plan and satisfactory assurances that the plan will be carried out.

(1) The PD is an entire development program concept and shall be reviewed as a whole.

(2) A PD may be developed for any property within the Town that is greater than seven and one-half (7.5) acres in size.

(3) The Planned Development shall be considered by the Planning Commission and Board of Trustees from the point of view of the relationship and compatibility of the individual elements, which make up the development in accordance with the provisions of this Chapter.

(4) The parcel being considered for a PD must be a legal building lot.

(5) Phasing of development: Each phase within a PD shall be so planned and so related to the existing surroundings and available facilities and services that failure to proceed to the subsequent stages will not have an adverse impact on the PD or its surroundings at any stage of the development.

(6) Consent of landowners required. No Planned Development may be approved by the Planning Commission or Board of Trustees without written consent or a letter of authorization of the landowners whose properties are included within the PD. All owners of land within the proposed PD shall sign each application form requesting consideration or approval of any PD.

(c) Standards Generally. The following standards and requirements shall govern the application of a Planned Development:

(1) No PD shall be approved without an official development plan setting forth the provisions for development of the PD, including but not necessarily limited to development standards, allowable uses, location and bulk of buildings and other structures; density of development; utilities, streets, roads, pedestrian areas and parking; common (or dedicated) open spaces; and other public facilities.

(2) A Planned Development Zone District is created as an amendment to the Official Zoning Map if it is consistent with the intent and policies of the Town's Comprehensive Plan and upon approval of an application for zoning or rezoning. Land uses within a Planned Development Zone District development may be multiple in nature and may include uses not otherwise permitted within the same zone district. The location and relationship of these uses shall be as established in and conform to the policies and standards contained within the Comprehensive Plan and other appropriate adopted and approved plans.

(3) Each development phase shall provide its planned share of open space, recreational facilities and common amenities. The official development plan shall include mechanisms to coordinate the provision and improvement of open space, recreational facilities and common amenities with the construction of any nonresidential space, dwelling units or other land uses.

(4) The official development plan shall include adequate, safe and convenient arrangements for pedestrian and vehicular circulation, off-street parking and loading space.

(5) The PD is a negotiated zone district. While there may be no fixed lot size or lot widths, the Planning Commission and Board of Trustees require minimum dimensional standards including setbacks, height, parking, space between buildings as necessary to provide adequate access and fire protection, to ensure proper ventilation, light, air and snow melt between buildings and to ensure that the PD is compatible with other developments in the area and that the PD does not adversely impact areas zoned Large Lot Rural Residential (RR). If the official development plan does not specify lot size, setbacks or other dimensional requirements for a particular use within the PD, such dimensional requirements shall be those dimensional requirements otherwise required for the particular use under this Chapter.

(6) The plans for the proposed PD shall indicate the particular portions of the project that the developer intends to develop under various use categories. Densities, averages and permitted uses shall be detailed for all development areas within the PD Zone District. A summary chart indicating development standards applicable to the entire PD and/or separate areas within the PD is required.

(7) Open space for the PD shall be planned to produce maximum usefulness to the residents of the development for purposes of recreation, provision of view corridors and scenery and to produce a feeling of openness. All areas designated as common or public open space pursuant to the requirements of this Section shall be accessible by proper physical and legal access ways.

(8) The developer shall provide within the PD central water, wastewater and stormwater drainage facilities as required by the Town.

(9) The development shall be designed to provide for necessary commercial, recreational and educational facilities conveniently located to residential housing.

(10) Clustered development and a mix of uses shall be encouraged to promote maximum open space, economy of development and variety in type, design and layout of buildings.

(11) Relationship to the Subdivision Regulations. All development within a PD Zone District requires a subdivision plat. The provisions of this Chapter concerning Planned Developments are not intended to eliminate or replace the requirements applicable to the subdivision of land or air space, as defined in state statutes and the ordinances and regulations of the Town. However, the uniqueness of each PD may require that specifications for the width and surfacing of streets, public ways, public utility rights-of-way, curbs and other standards may be subject to modifications from the specifications established in the Subdivision Regulations adopted by the Town, if the reasons for such exceptions are well documented. Modifications may be incorporated only with the approval of the Planning Commission and Board of Trustees as a part of their review of the official development plan for a PD and shall conform to acceptable engineering, architectural and planning principles and practices.

(d) Standards for Approval. The following standards shall be utilized by the Planning Commission and the Board of Trustees in evaluating any plan for Planned Development:

(1) Open space. A minimum of eight percent (8%) of the total nonresidential PD area and twenty-five percent (25%) of any residential use shall be devoted to open lands, useable open space and common areas that are public or quasi-public. No more than five percent (5%) of the required percentage of usable open space shall be in the form of water surfaces, floodplains, steep slopes or storm water detention areas. Acreage dedicated for school sites and other public land dedications shall be considered at a negotiated percentage in the open space calculation.

(2) Residential density. Residential density shall be limited to one (1) dwelling unit per acre unless the applicant pursues a major amendment to the adopted Comprehensive Plan.

(3) Gross building floor area. The gross building floor area of any use may be limited as required by the Board of Trustees upon consideration of the official development plan and individual characteristics of the subject land.

(4) Architecture. The following architectural standard is intended to prevent monotonous streetscapes and to avoid uniformity and lack of variety in design among nonresidential development within any PD. Building facades facing a primary access street or a parking area should have clearly defined, highly visible pedestrian entrances that feature the following:

a. Canopies or porticos;

b. Overhangs, recesses/projections;

c. Distinctive roof forms;

d. Arches;

e. Outdoor patios, plazas or courtyards;

f. Display windows; and/or

g. Planters or wing walls that incorporate landscaped areas and/or places for sitting.

(5) The PD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety and separation from living areas, convenience and access. Private internal streets may be permitted, provided that adequate access for police and fire protection is maintained and provisions for using and maintaining such streets are imposed upon the private users and approved by the Planning Commission and Board of Trustees. Bicycle lanes, horse paths and trails shall be provided for, if appropriate for the land use.

(6) The PD shall provide parking areas in conformance with the minimum parking standards of this Chapter in terms of number of spaces for each use, location, dimensions, circulation, landscaping, safety, convenience, separation and screening.

(7) The PD shall strive for optimum preservation of the natural features on the site.

(8) Any residential PD shall provide for a variety in housing types and densities, other facilities and common open space.

(9) Any residential PD shall provide adequate privacy between dwelling units.

(10) The PD shall provide pedestrian ways adequate in terms of safety, separation, convenience and access to points of destination.

(11) The uses within any PD must be served by an approved public water and sanitary sewer system.

(12) The maximum height of buildings may be increased or decreased above the maximum permitted for like buildings in other zone districts in relation to the following characteristics of the proposed building:

a. Its geographic location;

b. The probable effect on surrounding slopes and terrain;

c. Unreasonable adverse visual effects on adjacent sites or other areas in the vicinity;

d. Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view;

e. Influence on vistas and open space;

f. Uses within the proposed building; and

g. Fire protection.

(e) Common Open Space and Maintenance.

(1) Organization for maintenance. No PD shall be approved unless the Board of Trustees is satisfied that the landowner has provided for or established an adequate organization for the ownership and maintenance of common open space and private roads, drives and parking to ensure maintenance of such areas.

(2) Lot area and coverage, setbacks and clustering. In a multi-lot PD, the averaging of lot areas shall be permitted to provide flexibility in design and to relate lot size to topography, but each lot shall contain an acceptable building site. The clustering of development with usable common open areas shall be permitted to encourage provision for and access to common open areas and to save street and utility construction and maintenance costs. Such clustering is also intended to accommodate contemporary building types, which are not spaced individually on their own lots but share common side walls,

combined service facilities or similar architectural innovations, whether or not providing for separate ownership of land and buildings.

(3) Maintenance provisions. In the event that the organization established to own and maintain common open space or any successor organization, shall at any time after approval of the Planned Development fail to maintain the common open space in reasonable order and condition, the following procedures may be initiated by the Board of Trustees:

a. The Board of Trustees may serve written notice upon such organizations or upon the owners of the lots within the PD setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition, and the notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the time, date and place of a hearing thereon, which shall be held within fifteen (15) days of the date of notice.

b. At such hearing, the Board of Trustees may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured.

c. If the deficiencies set forth in the original notice and in the modifications thereof are not cured within the period set, the Town, in order to preserve the taxable values of the properties within the PD and to prevent the common open space from becoming a public nuisance, may enter upon the common open space and maintain the same for a period of one (1) year. Such entry and maintenance shall not vest in the public any rights to use the common open space except when it is dedicated to the public by the owners.

d. Prior to the expiration of the year of Town maintenance, the Board of Trustees shall call a public hearing upon notice to the organization responsible for the maintenance of the open space or to the residents of the Planned Development, at which hearing the organization or the residents shall show cause why such maintenance by the Town shall not continue for the succeeding year. If the Board of Trustees determines that the responsible organization is not ready and able to maintain the open space in a reasonable condition, the Town, in its discretion, may continue to maintain the open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

e. The cost of maintenance by the Town shall be paid by the owners of properties within the PD who have a right of enjoyment of the open space, and any unpaid assessment shall become a tax lien in the office of the County Clerk and Recorder upon the properties affected by such lien to the Board of Trustees and Town Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-2-80. Submittal and processing requirements for official development plan.

(a) Application Process for Official Development Plan. The Planned Development process requires the preparation of an official development plan for any project proposed for PD Zone designation and the preparation of a final development plan for each phase of the PD. An applicant must enter the subdivision process no later than at the time of final development plan preparation. An official development plan is the first step in the PD process. This document establishes the permitted uses, siting restrictions and official development controls and standards for the entire PD Zone. The official development plan constitutes the zoning plan for the property. The Board of Trustees may adjust official development plans over time to

reflect changing conditions through minor and major adjustments. See Section 16-2-90. No building, structures or improvements shall be constructed without first obtaining approval for a final development plan and final subdivision plat.

(b) Application Form, Application Fee and Cost Reimbursement Agreement. The Town Clerk shall provide land use application forms, an application fee schedule and a cost reimbursement agreement form to the applicant. Applicants for land development approvals are responsible for the costs of processing and review by the Town, as well as the Town's cost for notification and publication. The amount to be paid shall be determined based on the current Town Fee Schedule to be established by resolution. An applicant for Planned Development Zoning shall submit an original signed application form and required number of paper plan set copies to the Town Planner for review of completeness and subsequent referral to the Town Attorney, Town Engineer and other agencies for comment. Additional copies may be required after initial review. A signed cost reimbursement agreement shall accompany the original application. The applicant shall include the following information with the application form:

(1) Applicable fees.

(2) Letter of intent explaining the uses, type of development proposed and reasons for the requested PD Zone classification.

(3) List names and addresses of property owners within seven hundred fifty (750) feet and one (1) set of mailing labels for the properties.

(4) Proof of ownership.

(c) Preapplication Conference (Step 1). The applicant is required to have a meeting with the Town Planner. The meeting shall occur prior to submitting a zoning or rezoning application for a PD Zone designation.

(1) The purpose of this meeting is:

a. To review the general feasibility of the proposal;

b. To inform the applicant about procedures, process and submittal requirements;

c. To review applicable development standards and provide the applicant with any other information necessary to ensure that the formal application furthers the intentions stated within the adopted Comprehensive Plan and meets the objectives and requirements of the Town; and

d. To allow the applicant to ask questions to determine all known issues and concerns about the proposal. (NOTE: Town staff's opinions presented during the preapplication conference are intended to be informational only and do not represent a commitment on behalf of the Town regarding the acceptability of the proposal.)

(2) In addition to a preapplication review with the Town Planner, the Town Engineer shall review the PD zoning application to determine if public improvements may be necessitated because of the zoning or rezoning. If public improvements are necessary, the standards, criteria, timing and extent of the public improvements as specified by the Town Engineer shall be outlined in a public improvements agreement detailing the owner's obligations to design and construct the public improvements necessary to serve the development. The public improvements agreement shall be executed prior to the recordation of the required final subdivision plat. The need for public improvements shall consider:

a. The extent of existing and contemplated development of the surrounding area.

b. The need to ensure that the health, safety and welfare of the public will be maintained.

c. Whether the zoning or rezoning may ultimately create a need for public improvements to serve the area.

d. All rights-of-way, easements and access rights shall be required at the time of zoning or rezoning and other public improvements shall be constructed at a time designated by the Town Engineer.

(3) Within fourteen (14) days after the date of the preapplication review, the Town Planner shall notify the applicant in writing of its conclusions regarding the desired change with respect to the following items:

a. Foxfield Municipal Code.

b. Appropriateness of the change with respect to the policies set forth in the Comprehensive Plan.

c. Need, if any, to replat pursuant to the Subdivision Regulations. Subdivision is required for any PD.

d. Any required site development plan considerations.

e. General concerns related to the anticipated impact upon public rights-of-way and public improvements and appropriate requirements.

(d) Mandatory Neighborhood Meeting (Step 2). After receiving the written conclusions of the preapplication review, but prior to filing a formal application, the applicant shall meet with residents and persons owning property in the vicinity of the site. It shall be the obligation of the applicant, unless otherwise waived by the Town, to provide notice of the hearing to the following people or entities:

(1) The fee owners of the subject property.

(2) The applicant.

(3) The fee owners of real property within seven hundred fifty (750) feet from the boundary of the subject property.

(4) The registered representative of neighborhood homeowners' organizations within one thousand (1,000) feet of the subject property.

(e) Official Development Plan Submittal (Step 3).

(1) Graphic Plan. The plan document shall have an outer dimension of 24" x 36" and shall also be duplicated in 11"x17" reproducible size; along with an electronic file, containing the following information:

a. Parcel size stated as gross acres and square footage; and perimeter boundary.

b. Existing topographical character of the land with elevation contours at ten-foot intervals or less, showing all water bodies and courses, wetlands, floodplains, unique natural features and existing vegetation, critical wildlife habitat as identified by existing habitat conservation plans and/or the Colorado Division of Wildlife.

c. Approximate acreage and gross density of each area proposed for residential and nonresidential uses; number and type of residential units; and estimated floor area and types of nonresidential uses.

d. Total land area and location and amount of open space.

e. Approximate alignment of proposed and existing streets and pedestrian, trail and bicycle routes, including major points of access. Major points of access must be in conformance with the adopted CDOT Access Control Plan.

f. Internal traffic and circulation systems, off-street parking areas and loading areas.

g. Approximate location and number of acres of any public use, such as parks, trails, school sites and other public or semi-public uses.

h. Height, yard, lot, setback and other dimensional standards in a development stipulations table as outlined in Appendix 16-A to this Chapter.

i. Location of existing and proposed primary utility lines.

j. An "existing conditions" map of the area surrounding the site to a distance of at least one-quarter (¼) mile, showing the following:

1. Zoning districts.

2. General location of existing structures (to remain) with square footage and heights.

3. Major public facilities.

4. Location of existing municipal boundaries, service and school district boundaries.

5. Location and building envelope for all new structures and improvements.

k. A preliminary landscaping plan that illustrates the following:

1. Areas to be landscaped.

2. General types of plantings (shrubs, trees, groundcover and indicate whether deciduous or coniferous).

3. Berms, buffers and other treatments that serve to mitigate the impact of new development on adjacent land uses.

l. Signature blocks for the Board of Trustees, Arapahoe County Clerk and Recorder and owner.

(2) Written narrative. The applicant shall provide the following written information:

a. A legal description of the total site, including any recorded easements proposed for development, including a statement of present and proposed ownership. This statement shall include the address of the applicant, all the property owners, developers, parties of interest and any lien holders.

b. Evidence of the present ownership or agents thereof of all lands included within the Planned Development in the form of a current commitment for title insurance or title insurance policy issued within thirty (30) days of application.

c. A statement of planning objectives.

d. A statement of proposed ownership of public and private open space areas.

e. A proposed development phasing schedule.

f. General physiographic conditions and environmental studies of the proposed site.

g. A statement of the proposed method for controlling architectural design throughout the development.

h. A generalized drainage plan for the entire project indicating proposed on-site facilities and treatment and abatement of drainage to adjoining properties.

i. Water and sewer demand for projected uses and a statement concerning proposed water and sanitary sewer systems, including source and availability prepared by a qualified engineer registered in the State.

j. A letter from the Town, appropriate utility districts and boards stating their ability to serve the development with water, sewer, electricity, natural gas, telephone and fire protection service.

k. A generalized trip generation study for the entire development and its sub-parts. Also, a statement of the general intent of the applicant as regards the use of public versus private roads.

(f) Completeness Review and Referral.

(1) Information required for adequate review. Any information or reports required by this Section may be postponed or waived by the Town Planner or Town Engineer on the basis that the information is not necessary for a review of the application. There may be additional information or reports required by the Town staff, the Planning Commission or the Board of Trustees to evaluate the character and impact of the PD Zone request.

(2) Acknowledgement of complete application. When all required submissions and copies have been received by the Town Planner, the Town Planner will notify the applicant in writing that the application is complete and the Town Planner shall forward the complete application to the Town Attorney, Town Engineer and other Town consultants. The Town Planner shall determine the number of copies required for each required item.

(3) Referral of PD zoning request. Copies of the application shall be referred to the following agencies for their review and comment, if any. Upon receipt of the application for PD zoning, the Town Planner will check the application to determine if additional submissions or copies are needed for referral agencies. If additional submissions or copies are required, the Town Planner will notify the applicant. Referral comments must be received from the referral agencies at least fifteen (15) days prior to of any scheduled public hearings. All referral comments shall be reflected in Town staff reports regarding the PD zoning application.

(4) Mandatory Referral Agencies:

a. Colorado Department of Transportation.

b. Arapahoe County.

c. Arapahoe Park and Recreation District.

d. Cherry Creek School District.

e. South Metro Fire District.

f. Tri-County Health Department.

(5) Optional Referral Agencies:

a. Arapahoe County Water and Wastewater Authority (ACWWA).

b. East Cherry Creek Valley Water and Sanitation District.

c. Rangeview Water Association.

d. Other municipalities within one (1) mile.

e. Cherry Creek Basin Authority.

f. Homeowners Association as appropriate.

(g) Review Criteria used by Planning Commission and Board of Trustees. Any official development plan shall be reviewed to ensure that the general public health, safety and welfare are safeguarded and for substantial conformance to the following applicable review criteria:

(1) The official development plan is consistent with the Town's Comprehensive Plan and other adopted plans.

(2) The official development plan achieves the stated objectives of the Planned Development District, by allowing for the mixture of uses and greater diversity of building types, promoting environmental protection, limiting sprawl, improving design quality and a higher quality living environment, encouraging innovative design and a variety of housing types and managing the increase in demand for public amenities.

(3) The proposed land uses are compatible with other land uses in the development and with surrounding land uses in the area and the type, density and location of proposed land uses are appropriate based on the findings of any required report or analysis.

(4) The street design and circulation system are adequate to support the anticipated traffic and the proposed land uses do not generate traffic volumes which exceed the capacity of existing transportation systems or that adequate measures have been developed to effectively mitigate such impacts.

(5) The official development plan adequately mitigates off-site impacts to public utilities facilities and the large lot residential development, which is the predominant land use within the Town.

(6) The fiscal impacts have been satisfactorily addressed and the Town or special district will be able to provide adequate levels of service for police and fire protection, street maintenance, snow removal and other public services or that adequate measures have been developed to effectively mitigate such impacts.

(7) Higher levels of amenities, including open spaces, parks, recreational areas and trails, will be provided to serve the projected population.

(8) The official development plan preserves significant natural features and incorporates these features into parks and open space areas.

(9) There are special physical conditions or objectives of development that the proposal will satisfy to warrant a departure from the standard regulation requirements.

(10) The applicant adequately demonstrates that the proposal is feasible and complies with all adopted development standards set forth in the official development plan and other requirements of this Chapter. In cases of conflicting provisions, the more restrictive shall apply.

(h) Planning Commission Approval of Official Development Plan. Unless waived by the Board of Trustees, the Planning Commission shall hold at least one (1) public hearing. The Planning Commission shall, within thirty (30) days of the official development plan review meeting, make to the Board of Trustees at least one (1) of the following recommendations:

(1) Approve the official development plan as submitted, with certain conditions as stated, if any; or

(2) Deny the official development plan or certain portions thereof, with all the reasons clearly stated.

(i) Official Development Plan; Board of Trustees Action. The Board of Trustees shall hold at least one (1) public hearing. The Board of Trustees shall notify the applicant and the Planning Commission in writing of any of the following actions taken:

(1) Approval of the official development plan as submitted, with certain conditions as stated, if any;

(2) Denial of the official development plan as submitted or certain portions thereof, with all reasons clearly stated. Denial means that application for an official development plan shall not be accepted; or

(3) Referral of the official development plan back to the Planning Commission with specific instructions for additional study and recommendations, for a period not to exceed thirty (30) days.

(j) Filing and Recording of Approved Official Development Plan.

(1) Following the decision of the Board of Trustees, the Town Planner will inform the applicant in writing of the Board's decision and, if the official development plan was approved, instructions on the preparation of the signature Mylar, including any special notes or revisions required as a condition of approval and the amount of outstanding fees, if any, that are due. The fees shall include the amount necessary to record the official development plan and other materials. The letter shall also state the submittal requirements and required fees for the final development plan.

(2) The applicant shall have one hundred eighty (180) days to submit a final Mylar of the official development plan, the required written narrative and an electronic file to the Town Planner for the Mayor's signature. In its discretion and for good cause shown by the applicant, the Planning Commission may extend the time a maximum of sixty (60) days. Upon lapse of the two-hundred-forty-day period and any time extension, the approval of the official development plan shall be void.

(3) The official development plan is valid for a period not to exceed three (3) years unless the applicant proceeds to a final development plan for any portion or phase of the subject property.

(4) Signature Mylar. The applicant will submit three (3) check prints of the signature Mylar to the Town Planner, who will send a copy to the Town Attorney and Town Engineer, if necessary. After review by the Town Planner, the applicant will be notified to prepare two (2) sets of the signature Mylars, with any corrections as directed by Town staff. The applicant shall sign and submit the Mylar set to the Town Clerk.

(5) The Mayor will sign the signature Mylar sets and return them to the Town Clerk to have one (1) set recorded in the office of the County Clerk and Recorder.

(6) The second signed reproducible Mylar sets will be maintained in the files of the Town Clerk. Paper copies of the signed Mylar set will be maintained in the files of the Town Planner and Town Engineer.

(7) Amend the Official Zoning Map. Following the recording of the official development plan map, the Town Planner will amend the Official Zoning Map.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-2-90. Amendments to official development plan.

(a) Intent. From initial concept and approval to final construction, unforeseen changes and ordinary refinements occur which may require changes to the approved official development plan. In order to streamline the review process and to eliminate unnecessary delays, the intent of this Section is to establish a procedure for approving minor official development plan revisions. It is also the intent of this Section to establish a procedure to review and approve significant changes to the approved official development plan.

(b) Minor Amendments. Minor amendments to an approved official development plan may be approved administratively by the Town Planner after written authorization from the Board of Trustees stating that the amendments are minor in nature.

(1) Minor amendments shall not represent more than a ten-percent change in the location, height, yard, lot and other development standards and can only be granted if required by engineering or other circumstances not foreseen at the time the official development plan was approved, so long as no modification violates any standard or regulation set forth in this Chapter.

(2) The applicant shall make a written request to the Town Planner justifying the proposed minor amendment and clearly showing on the official development plan and accompanying written narrative that portion which is proposed for amendment. A record of such approved minor amendment shall be filed and recorded in the same manner as the original.

(c) Major Amendments.

(1) Major amendments to an approved official development plan shall be processed in the same manner as the original official development plan. Approval of a major amendment to an approved official development plan shall be by ordinance. Major plan amendments include, but are not limited to the following:

a. A change in land use or development concept.

b. An increase in building coverage of nonresidential uses or an increase in residential density levels.

c. An increase in the height of any proposed structure.

d. A realignment of major circulation patterns or a change in functional classification of the street network.

e. A reduction in approved open space or common amenities.

f. Other significant changes that involve policy questions or issues of overriding importance to the community.

(2) Submittal requirements. A request for a major amendment shall be accompanied by the same type and quality of information as was necessary for the original final approval and passage of the official development plan, in addition to the following:

a. A map of the entire official development plan area, which clearly defines that portion which is proposed for amendment.

b. A justification of the proposed amendment, including a discussion of any changes in impact, which would result from the amendment.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-2-100. Obsolete official development plan.

Findings Necessary to Declare Official Development Plan Obsolete. An official development plan may be considered obsolete if the Planning Commission or Board of Trustees finds that any of the following conditions exist for an official development plan that is not a site specific development plan within the meaning of Section 16-1-180 of this Chapter:

(1) The original development concept has not been followed and is deemed a zoning violation.

(2) The official development plan has been inactive and no final development plans have been approved and filed for the past three (3) years.

(3) A final development plan has been approved but no building permits have been issued for the past five (5) years.

(4) In the event an official development plan is found to be obsolete, a new official development plan shall be required subject to the submission and approval process of this Section.

(5) The Town may withdraw or rescind approval of any official development plan deemed obsolete.

Sec. 16-2-110. Submittal and processing requirements for final development plan.

(a) Application Process.

(1) Approval of a final development plan is the last stage of the Planned Development process. Whereas the official development plan establishes permitted land uses and general development stipulations, the final development plan provides more detailed specifications, including but not limited to:

a. Building envelopes.

b. Building design (scaled architectural elevations).

c. Detailed landscape plan (design and materials).

d. Parking lot layout.

e. Lighting plan and fixtures.

f. Signs.

g. Access and on-site circulation.

(2) The final development plan may include all or a portion of the site covered by the approved official development plan. The final development plan application is intended to specify design components of the Planned Development District or portions thereof and provide for the review of additional items not required by the official development plan. A final development plan application may be made for all or a portion of the entire District as previously approved at the official development plan stage. All final development plans must have accompanying them appropriate subdivision plats, which either have been approved or are undergoing the approval process if they are integral to the proposed development. Final development plans must include structure locations and building foot print dimensions. In any Planned Development District, an approved final development plan for all or portions of the district must be in effect before any building permits may be issued for the construction of structures in the approved portions of the district. The completed application shall be known as the final development plan.

(b) Application Form. An applicant for final development plan approval shall submit an original signed application form to the Town. A deposit check for review expenses and a signed charge back agreement (if one is not already on file in the Town Clerk's office) shall be submitted with the original application. Copies will be transmitted to Town consultants and outside referral agencies for comment.

(c) Submittal Requirements. The final development plan shall include all of the information required in the official development plan in its finalized, detailed form plus any additional items included below. Omissions are cause to continue or deny the application.

(1) Final development plan - written documentation (fifteen [15] copies or as directed by Town staff.).

a. Proof of ownership. (Title Commitment with Schedule B) dated within thirty (30) days of the application.

b. Letter of Intent describing the proposed development.

c. List of properties within seven hundred fifty (750) feet, plus a set of mailing labels for the properties.

d. A final development schedule indicating the approximate dates when construction of the phases of said development can be expected to begin and to be completed.

e. A description of the proposed open space to be provided at each stage of development; an explanation of how said open space shall be coordinated with surrounding developments; total amount of open space (including a separate figure for usable amount of open space); and a statement explaining anticipated legal treatment of ownership and maintenance of common open space areas and the amounts and location of dedicated public open space.

f. Copies of proposed final covenants, declarations, architectural design standards, grants of easements or other restrictions to be imposed upon the use of the land, including common open spaces, buildings and other structures within the development.

g Physiographic and environmental studies of the proposed site prepared and attested to by qualified professional authorities in the following fields: soil quality, slope and topography, geology, water rights and availability, ground water conditions and impact on wildlife.

h. Any required dedication documentation and/or improvement agreements and bonds plus an updated title insurance commitment.

i. Any new items or studies not submitted with the official development plan.

j. The applicant shall submit required fees.

k. Quantitative data for the following: final number of dwelling units, number of bedrooms in multi-family residential units, final figures for previously agreed-upon design or development standards or any other negotiated items and footprint sizes of all proposed nonresidential buildings.

l. A detailed study of the traffic impact of the development on the regional street system.

m. Any written documents associated with providing utility service and demonstrating water and wastewater availability.

n. Approved access permit from the Colorado Department of Transportation, if applicable.

(2) Final development plan - graphic documentation. Fifteen (15) paper sets of the final development plan map set or as directed by Town staff, which shall be a blackline print or photocopy of original drawings (24" x 36" size) containing the following information:

a. Project name, type of proposal (final development plan), legal description of the plan's land area, date of the drawing, scale, north arrow and existing zoning of the site.

b. Vicinity map with north arrow (scale of 1" = 2,000' preferred), with an emphasis on the major roadway network within one (1) mile of the proposal.

c. Nonresidential: The graphic locations (building envelopes), dimensions, maximum heights and gross floor area of all existing and proposed structures and the location of entrances, loading areas, location of outdoor trash receptacle systems and emergency vehicle access, if any. Location of parking spaces with typical dimensions.

d. Residential: Graphic representation showing lots, street names and dimensions, sidewalks or pedestrian walkways.

e. Any plan maps that have been revised since the official planned development plan approval.

f. A landscape plan indicating the treatment and materials used for parking lots, public and common open spaces and a revegetation plan showing treatment of disturbed areas.

g. Information on land areas adjacent to the proposed development to indicate integration of circulation systems, public facilities and utility systems and open space.

h. The planned pedestrian, trail, bicycle and vehicular circulation system, including their interrelationships with the vehicular parking and unloading system, indicating proposed detailed treatments of points of conflict. Show all proposed curb cuts and driveway locations and dimensions, off-street parking in terms of location, dimensions and total numbers by type (full-size, compact, handicap, etc.) and types of surfacing.

i. A soil erosion and prevention plan.

j. The proposed treatment of the perimeter of the development, including materials and techniques used such as screens, fences, walls and landscape plan.

k. A detailed engineered drainage plan indicating general on-site and required off-site facilities and proposed treatment and abatement of run-off drainage to adjoining properties.

l. Preliminary or final subdivision plats required and prepared as per the requirements of the Town's Subdivision Regulations.

m. Preliminary or final engineering plans for public roads within the development, points of access and designs for intersections with and modifications of existing public rights-of-way and designs for any off-site road improvements to connect the Planned Development to the existing street system. Final plans for private roads are to be included for any portions of the site undergoing final review.

n. A site map that depicts the development phases thereof, sites and building footprint sizes and locations outlined in the development schedule.

o. Engineering schematic plans that depict general line sizes and proposed points of connection to existing or planned utility systems, both on and off site; final engineered plans and specifications. Include dimensions of all existing and proposed easements.

p. Existing and proposed finished grade topography at two-foot contours or less, tied to U.S.G.S. datum.

q. Documentation showing conformance to the Town's adopted floodplain regulations and adopted engineering standards.

r. A snow removal and/or storage plan.

s. A detailed lighting plan depicting on-site street light location, height and fixture type, with supplemental specifications, including a photometric plan for the site.

t. A detailed sign plan showing the location, size, height and materials for all signs on the property.

u. Chart comparing all regulations and requirements of the proposed final development plan with those of the approved official development plan regarding the proposed uses, building heights, gross floor area, residential density, gross floor area ratios, setbacks, open space, parking ratios and any other applicable standards.

v. Standard and special notes approved by the Board of Trustees that regulate the development, certifications and dedications as approved by the Town Attorney.

w. Required signature blocks as shown in Appendix 16-B to this Chapter.

x. Development Stipulations Chart as shown in Appendix 16-A to this Chapter.

y. Other information as requested by Town staff or Board of Trustees or required as a condition of the official development plan.

(d) Review Procedure.

(1) The applicant shall file a minimum of fifteen (15) copies of the final development documents or an alternative number of copies as directed by Town staff, with the Town Clerk and pay the required fees.

(2) Filing of documents is to be made thirty (30) days in advance of the regular meeting date of the Planning Commission at which the final development plan will be discussed. Responsible Town staff shall make any written comments in advance of this meeting. Upon receipt of the documents for Planning Commission approval, and after review and approval by the Town Planner, the Town Clerk shall schedule the project on the next Planning Commission agenda, but no sooner than thirty (30) days, as a public meeting and give due notice of general description to the public of said meeting in a newspaper of local circulation.

(3) The final development plan must be in conformance with the official development plan as approved or amended. Should any unapproved modifications to the official development plan be presented for review at this final development plan stage, then these changes must be approved before the final development plan can be approved as a whole. Should this be the case, these modifications may not involve one (1) or more of the following unless formal public hearings are conducted on each change:

a. Violation of any provision of this Chapter.

b. Varying the original lot area requirement by more than ten percent (10%).

c. A reduction of the original areas reserved for the open space.

d. Increasing the original floor areas proposed for nonresidential use by more than ten percent (10%).

e. Increasing the original total ground area covered by buildings.

f. Increasing the original density.

g. Any other items where changes amount to greater than ten percent (10%) of originally negotiated amounts.

(e) Approval Procedure.

(1) The Planning Commission shall determine the application's compliance with the provisions of this Chapter and the official development plan based on a review conducted by the Town Planner. After consideration of the application, the Planning Commission shall, by resolution, approve said application as presented, approve said application subject to specified conditions or disapprove it.

(2) The Planning Commission shall forward said resolution, together with the reasons for the recommendation, to the Board of Trustees. The application and accompanying resolution shall be submitted for review a regularly scheduled Board of Trustees meeting no sooner than twenty (20) days after the Planning Commission's decision.

(3) Upon receipt of the final development plan, the Board of Trustees may approve, approve with conditions or deny the final development plan. The Board of Trustees shall not approve any new major change or addition in the final development plan recommended by the applicant until the proposed major change or addition has been referred to the Planning Commission for recommendations and a copy of said recommendations has been filed with the Board of Trustees.

(4) If the final development plan is approved subject to conditions, the formal acceptance and recording of such approval shall not be made until the applicant has obtained the signature of the Mayor of the Town on the plan face. All conditions must be satisfied before any official Town signatures are fixed thereto.

(5) The Board of Trustees shall direct the Town Clerk to record the pertinent written and graphic documents of the final development plan with the County Clerk and Recorder. All recording and duplicating costs are to be paid in advance by the applicant. Copies of all records are to be kept in the Town Hall. Preparation of signature Mylars shall be as set forth in Subsection 16-2-80(j) of this Article.

(f) Amendments to Final Development Plan.

(1) This Section shall serve as the mechanism for reviewing and approving changes to the final development plan. Minor changes in the location, siting and height of buildings and structures may be authorized by the Town Planner without additional public hearings if required by engineering or other circumstances not foreseen at the time the final development plan was approved. No change authorized by this Subsection may cause any of the following:

a. A change in the use or character of the development.

b. An increase in the official land coverage of structures.

c. An increase in the intensity and density of use.

d. A reduction in approved open space.

e. A reduction of off-street parking and loading space.

f. A reduction in required pavement widths.

g. An increase in height that is more than five (5) feet.

(2) All other changes in use or rearrangement of lots, blocks and building tracts or any changes in the provision of common open spaces may be made by the Board of Trustees after a report is prepared by the responsible Town staff and recommendation by the Planning Commission.

(3) Such amendments may be made only if they are shown to be required by changes in conditions that have occurred since the final development plan was approved or by changes in the official development plan. Any changes which are approved for the final development plan must be recorded as amendments in accordance with the procedure established for the recording of the initial final development plan documents with the exception that prior to making it recommendation to the Board of Trustees, the Planning Commission shall hold at least one (1) public hearing, with the applicant being responsible for publishing notice of a general description of said hearing, in the official publication of the Town at least fifteen (15) days in advance of the hearing.

(g) Failure to Begin Development or to Show Substantial Progress.

(1) Each approved final development plan must contain a detailed development schedule of public and private improvements. The Town staff shall monitor this schedule and failure of the developer to substantially adhere to it shall be cause for a final development plan special review by the Planning

Commission. The Planning Commission special review shall be commenced if one (1) or more of the following situations arise:

a. Failure to begin subdivision platting and/or draw building permits for construction as detailed in the approved development schedule within eighteen (18) months of the scheduled starting date or extensions thereto.

b. Inactivity or documented lack of progress as determined by either the Town staff or Planning Commission on any stage of the project for more than two (2) years from the last completed benchmark in the approved development schedule.

c. Request for extensions to the starting dates by the developer.

d. Failure to complete improvements in a timely manner.

(2) The Planning Commission may extend for not more than two (2) periods of twelve (12) months each the time for beginning the project.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

ARTICLE 3 General Regulations and Development Standards

Sec. 16-3-10. Application of general regulations and development standards.

(a) Purpose. In addition to the requirements contained elsewhere in this Chapter, all uses of land and structures shall be governed by the general regulations and development standards contained in this Article to promote the general health, safety and welfare of Foxfield residents.

(b) Intent. The intent of this Article is to encourage the creation of safe, adequate and attractive facilities and to minimize views of unattractive uses or activities through use of sound site design principles and the establishment of minimum requirements. The standards set forth herein are recognized as enhancing the compatibility of dissimilar uses and promoting stable property values.

(c) Application.

(1) The general regulations and development standards of this Article shall not be retroactive on existing uses. However, these standards shall apply to all uses in all zoning districts under the following circumstances:

a. New buildings and uses of land that require a permit, license, plot plan or site development plan.

b. Additions involving expansion of the gross floor area or developed site area by twenty percent (20%) or more above that in existence prior to the effective date of this Chapter.

c. A change in the use of the building or land which requires a change in the zoning district or a special review use permit.

d. A change in the occupancy of a building or the land, which requires a new sign or other site improvements addressed in this Article.

(2) Prior to issuance of any permit, license or special review use permit or granting of a change in use in any zoning district for any property, the applicant shall demonstrate that the property complies with the all applicable regulations.

(3) All buildings, parking areas, landscaping, signs and other improvements noted in the general regulations and development standards in this Article shall be constructed and installed in accordance with the approved plans prior to issuance of a certificate of occupancy for the building or use.

a. The Town Planner may allow certain improvements to be constructed or installed within an agreed-upon time allowing for seasonal changes. Such arrangements may involve performance bonds or other methods as deemed appropriate by the Town Planner to assure eventual compliance with this Chapter.

b. The Town Planner may permit in a particular district a permitted use and a temporary use not listed in this Chapter, provided that such use is of the same general type as the uses permitted by this Chapter.

(d) Land Dedications. Land designated as floodplain or open space through dedication or reservation for any reason shall be indicated as such on any land development application. Such land and facilities shall be built and maintained by a unit of government, by a nonprofit corporation or by private interests as part of a subdivision or development of land for use either by the inhabitants or general public thereof. Ownership of the land may be deeded or reserved to a property owner's association or be dedicated to the public or as required by any condition for granting of a subdivision plat, zone district or Planned Development District, including designation of a park, trail or other open recreation use.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-3-20. Visibility at intersections; application of sight triangle.

(a) At all street intersections, there shall be maintained a clear field of vision between a point which is thirty-six (36) inches above the average street grade and ninety-six (96) inches above that point. Such field of vision shall be of such a distance as to enable the operator of any motor vehicle, bicycle or other transportation device or horseback rider to clearly see onto the intersecting street from a distance which is thirty (30) feet along the property line from the point where such street rights-of-way intersect, providing for clear visibility from each of said streets. Said field of vision is described as a sight triangle and is determined by measuring from the Town rights-of-way point of intersection a distance of thirty (30) feet along each Town right-of-way line as depicted in Figure 16-1 below.

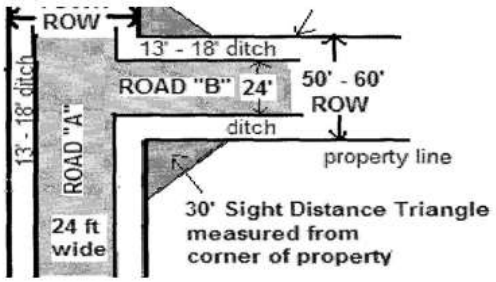


Figure 16-1
Sight Distance Triangle

(b) The following structures shall be permitted within the sight triangle:

(1) Fences that are seventy percent (70%) or more open as viewed from outside the fence; for example, a rail or wire fence. Solid fences such as stockade or board-on-board fences are prohibited.

(2) Utility poles, light standards and traffic control devices.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-3-30. Off-street parking standards.

(a) Provisions, Applicability and Maintenance - Responsibility of Owner. This Section imposes minimum standards for the development of parking areas in conjunction with the various uses permitted in this Chapter. The purpose of this Section is to require that the owner of a land use provide and maintain sufficient quantities of parking for each land use. The intent of these standards is to require attractive, convenient, efficiently developed parking areas that provide sufficient quantities of parking spaces with ample area for fire lanes, maneuvering, snow storage, retention of drainage and landscaping and that ensure public safety. The required parking standards contained herein are minimum standards. *Provide and maintain* also means that the off-street parking area shall remain free from pavement deterioration, chuckholes, pavement failure and cave-in.

(b) Administration.

(1) Off-street parking shall be provided as set forth in this Chapter in association with any use generating demand for parking. Nothing in this Chapter shall deprive the owners or operators of property, generating a need for parking, the right to maintain control over such property devoted to off-street parking or to charge whatever fees they deem appropriate for such parking.

a. The proposed method of complying with this Section shall be indicated on all plans required to be submitted to the Town as a part of an application for a final development plan and on any site development plan submitted for a building permit.

b. When any addition to or enlargement of an existing building or use or a change in use increases the building or the developed area of the use or the parking requirements of the building or structure, the parking requirements of this Section must be met. Moreover, if the addition, enlargement or change in use increases the building or the developed area of the use or the required parking by twenty percent (20%) or more, then the parking for the entire building shall be brought into conformance with all requirements of this Section, including required number of spaces, access, landscaping, lighting, screening and other applicable standards.

(2) Any change in the use of a building or lot which increases the off-street parking as required under this Section shall be unlawful and a violation of this Section until such time as the off-street parking complies with the provisions of this Section.

(c) Number of Off-Street Parking Spaces Required.

(1) Minimum requirements: All uses shall provide the number of off-street parking spaces listed below. Buildings with more than one (1) use shall provide parking required for each use. There are certain uses that are only allowed within the Village Commercial (VC) Zone District or Planned Development (PD) District as indicated in the chart. In addition, certain uses are required to comply with the rural residential property standards.

(2) The Town Planner shall determine parking requirements for uses not specifically listed based on an analysis of parking requirements for similar uses or on anticipated parking demands.

Use	Number of Spaces Required
Residential dwelling units	
Studio or 1-bedroom PD only	1.5 per dwelling unit
2 or more bedrooms; in addition, multi-family dwellings PD only	2 per dwelling unit 1 per guest space per 5 dwelling units

Group living	
Assisted living/facilities for care of the elderly or infirmed, including nursing homes	1 per 4 beds plus 1 per 2 employees
Group homes (up to 8 residents)	2 per group home, plus 2 per 3 employees
Commercial accommodations, including bed and breakfasts, lodgings and hotel/motel units, regardless of how owned and managed.	1 per individual exit of accommodations unit plus 1 per employee on the largest shift plus 1 per 400 sq. ft. gross floor area of public meeting area and restaurant
Automobile service, repair and sales	
Gas stations	2 per service bay plus required stacking spaces
Service station or auto lube center	2 per service bay plus required stacking spaces
Auto repair or body shop	2 per bay; spaces for each bay may park tandem
Car wash, self-service	3 stacking spaces in front of each bay
Car wash, full-service	5 per bay plus required stacking spaces
Retail, entertainment, office and professional services	
Banks (including branch and drive-through)	1 per 300 sq. ft. of gross floor area plus required stacking spaces for drive-through
Bowling alley	5 per bowling lane
Convenience store	1 per 200 sq. ft. of gross floor area plus stacking spaces for drive-up window
Convenience stores with gas sales	1 per pump island, plus 1 per 150 sq. ft. gross floor area, plus 2 per 3 employees
Dining and drinking establishments including private clubs and restaurants	1 per 75 sq. ft. of dining and waiting area
Dining and drinking establishments, if dancing and/or entertainment is provided	1 per 50 sq. ft. of building plus required stacking spaces
Serving or preparing food and beverages for consumption outside of a building	1 per 50 sq. ft. of building plus required stacking spaces
Funeral homes, mortuaries and crematoriums	1 per 300 sq. ft. of gross floor area
General commercial and retail sales	1 per 300 sq. ft. of gross floor area, including storage areas
Health and athletic clubs, aerobics, recreational amusement and entertainment facilities	1 per 125 sq. ft. of gross floor area excluding storage areas
Medical and dental offices, clinics	1 per 250 sq. ft. of gross floor area
Public, Quasi-public and Institutional	
Community service facilities (e.g., post office, courts, community health building)*	1 per 250 sq. ft. of gross floor area
Day care or nursery	1 per employee, plus 1 per 5 children
Library, museum or gallery	1 per 300 sq. ft.
Places of worship	1 per 3 seats in primary meeting room
Public assembly and civic association halls (includes all facilities used for receptions and conventions	1 per 40 sq. ft. of gross floor area in the primary meeting room or assembly area
Schools	
Through junior high	2 per classroom
High schools and colleges	10 per classroom
School auditoriums	1 per 3 seats in auditorium
Utilities	1 per 300 sq. ft. of office area plus 1 stall for each

	company vehicle

* All other community service facilities shall be determined by the Town Planner based on an analysis for similar uses or on anticipated parking demands.

(d) Calculation of Parking Space Requirements. Number of spaces: Separate off-street parking spaces shall be provided for each use.

(1) Where parking facilities are combined and shared by two (2) or more uses, the off-street parking space required for two (2) or more uses having the same or different standards for determining the amount of required off-street parking spaces shall be the sum of the standards of all the various uses.

(2) When any parking calculation results in a required fractional space, such fraction shall be rounded off to the next whole number.

(e) Measurement of Floor Area. Floor areas used in calculating the required number of parking spaces shall be gross floor areas of the building calculated from the exterior outside wall without regard to a specific inside use. In mixed-use facilities, the following applies.

(1) Calculations shall be based on gross square footage of each identifiable use within the building and the total square footage of each identifiable use shall be the same as the gross floor area calculated from outside wall to outside wall.

(2) Uses which serve more than one (1) of the uses, such as bathrooms, mechanical rooms, stairwells, circulation, airshafts, storage areas and elevators, shall be prorated based on the area of each identifiable use.

(f) Joint Use of Parking Facilities or Shared Parking. When two (2) or more businesses, structures and/or uses are served by the same parking area, the applicant may apply for special parking approval. The off-street parking area or shared parking facilities shall not exceed twenty percent (20%) of the required parking. Applicants wishing to utilize joint or shared parking facilities or areas shall provide satisfactory legal evidence to the Town Planner in the form of deeds, leases or contracts to establish joint use or shared parking. Upon submission of documentation by the applicant of how the project meets the following criteria, the Town Planner may approve reductions of up to and including twenty percent (20%) of the parking requirements of this Section if the Planning Commission finds that:

(1) The parking needs of the use will be adequately served.

(2) If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs.

(3) The applicant provides an acceptable proposal for a transportation demand management program, including a description of existing and proposed facilities and assurances that the use of alternate modes of transportation will continue to reduce the need for on-site parking on an ongoing basis.

(g) Compact Parking. Up to twenty percent (20%) of all required off-street parking spaces may be designated as "compact car spaces." Such spaces shall be appropriately marked to indicate the location of the spaces. Off-street parking spaces provided in excess of the required number of spaces for a building or use may be in the form of compact parking spaces.

(h) Determination of requirements for uses not listed. Requirements for types of buildings and uses not specifically listed in this Article shall be determined by the Town Planner after study and recommendation, which should include all relevant factors, including but not limited to:

(1) Vehicle occupancy studies.

(2) Comparable requirements from other relevant municipalities.

(3) Requirements of comparable uses listed in this Article.

(4) Suitable and adequate means will exist for provision of public, community, group or common facilities.

(5) Provision of adequate loading facilities and for a system for distribution and pickup of goods.

(6) The use will not be detrimental to adjacent properties or improvements in the vicinity to the area.

(7) The proposed use will not confer any special privilege or benefit on the properties or improvements in the area, which privilege or benefit is not conferred upon similarly situated properties elsewhere in the Town.

(i) Handicap Parking Requirements.

(1) The required number of parking spaces for the disabled for all land uses shall be provided in accordance with federal and state law. Each parking space for the disabled shall be in conformance with applicable requirements of the Americans with Disabilities Act (ADA).

(2) The required spaces shall be located to provide the least-traveled distance to accessible facilities served. They shall be located, where feasible, to allow those parking in the spaces to access the associated building without crossing vehicle traffic area. The distance between the most remote principal entrance of a building and any one (1) space shall not exceed two hundred (200) feet.

(3) Size. Required spaces shall be not less than eight (8) feet wide and shall have an adjacent access aisle not less than five (5) feet wide. Two (2) adjacent spaces may share a common access aisle. Such aisles shall provide an accessible route of travel to the building or facility entrance. Boundaries of the required parking spaces and aisles shall be marked to identify the use of such spaces.

(4) Identification sign. Every parking space required by this Section shall be identified by a sign centered from three (3) feet to five (5) feet above the ground at the head of the required space. The sign shall be marked with the international symbol of access and shall bear the words, "Reserved - Tow Away Zone." Such signage shall not be less than twelve (12) inches in height. The lettering shall be not less than one (1) inch or more than two (2) inches in height and shall be on a background of contrasting value.

(5) Surface. Parking spaces and access aisles shall slope not more than one (1) inch in forty-eight (48) inches and shall be firm, stable, smooth and slip-resistant.

(j) Parking Restrictions.

(1) Weight restrictions. Parking or storing of any vehicle, excluding recreational vehicles, with a Gross Combination Weight Rating (GCWR) greater than thirty-six thousand (36,000) pounds is prohibited. GCWR is defined in Section 42-2-402(6), C.R.S.

(2) Number of vehicles allowed on a lot. Parking or storing of any vehicle, recreational vehicle, trailer, boat or other articles of personal property, not owned by the owners and or occupants of the property upon which it is parked, stored or used, for longer than a period of ten (10) days.

(3) Parking or storing of vehicles in residential areas. The outside parking or storing of more than five (5) vehicles on the property, including but not limited to cars, recreational vehicles, campers, boats, trailers, implements of husbandry, mobile machinery and self-propelled construction equipment, is prohibited.

(4) Reserved.

(5) Parking or storing of vehicles, with signs mounted, attached or painted on, when used as additional advertising on or near the premises and not used in conducting a business or service on the premises.

(6) Sale or repair uses. No nonresidential off-street parking space shall be used for the sale, repair, dismantling or servicing of any vehicle, equipment, material or supplies.

(7) Engine idling. It shall be unlawful for any person to idle or permit the idling of the motor of any stationary diesel fuel-burning bus or motor vehicle or idle or permit the idling of the motor of any stationary motor vehicle of any kind whatsoever for a period in excess of fifteen (15) consecutive minutes in any hour, within the Town limits at any time of the day or night. It is the intent of this Section that an owner or operator may not circumvent the provisions of this Section by the repeated turning on and off of a diesel engine at any time that the outside temperature is twenty-two (22) degrees Fahrenheit or above; provided, however, that unattended vehicles operated by diesel powered engines shall not be allowed to idle at any time.

(8) This Section shall not apply when an engine must be operated in the idle mode for safety reasons, including, but not limited to, cranes and forklifts used in the construction industry, ambulances or other public safety vehicles.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04, §1, 2021)

Sec. 16-3-40. Stacking space standards for drive-throughs, parking attendants or paid parking collection devices.

(a) Submittal of Plans. The applicant's plan shall show the location, size and dimensions of all such facilities. The plan shall follow the stacking space schedule and shall demonstrate that such facilities will not result in the stacking of vehicles on public rights-of-way and that an adequate area is reserved for the safe transfer of the motor vehicle between any parking attendant or valet and the driver of the vehicle. In no event shall drive-throughs, parking attendants, paid parking collection devices or areas associated with such uses be located in a public street or right-of-way or interfere with vehicular or pedestrian traffic on a public street, sidewalk or other right-of-way.

(b) Stacking Space Schedule.

Use	Minimum Stacking Space	Measured From
Bank teller lane	4	Teller or window
Automated teller	3	Teller
Restaurant drive-through	8	Order box
Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-3-50. Parking lot design standards.

(a) Parking Space and Access Drive Requirements. Except as may be provided for compact cars elsewhere in this Section, minimum size of off-street parking space and parking lot drives shall be in accordance with the following:

(1) Minimum stall size: nine (9) feet by eighteen (18) feet.

(2) Minimum access drive width: twelve (12) feet per lane.

(3) Minimum backing area width: twelve (12) feet; twenty-four (24) feet (two [2] drive lanes).

(4) Angled parking spaces: per Town Engineer.

(b) Location and Design of Parking Lots.

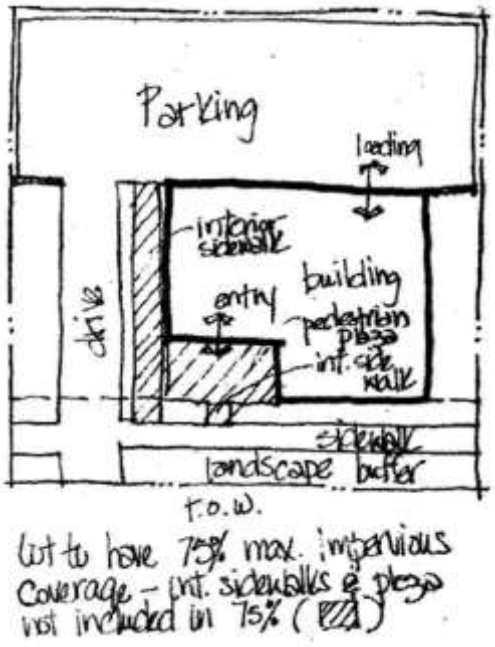
(1) All parking lots shall be set back a minimum of five (5) feet from any public rights-of-way.

(2) Parking lots shall be so designed as to appear as an accessory use to the principal use. If a parking lot faces an arterial or collector street, parking lots shall be screened from the street by low walls, landscaping and/or railings that effectively conceal parked cars.

(3) In all nonresidential areas and any residential development requiring a parking lot, all off-street parking lots must be accessed by a defined access lane off the main public right-of-way. This access lane must be separated from the traveled portion of the roadway by at least a seven-foot setback. Backing of parked cars into public road drive lanes from off-street parking areas is not allowed.

(4) Required parking spaces must be provided on the same property as the principal building or use. Parking areas shall be owned by the owner of the principal use for which parking spaces are provided.

(5) All parking lots and drive lane areas shall be surfaced with asphalt or concrete.



(6) All parking lots shall be provided with adequate drainage to accommodate increased runoff from the site and shall be designed with catchment basins or other similar structures to prevent non-point source pollution.

(7) Access drives shall be perpendicular to the traveled right-of-way and shall not exceed a five-percent grade within fifty (50) feet of their entrance to a public or private road right-of-way.

(8) A twenty-percent allowance for compact cars may be applied to nonresidential uses in any district. These spaces shall be properly marked and grouped within the overall parking plan. Space size shall be a minimum of eight (8) feet by sixteen (16) feet.

(9) In nonresidential zone districts, no parking area will be allowed in the side yard setback; driveways may be all or partially in side yard setbacks.

(10) All parking areas shall be properly maintained.

(11) Parking lot setbacks, islands and other open spaces shall be landscaped to the greatest extent possible. Landscaped areas may also be used for snow storage as long as they are maintained properly and vegetation replaced when necessary.

(12) Parking areas may not be used for the dismantling of vehicles or storage of commodities. Sales of commodities from parking lots are not allowed except with a valid peddler's license issued by the Town Clerk or for special events which are approved by the Town.

(13) Curb cuts should be limited to the fewest number necessary to provide workable access. In general, curb cuts should be placed at intervals greater than one hundred (100) feet, unless this would preclude access to an independent property.

(14) Parking lots should provide well-defined circulation for both vehicles and pedestrians.

(15) Vehicles shall not overhang any public property or pedestrian access including sidewalks or landscaped area. A concrete or otherwise permanent curb, bumper or wheel stop shall be installed to protect public right-of-way, sidewalks and/or landscaped areas and islands.

(16) Standard traffic control signs and devices shall be used to direct traffic where necessary within a parking lot.

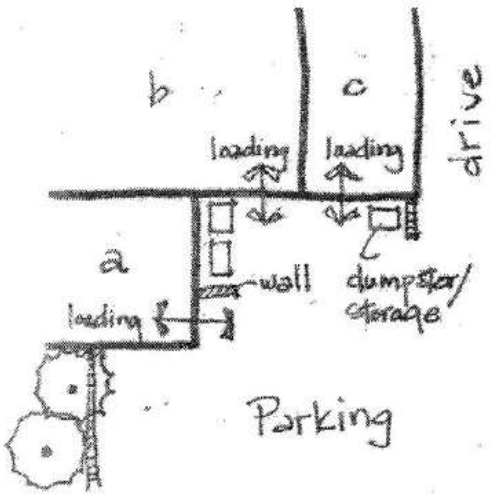
(17) Access drives to the parking lot shall be readily observable to the first time visitor.

(18) Parking lot entrances, the ends of parking aisles and the location and pattern of primary internal access drives should be well marked by signs or landscaped islands with raised curbs.

(19) Parking spaces shall be marked and maintained on the pavement and any other directional markings or signs shall be installed as permitted or required by the Town to ensure the approved utilization of space, direction of traffic flow and general safety.

(20) All off-street parking spaces shall be unobstructed and free of other uses.

(21) The layout should specifically address the interrelation of pedestrian and vehicular circulation and provide specific treatment at points of conflict, such as signs, painted crosswalks and raised pedestrian walks or landings.



(22) Loading and unloading facilities shall be located in the rear or side of buildings and shall be screened from public view.

(23) Storage and refuse containers must be screened with impervious fencing or plantings and shall not front on to any street. Refuse storage and pickup areas shall be combined with other service and loading areas.

(24) Vehicular ingress and egress to public major or minor arterials and collector streets from off-street parking shall be so combined, limited, located, designed and controlled with flared and/or channeled intersections as to direct traffic to and from such public right-of-way conveniently, safely and in a manner which minimizes traffic friction and promotes free traffic flow on the streets without excessive interruption. Access shall be unobstructed and direct.

(c) Lighting Requirements for Parking Lots. All off-street parking lots shall provide adequate lighting. Lighting shall conform to the following standards.

(1) Light sources shall be concealed and fully shielded and shall feature sharp cut-off capability so as to minimize up-light, spill-light, glare and unnecessary diffusion on adjacent property. All lighting fixtures shall meet the IES requirement for a full cut-off fixture.

(2) Neither the direct nor the reflected light from any light source may create a traffic hazard to operators of motor vehicles on public roads. No colored lights may be used in such a way as to be confused or construed as traffic control devices. Background spaces, such as parking lots and circulation drives, shall be illuminated to be as unobtrusively as possible to meet the functional needs of safe circulation and of protecting people and property.

(3) The style of light standards and fixtures shall be consistent with the style and character of architecture proposed on the site. Poles shall be anodized or coated to minimize glare from the light source.

(4) Maximum on-site lighting levels shall not exceed ten (10) foot-candles, except for loading and unloading platforms where the maximum lighting level shall be twenty (20) foot-candles.

(5) Light levels measured twenty (20) feet beyond the property line of the development site (adjacent to residential uses or public rights-of-way) shall not exceed one-tenth (0.1) foot-candle as a direct result of the on-site lighting.

(6) All lights used to illuminate parking spaces, driveways or maneuvering areas shall be so designed, arranged and screened so to minimize light spillage on adjoining lots or streets.

(7) All lighting fixtures, including security lighting facilities, shall be directed away from adjacent residential uses and public streets and shall not be of an intensity which unreasonably disturbs adjacent residential users or users of public streets and shall not be installed above a maximum height of twenty-five (25) feet.

(d) Sidewalks. Sidewalks in parking areas can be no less than four (4) feet in width.

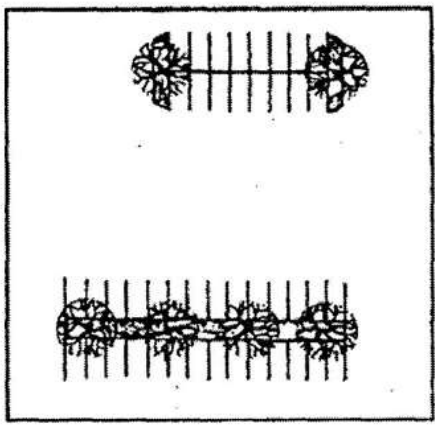
(e) Parking Lot Landscaping.

(1) Minimum landscaped area for any parking lot accommodating ten (10) or more spaces: fifteen percent (15%), of which at least ten (10) feet in depth must be placed along the front edge of the public right-of-way. On corner lots, landscaping of at least ten (10) feet in depth must be placed on both public rights-of-way.

(2) All parking lots shall be landscaped with indigenous vegetation and include both trees and shrubs. The pedestrian crossings shall be clearly differentiated from the rest of the parking surface. A minimum of five percent (5%) of the interior area of a parking lot accommodating ten (10) or more spaces must be planted. The interior of a parking lot is considered to be the traffic islands and areas around the actual parking spaces; it does not include the required perimeter treatment.

(3) Parking lots shall be screened from adjacent uses and from the street. Screening from residential uses including the street between a nonresidential use and residential use shall consist of a fence or wall six (6) feet in height in combination with plant material and of sufficient opacity to block at least seventy-five percent (75%) of light from vehicle headlights.

(4) Landscaped areas within parking lot interiors shall be located in such a manner as to divide and break up the expanse of paving. There shall be no more than fifteen (15) parking spaces in a continuous row on one (1) side without being broken by a landscape island. Landscaping aisles, which have parking on both sides, may be permitted as an alternative to individual landscape islands as long as no more than fifty percent (50%) of the required islands and the equivalent area of said islands are incorporated into landscaping aisles.



(5) Landscaping shall be designed to meet the minimum sight triangle visibility requirements.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-3-60. Fences, berms and sound walls in the large lot rural residential zone district.

(a) Permits.

(1) A permit is required prior to construction of fences, berms or sound walls except for fences, berms and sound walls exempt per this chapter.

(2) All fences, berms and sound walls must be located entirely within the property boundaries. It is the responsibility of the homeowner to verily the property lines, rights-of-way, drainageways and easements on the subject property.

(3) Whenever an exception to any term of this article is sought for a fence, berm or sound wall the applicant shall seek a variance in accordance with Section 16-5-70 of this chapter.

(b) Fences. Fences are permitted on lots in the Large Lot Rural Residential Zone District subject to compliance with the following regulations:

(1) Application Submittal Requirements:

a. Application form and fee as set in the Fee Schedule Resolution.

b. Copy or sketch of a concept site plan, Improvement Location Certificate (ILC) or survey showing property boundaries (property lines), rights-of-way, drainageways, easements and the proposed location of the fence on the property. It is the responsibility of the Applicant to verify all locations of property lines, rights-of-way, drainageways and easements when applying for a fence permit

c. Fences that are in drainageways and privacy fences within fifty (50) feet of any property line must be approved by the Town Engineer.

d. Construction must commence within one hundred eighty (180) days of permit issuance and must not cease for periods of one hundred eighty (180) continuous days or the permit will be voided.

e. Fences exempt from permits:

i. Moveable or temporary riding rings.

ii. Fences constructed of netting, chicken wire and similar light-weight material, for the purpose of protecting vegetation and gardens from wildlife.

iii. Construction fences, for the duration of an approved building or overlot grading permit.

iv. Wire attached to the inside of a permitted open fence provided that the wire material used does not cause the fence to become less than seventy percent (70%) open.

(2) Height.

a. No fence, including fences around swimming pools, shall exceed six (6) feet in height, except as provided in subsection (c) below.

b. Height shall be measured as the vertical distance from existing grade, or the grade of an approved overlot grading plan to the top of the fence. Columns shall not be included in determining the height of the fence so long as the height of the column is not more than two (2) feet greater that the applicable height limitations for the fence. Where fences and berms are constructed one (1) upon the other, the height of the fence and berm shall be the sum of the individual parts.

c. Open fences used to enclose the immediate area of a tennis or sports court may not exceed ten (10) feet in height.

(3) Construction in Drainageways. Installation of fences will be allowed in drainageways only if such structures do not impede the flow of drainage in the drainageway and are constructed to minimize the collection of debris that could block the drainage flows.

(4) Standards for Residential Fences.

a. In order to preserve the Town's open views, any fences located within fifty (50) feet of the closest edge of a Town right-of-way shall be constructed as open fences (seventy percent [70%] or more open).

b. The use of chain-link shall not be permitted within fifty (50) feet of a Town right-of-way.

c. The use of barbed wire fences shall not be permitted. Fences shall be constructed of materials designed or specified to be used for such purpose.

(5) Nonconforming Fences. Any fence legally in existence at the time of the creation of this section that does not fully comply with the requirements of this section shall be considered legally nonconforming and may remain in place until such time as the fence is enlarged, expanded or modified or requires repair of more than fifty percent (50%) of the linear feet of the nonconforming fence. All nonconforming fences are subject to the requirements for nonconforming structures.

(c) Berms. Berms are permitted on lots in the Large Lot Rural Residential Zone District, subject to compliance with the following regulations:

(1) Application Submittal Requirements.

a. Application form and fee as set in the Fee Schedule Resolution.

b. Copy or sketch of a concept site plan, improvement location certificate (ILC) or survey showing property boundaries (property lines), rights-of-way, drainageways, easements and the proposed location of the berm on the property. It is the responsibility of the applicant to verify all locations of property lines, rights-of-way, drainageways and easements when applying for a berm permit.

c. The width, height and length of the proposed berm(s) along all points of the proposed berm(s);

d. A description of any potential modification or redirection of the preconstruction or historic surface drainage patterns as a result of the proposed berm(s).

e. Proposed berms must be approved by the Town Engineer and applicant must comply with the escrow deposit requirements of subsection 16-5-100(b) of this chapter.

f. A berm permit shall be valid for ninety (90) days following the date the permit is issued. All of the work on the site authorized by such permit shall be completed within ninety (90) days of the date of issuance thereof; thereafter, said berm permit shall expire and be deemed cancelled. An extension of up to sixty (60) days may be granted by the Town. If any berm is not completed within the time herein provided, a new permit will be required to complete the work. If a new permit is not obtained, the property shall be restored to its preconstruction grade within ninety (90) days after expiration of the permit. The Town shall have any and all remedies available to it under section 16-3-6(c)(5) of this Code in the event any condition of this permit is violated or not complied with

g. Berms exempt from permits:

1. Berms not exceeding eighteen (18) inches in height from the existing grade and not more than twelve (12) square yards in area shall not require a permit, but such berms shall comply with subsections (3) and (4) below.
2. Berms that will be constructed pursuant to an overlot grading plan that is approved as of the date construction of the berm commences.

(2) Height. Berms shall not exceed four (4) feet in height as measured from existing grade, or if the berm is adjacent to a public street, from the grade of the centerline of the adjacent public street, whichever is less.

(3) Construction in Drainageways. Installation of berms will be allowed in drainageways throughout the Town only if such berms do not impede the flow of drainage in the drainageway and are constructed to minimize the collection of debris that could block the drainage flows.

(4) Standards for Residential Berms.

a. Berms shall have a maximum side slope of 3:1.

b. Tops of berms shall have a minimum width of three (3) feet at the crown.

c. Berms shall undulate or otherwise be designed with naturalistic contouring. Berms shall connect into existing grades at their perimeter to ensure that berms appear natural.

d. Berms shall be landscaped, at a minimum, with native grasses and/or native landscaping. Such landscaping must be installed within ninety (90) days of completion of the final grading.

e. Berms must be mowed or maintained according to Town regulations.

f. Berms must be located entirely within property lines.

g. Berms shall not be designed to collect, redirect or release surface water upon adjacent property in a manner inconsistent with the historic or preconstruction conditions or applicable law without the written consent of the adjacent landowner.

h. Berms shall be prohibited within the sight triangle or any intersection.

i. During construction of the berm and until all landscaping is completed, appropriate erosion control is required.

(5) In addition to any other remedy or penalty for violation of this section as provided in article 4 of chapter 1 or section 16-1-100, the Town may require immediate removal of any berm constructed contrary to this section and reimbursement to the Town of any costs associated with such action.

(6) Nonconforming Berms. Any berm legally in existence at the time of the creation of this section that does not fully comply with the requirements of this section shall be considered legally nonconforming and may remain in place until such time as the berm is enlarged, expanded or modified or requires repair of more than fifty percent (50%) of the linear feet of the nonconforming berm. All non-conforming berms must comply with the requirements of subsections 16-3-60(c)(4)(4) and 16-3-60(c)(4)(5) above. All nonconforming berms are subject to the requirements for nonconforming structures.

(d) Sound Walls. Sounds walls are permitted on residential lots located adjacent to property zoned commercial and adjacent to Arapahoe Road, Parker Road and South Lewiston Way, to screen views and to block road noise, subject to the following conditions:

(1) Application Submittal Requirements.

a. Application form.

b. Copy or sketch of a concept site plan, improvement location certificate (ILC) or survey showing property boundaries (property lines), rights-of-way, drainageways, easements and the proposed location of the sound wall on the property. It is the responsibility of the applicant to verify all locations of property lines, rights-of-way, drainageways and easements when applying for a sound wall permit.

c. A drawing and written description depicting the height, dimensions and materials to be used in constructing the sound wall.

d. Sound Walls must be approved by the Town Engineer.

e. Construction must commence within one hundred eighty (180) days of the permit issuance and must not cease for periods of one hundred eight (180) continuous days or the permit will be voided.

(2) Height.

a. A sound wait shall have a minimum height of eight (8) feet and shall not exceed a maximum height of twenty (20) feet.

b. Height shall be measured as the vertical distance from existing grade of the road which the noise is coming from, or the grade of an approved overlot grading plan to the top of the sound wall. Where sound walls and berms are constructed one upon the other, the height of such sound walls and berms shall be measured as the sum of the individual units.

(3) Standards for Residential Sound Walls.

a. Sound walls for sight or sound mitigation may be located adjacent to, or along the perimeter, of property lines along Arapahoe Road, Parker Road and South Lewiston Way, or a commercial development provided that the structure is located entirely within property lines.

b. Sound walls may be constructed of wood, brick, stone, earth berms, concrete, or masonry material and should be constructed such that there are no gaps or holes in a manner consistent with CDOT sound wall construction standards.

c. Berms constructed for sound mitigation shall also comply with the following standards for berms:

i. Berms shall undulate or otherwise be designed with naturalistic contouring. Berms shall connect into existing grades at their perimeter to ensure that berms appear natural.

ii. Berms shall be landscaped, at a minimum, with native grasses and/or native landscaping. Such landscaping must be installed within ninety (90) days of completion of the final grading.

iii. Berms must be mowed or maintained according to Town regulations.

iv. Berms must be located entirely within property lines.

v. Berms shall not be designed to collect, redirect or release surface water upon adjacent property in a manner inconsistent with the historic or preconstruction conditions or applicable law without the written consent of the adjacent landowner.

vi. Berms shall be prohibited within the sight triangle or any intersection.

vii. During construction of the berm and until all landscaping is completed, appropriate erosion control is required.

(4) Nonconforming Sound Walls. Any sound wall legally in existence at the time of the creation of this Section that does not fully comply with the requirements of this Section shall be considered legally nonconforming and may remain in place until such time as the sound wall is enlarged, expanded or modified or requires repair of more than fifty percent (50%) of the linear feet of the nonconforming sound wall. All nonconforming sound walls are subject to the requirements for nonconforming structures.

(Ord. 03 §1, 2016; Ord. 02 §§1, 2, 2018)

Editor's note(s)—Ord. 03 , § 1, adopted July 7, 2016, repealed the former § 16-3-60, and enacted a new section as set out herein. The former § 16-3-60 pertained to similar subject matter and derived from Ord. 5, § 1, adopted in 2009; and Ord. 1, § 1, adopted in 2012.

Sec. 16-3-70. Screening, fences and walls in nonresidential areas.

(a) Comprehensive Site Plan. A comprehensive site plan for screening, fencing and walls shall be required for all nonresidential developments. This plan shall illustrate how screening, fencing and walls achieve the standards set forth below and shall identify privately provided maintenance responsibilities. Plans submitted for review shall include a graphic depiction of the screening, fence and/or wall as seen from the street or public open space. This plan shall be approved by the Town Planner as part of the site development plan review process.

(b) Nonresidential Screening, Fence and Wall Standards.

(1) Fences or walls shall be constructed of materials similar to or compatible with and complementary to, the primary building material and architecture. Fences shall receive the same architectural treatment on both sides.

(2) Chain-link fences are prohibited in any nonresidential area.

(3) Fences or walls along public streets and public open spaces shall provide visual breaks or architectural treatments every thirty (30) feet. These treatments include columns, planting areas, open fencing sections or others that meet the intent of this Section.

(4) Ancillary structures and service areas, such as trash enclosures and utility enclosures, shall be enclosed on three (3) sides with a solid gate on the access side.

(5) Loading docks shall be screened from view from neighboring properties and the public right-of-way.

(6) Screening standards can be met in a number of ways, including but not limited to garden walls, retaining walls, wooden fences, earthen berms, constructed planters, dense hedges or a combination of these identified strategies.

(7) Plant material used for screening shall achieve required screening in its winter seasonal condition within three (3) years of completion of the construction of the area to be screened.

(8) Fences adjacent to designated public open spaces, gulches and detention facilities shall be a minimum of seventy percent (70%) open. No solid walls are permitted. All fences adjacent to public open spaces and detention facilities shall be of similar style and materials the entire length of the open space or detention facility.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-3-80. Lighting standards.

(a) Purpose of Lighting Standards. All new development shall utilize lighting techniques that minimize the impact of lighting on the night sky. Exterior lighting shall be used for purposes of identification, security and safety and illumination in areas of pedestrian circulation and vehicular traffic. These standards apply to all development within the Town. The purposes of the lighting standards are as follows.

(1) Promote safety and security.

(2) Reduce the escalation of nighttime light pollution.

(3) Reduce glaring and offensive light sources.

(4) Provide clear guidance to builders and developers.

(5) Encourage the use of improved technologies for lighting.

(6) Conserve energy.

(7) Prevent inappropriate and poorly designed or installed exterior lighting.

(8) Minimize interference with use or enjoyment of property through unnecessary nighttime illumination and the loss of scenic night sky views due to increased urban sky-glow.

(b) General Standards.

(1) Neither the direct nor reflected light from any light source may create a traffic hazard to operators of motor vehicles on public roads, nor may colored lights be used in such a way as to be confused or construed as traffic control devices. Background spaces, such as parking lots and circulation drives, shall be illuminated to be as unobtrusive as reasonably possible while meeting the functional needs of safe circulation and of protecting people and property.

(2) Light sources must minimize contrast with the light produced by surrounding uses and must produce an unobtrusive degree of brightness in both illumination levels and color rendition. The light source must be a white or pale yellow color. Colored lights are not allowed, except for seasonal ornamental lighting.

(3) Light sources shall be downcast, concealed and shielded and shall feature sharp cut-off capability to minimize up-lighting, spill-lighting, glare and unnecessary diffusion onto adjacent property.

(4) Except as otherwise allowed herein, all lighting (including but not limited to street, parking lot, security, walkway and building) shall conform with the Illuminating Engineers Society (IES) criteria for true cut-off fixtures (ninety percent [90%] of fixture light out-put within the 0—60° range from vertical). If the bulb position within a fixture is vertical, all lights must be retrofitted with shielding in a manner such that the light conforms to IES criteria for true cut-off fixtures as defined herein. Any or all of the following may be required:

a. A high socket mount.

b. A translucent fixture lens.

c. An opaque coating or shield on a portion of the perimeter of the lens.

d. Other industry-accepted measures to ensure that the fixture IES.

e. Classification as a true cut-off is not compromised.

f. No casting of light outside the property boundary.

(5) Maximum on-site lighting levels shall not exceed ten (10) foot-candles, except for loading and unloading platforms. For reasons of security, a maximum of one and one-half (1.5) foot-candles at entrances, stairways and loading docks is permitted unless required by any federal, state or local jurisdiction.

(6) All lights, except for those required for security as provided herein, must be extinguished within one (1) hour after the end of business hours and remain extinguished until one (1) hour prior to the commencement of business hours. Lights installed for the purpose of outdoor activities must be extinguished between the hours of 10:00 p.m. and 7:00 a.m. the following day.

(7) Light levels measured at twenty (20) feet beyond the property line of the development site onto adjacent residential uses or public rights-of-way shall not exceed one-tenth (0.1) foot-candle as a direct result of on-site lighting.

(8) Blinking, flashing or changing intensity lights shall be prohibited, except for temporary holiday displays or lighting required by the FAA for air traffic control and warning purposes.

(9) Linear lighting (including but not limited to neon and fluorescent lighting) primarily intended as an architectural highlight to attract attention or used as a means of identification is prohibited.

(10) Up-lighting is prohibited except for the up-lighting of flags within nonresidential projects and with a limit of two (2) fixtures per flagpole with a maximum of one hundred fifty (150) watts each. The fixtures must be shielded as required by Paragraph 16-3-100(j)(7) of this Article.

(11) Lighting of any sign shall be permitted subject to the following criteria:

a. Light sources shall be concealed and unobtrusive.

b. Lighting shall be limited to the identification marker (sign) and not used to illuminate landscaping.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §5, 2014)

Sec. 16-3-90. Landscape standards for nonresidential uses and planned developments.

(a) Calculation of Landscaped Area. Nonresidential developments and Planned Developments shall dedicate the required open space as specified in Article 2 of this Chapter. The required gross land area for open space, parks and trails may include one (1) or more of the following:

(1) Parks;

(2) Open spaces;

(3) Pathways, including sidewalks and bicycle paths, that are separate and distinct from any parking area or lot;

(4) Landscaped areas, including buffers and berms, to separate dissimilar uses;

(5) Public or private outdoor seating areas;

(6) Plazas:

(7) Courtyards; and

(8) Play areas.

(b) Required Buffers.

(1) A buffer consisting of landscape materials, fences, walls, berms or a combination of these techniques is required for all nonresidential uses abutting a residential lot or residential street.

(2) The required buffer between a residential lot or residential street and all nonresidential structures shall be at least twenty (20) feet. Additional standards may also apply as outlined in Section 16-3-130 below.

(3) Buffers between a residential lot or residential street and all nonresidential structures shall be landscaped by providing trees of at least two-and-one-half-inch caliber, spaced no further apart than thirty-five (35) feet on center, at a ratio of one (1) tree and five (5) shrubs for every seven hundred fifty (750) square feet of buffer area or one (1) tree and five (5) shrubs for each thirty (30) linear feet of buffer, whichever is greater.

(4) All service areas or mechanical equipment areas shall be fenced or screened from view.

(5) Buffers may be interrupted for necessary pedestrian and vehicle access.

(c) General Landscape Standards.

(1) Required landscape areas shall be covered with live, irrigated, lower water-consuming groundcover over at least seventy-five percent (75%) of the landscaped area. Pedestrian walks and other hardscape landscape features (excluding parking spaces and drives) may comprise up to twenty-five percent (25%) of the landscaped area. No large open mulch or bare soil areas are allowed.

(2) Plantings shall be located to preserve and enhance the use of the site and complement the open space. Landscape plantings shall be located in front of walls or fences to maximize the intent of the screening and buffering.

(3) Landscaping of the adjacent local street right-of-way may be included in meeting the landscape area requirement for individual lots if the property owner improves and maintains it.

(4) Landscaping in buffers may count toward the total landscaping/open space requirement.

(5) Minimum requirements for plant materials:

a. Overall, landscaped areas shall contain a minimum of two (2) trees and four (4) shrubs per seven hundred fifty (750) square feet of landscaped area, plus one (1) additional tree for every fifty (50) feet of parking lot frontage along a public or private street; and these additional trees must be placed along the street frontage. Each island must contain a minimum of one (1) tree and four (4) shrubs. One (1) additional tree may be substituted for each four (4) shrubs required herein.

b. At least fifty percent (50%) of the trees shall be overstory/shade deciduous species and twenty-five percent (25%) of the trees shall be coniferous species, except in the required buffer area, which may be any combination of species.

c. Minimum size of trees and shrubs shall be as required in Table 1:

TABLE 1

Size and Type of Plant	Minimum Allowable Plant Size for New Landscaping
Ornamental trees	2-inch caliper
Deciduous trees	1.5-inch caliper
Evergreen trees	6 feet tall
Shrubs	5-gallon container

(6) Grading of landscape areas shall not exceed slopes greater than 4:1 where mowing is required; 6:1 for common open space and pocket park areas; and 3:1 where shrub beds or native grasses are provided.

Sec. 16-3-100. Sign standards.

(a) Purpose and Intent. The purpose of this Section is to establish regulations for the systematic control of signs and advertising displays within the Town. The intent is to protect and promote the general health, safety and welfare of the public. It is also the intent to aid and assist in the safe and aesthetic development and promotion of business. This can be accomplished by providing standards, which allow signs and advertising displays that are compatible with their surroundings.

(b) Scope.

(1) To establish a permit system to allow a variety of types of signs in commercial and residential zones.

(2) To allow certain signs that are small, unobtrusive and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this Chapter, but without a requirement for permits.

(3) To provide for temporary signs without commercial messages in limited circumstances.

(4) To encourage signs which are compatible with adjacent land uses.

(5) To provide for the enforcement of the provisions of this Chapter.

(c) General Provisions.

(1) The provisions of this Section shall apply to the display, construction, erection, alteration, use, location and maintenance of all signs within the Town.

(2) All signs located within the limits of the Town shall be required to comply with all applicable requirements for zoning districts in which the sign is located, unless otherwise provided for in this Section.

(3) Signs and sign structures shall be maintained at all times in a state of good repair and free from deterioration, insect infestation, rot, rust or loosening.

(4) Signs shall be constructed so that they are able to withstand the maximum wind pressure for the area in which they are located.

(5) The Town shall have the authority to order the repair, alteration or removal of a sign that constitutes a hazard to life or property or that does not comply with the requirements of this Section.

(d) Exempt Signs. The following signs are exempt from the requirements of this Section and do not require a sign permit.

(1) All signs erected by the Town.

(2) Bus shelters, but not including the benches within said shelters, erected by or on behalf of the Town.

(3) Official governmental notices and notices posted by governmental officers in the performance of their duties.

(4) Temporary or permanent signs erected by public utility companies, transit authorities or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices.

(5) Signs required or specifically authorized for a public purpose by any law, statute or ordinance. No such sign shall be placed in the public right-of-way unless specifically authorized or required by law, statute or ordinance.

(6) Public signs: Signs required or specifically authorized for public purpose by any law, statute or ordinance, which may be of any type, number, area, height above grade, location, illumination or animation, authorized by the law, statute or ordinance under which the signs are erected. Signs of danger or of a cautionary nature are limited to wall and ground signs; no more than two (2) per street front; no more than four (4) square feet per sign in area; and no more than ten (10) feet in height above grade. These signs may be illuminated but only from a concealed light source which does not flash, blink, chase or fluctuate; and signs which are not animated.

(7) Private traffic control signs, including directional signs and signs relating to a hazardous area or construction zone that conform to the standards of the Colorado Manual of Uniform Traffic Control Devices. These signs must be place within the established road right-of-way.

(8) Small signs not exceeding six (6) square feet that do not contain any advertising which are displayed for the direction, information or convenience of the public, including signs that identify hours of operation, rest rooms, location of public telephones and parking entrances.

(9) Memorial signs and plaques: Memorial signs, plaques, tablets, names of buildings and date of erection when cut into any masonry surface or inlaid so as to be part of the building when constructed of bronze or other noncombustible material.

(10) Signs in the display window: Signs in the display window of a business use which are incorporated with a display of merchandise or a display relating to services offered which do not exceed four (4) square feet in area.

(11) Professional: Nameplate signs not more than two (2) square feet in area which are fastened directly to the nonresidential building and do not project more than six (6) inches beyond the property line.

(12) Signs within buildings: Any sign placed inside a building may be erected without requiring a permit if not visible from a public street or sidewalk.

(13) Environmental signs, including but not limited to wildlife, wildfire, environmental, wetlands, conservation area and riparian area identification signs.

(14) Flags of any nation or government, whether in a residential, nonresidential or Planned Development District as further regulated in Paragraph (j)(7) of this Section.

(15) Any event signs for events lasting less than twenty-four (24) hours, including but not limited to garage sales, weddings, gatherings, etc. Temporary signs announcing a campaign, drive or event of a civic, philanthropic, educational or religious organization, provided that these event signs are not displayed for more than fourteen (14) days and do not exceed sixteen (16) square feet in total sign area.

(16) Holiday displays installed no earlier than two (2) weeks prior to the holiday and removed within two (2) weeks following the holiday, except that lighting erected in connection with the observation of Christmas, Hanukkah or Kwanza may be installed no earlier than Thanksgiving of the same year.

(17) Construction signs. One (1) temporary construction sign advertising a new development, construction or other new improvement of a property denoting architectural, engineering or construction firms engaged in work, shall be permitted. Such sign shall be limited to ground or wall signs; shall not exceed thirty-two (32) square feet per face or ten (10) feet in height. The temporary sign shall be removed upon issuance of a certificate of occupancy.

(18) Real estate signs subject to the provisions in each zone district.

(19) Political signs subject to the provisions in each zone district.

(e) Sign Permits.

(1) All requests for sign permits shall be submitted to the Town with a completed application form.

(2) A sign permit deposit shall be collected by the Town at the time the permit request is submitted.

(3) All requests for signage shall be accompanied by a drawing, fully dimensioned, showing the sign construction specifications, color, method and intensity of illumination, message and site plan showing the location, setback, height and sign area of all proposed and existing signage. If the sign is to be placed on an existing building in a nonresidential zone district or within a Planned Development District, a photo simulation of the sign on the wall on which it is to be placed shall be included. If the sign is a freestanding or monument sign in a nonresidential zone district or within a Planned Development District, a stamped structural drawing of the proposed sign shall be included.

(4) Prior to approval by the Town, the Town Planner shall review all permanent (non-temporary) sign permit requests.

(5) The Town Planner shall have the authority to approve, deny or make recommendations or conditions on any sign permit application. Any decision or recommendation made by the Town Planner may be appealed upon request of the applicant to the Board of Trustees.

(6) Following approval by the Town, the sign owner or sign contractor shall apply to the Town for a building permit, which permit must be issued prior to placement of the signs on the property.

(7) The expiration date for such permits shall be specified in each permit and, with respect to installation of signs, shall not exceed one hundred eighty (180) days and shall be issued in conjunction with building permits.

(f) Sign Measurement.

(1) Sign area. The area of a sign shall be measured as follows:

a. The measured area of a sign shall be the entire area within a single continuous perimeter of not more than eight (8) straight lines enclosing the extreme limits of a writing, representation, emblem or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate a sign designed with more than one (1) exterior surface.

b. The supports, structure or bracing of a sign shall be omitted from measurement unless such supports, structure or bracing are part of the message or face of the sign or form an integral background of the display.

c. The area of all faces shall be included in determining the total area of a sign.

d. Corporate logos, color schemes, trademark identities and themes shall be included in calculations of sign area.

e. The building footprint on the approved site plan shall be used to calculate wall sign area allowances on each building. Only one (1) floor level shall be used.

(2) Setbacks. For the purpose of determining setback distances, measurements shall be taken from the edge or surface of the sign or sign structure, which is closest to the street, right-of-way, district line or property line from which the sign is to be setback.

a. Freestanding signs in nonresidential zoning districts up to and including signs six (6) feet in height above ground level shall be set back ten (10) feet from any property line adjacent to a street.

b. Signs exceeding six (6) feet in height above ground level shall be set back a minimum of twenty (20) feet from any property line adjacent to a street.

c. Signs in a nonresidential zoning district or Planned Development District shall be located not less than twenty (20) feet from any adjacent residential zoning district line.

d. Signs on corner lots or at the intersection of any driveway, parking lot, entrance or exit with any street shall be regulated such that no sign exceeding a height of three (3) feet above ground level shall be erected within the sight triangle established for said property.

(3) Height.

a. Wall signs. For the purpose of determining the height of any wall sign, height shall be measured from the average finished grade elevation along the building frontage to the highest point of the sign. No portion of a sign may exceed the height of the wall to which it is attached nor extend over windows.

b. Freestanding signs. For the purpose of determining the height of any freestanding sign, measurement of the vertical distance from the elevation of the nearest public sidewalk or paved street within twenty-five (25) feet or, if there is not a public sidewalk or paved street within twenty-five (25) feet, from the lowest point of the finished grade on the lot upon which the sign is located and within twenty-five (25) feet of the sign, to the uppermost point on the sign or sign structure. No freestanding sign shall exceed fifteen (15) feet in height.

(g) Prohibited Signs. To protect the health, safety and welfare of the people of the Town, to minimize traffic hazard and distraction and to promote the community appearance, the following signs shall be prohibited in the Town unless the specific use is provided for in this Chapter.

(1) Any sign which in any way obstructs the view of, may be confused with or purports to be an official traffic sign, signal or device or any other official sign.

(2) Any sign which creates in any way an unsafe distraction for motor vehicle operators.

(3) Any sign which obstructs the view of motor vehicle operators entering a public roadway from any parking area, service drive, private driveway, alley or other thoroughfare.

(4) Any sign which is located in a street intersection sight triangle and exceeds three (3) feet in height.

(5) Any sign which obstructs free ingress to or egress from a required door, window, fire escape or other required exit way.

(6) Any sign which is structurally unsafe; constitutes a hazard to safety or health; is not kept in good repair; is capable of causing electrical shocks to persons likely to come in contact with it; or does not conform to the design, structural and material standards for signs as adopted by the Town.

(7) Any sign located within utility easements, on public property or public rights-of-way, unless the use is specifically provided for in Section 16-3-20 of this Chapter.

(8) Signs painted or affixed to benches.

(9) Signs mounted, attached or painted on motor vehicles, trailers or boats when used as additional advertising on or near the premises and not used in conducting a business or service on the premises.

(10) Portable signs, except those required for traffic control and sandwich boards and A-frame signs unless located on a sidewalk of sufficient width so as not to block pedestrian circulation.

(11) Roof signs.

(12) Electronic message center signs unless approved as part of a planned sign program.

(13) Animated signs.

(14) Flashing signs.

(15) Revolving beacons and searchlights.

(16) Strings of light bulbs used in connection with commercial premises for commercial purposes, other than traditional holiday decorations used in compliance with these regulations.

(17) Exposed neon tubing or signs unless approved as part of a planned sign program.

(18) Signs, other than flags, designed or allowed to wave, flap or rotate with the wind.

(19) Any sign emitting sound.

(20) Signs with more than two (2) faces.

(21) Off-premises signs.

(22) Commercial billboards.

(23) Signs announcing a proposed use or land development prior to approval of the proposed use on that property by the Town.

(h) Signs in Residential Districts. In general, small, unobtrusive signs, bearing no commercial or off-premises content and which are relevant to the lives of the residents are permitted in the RR (Large Lot Rural Residential) Zoning District. Permanent signs in any Planned Development Zoning District shall require an approved planned sign program. Signs on residential lots shall adhere to the following design standards:

(1) Signs and sign structures that incorporate a foundation, footer or illumination require a permit.

(2) Illuminated signs and sign structures and flagpoles shall be regulated according to the requirements of Section 16-3-80 of this Chapter.

(3) The following specific sign types shall be regulated as follows in residential zoning districts:

a. Individual residential lot sales. One (1) unlighted real estate sign per street frontage advertising the sale, rental or lease of the premises on which it is maintained; not to exceed four (4) square feet per sign face and not over three (3) feet high. Such sign shall be removed within seven (7) days after the sale, lease or rental.

b. Multiple residential lot sales. One (1) unlighted real estate sign per major street frontage advertising the sale, rental or lease of the premises on which it is maintained; not to exceed sixteen (16) square feet per sign face and not over five (5) feet high. Such sign shall be set back ten (10) feet from the property line and removed within seven (7) days after the sale, lease or rental.

c. "For Sale," "Garage Sale" and "Yard Sale" signs shall only be used to advertise commodities or objects that are owned by a resident of the Town. "Estate Sale" signs shall only be used to advertise commodities or objects that were owned by the occupant of the residence at which the sale is held, at the time of the person's death. All such signs shall be displayed according to the requirements of all applicable Town ordinances.

d. Political signs erected on private property with the permission of the property owner, in connection with proposition elections or political campaigns or elections, shall not exceed four (4) square feet in surface area per face or three (3) feet in height. Signs may be displayed for a period of one hundred twenty (120) days, beginning no sooner than ninety (90) days prior to the date of the election or the commencement of early voting. The person or organization responsible for the erection or distribution of any election signs or the owners of the property on which such signs are located shall remove such signs within three (3) days following the election or conclusion of the campaign.

(i) Signs in the Right-of-Way. Signs in the right-of-way of residential zones shall be regulated as follows. No signs are allowed within the right-of-way in any nonresidential zone district or PD District. Temporary signs are permitted in the right-of-way in residential zones at the discretion of the Town, provided that they comply with all of the following standards:

(1) Such sign does not exceed two (2) square feet in area per face and the top of the sign is no more than three (3) feet above the ground.

(2) No person shall construct or cause to be constructed a sign or sign structure in the right-of-way, which would not easily break away if hit by a vehicle or otherwise creates a potentially hazardous roadside obstacle.

(3) All temporary signs shall be located at least ten (10) feet from a paved street or trail.

(4) No sign except for political signs and "House for Sale" signs shall remain in the right-of-way for more than one (1) week.

(5) No sign shall advertise or direct attention to a business, commodity, service or activity regardless of whether it is conducted, sold or offered in the Town, except that it may advertise a specific house for sale, open house, garage, yard or estate sale located in the Town. Both the sign and related activity shall comply with all applicable sections of this Section.

(6) Signs which do not violate any other provision of this Section may be used to direct traffic to a property within the Town; however, the number of signs shall not exceed the minimum number needed to direct traffic to the property and shall be limited to one (1) sign per entry and one (1) sign per intersection.

(7) The person or organization responsible for the erection or distribution of any sign in the right-of-way shall be responsible for removing such sign. The removal of garage, estate and yard sale signs shall be regulated by this Section. Political signs shall be removed within three (3) days following the election or termination of the campaign. All other signs shall be removed immediately following the conclusion of the event or activity to which they are related.

(j) Signs in All Nonresidential Zone Districts and Planned Development Districts. All signs in a nonresidential zone district or Planned Development District require a sign permit and shall be regulated as follows:

(1) Freestanding signs. All freestanding signs shall be ground or monument signs. The sign panel or backing shall be a maximum of six (6) feet high by ten (10) feet long; shall not exceed eight (8) feet in height above finished grade; and must be located within the complex or area or an adjacent road right-of-way. All text must fit within a twenty-four-square-foot rectangle. All ground or monument signs are also required to meet the following requirements:

a. Commercial centers with a floor area of at least fifteen thousand (15,000) square feet of gross leasable floor area shall be permitted one (1) identification monument sign that identifies the center. The maximum size of the sign is the same as for any freestanding sign. A portion of the

sign area may be used as a directory to identify individual businesses within the center, provided that a minimum of twenty-five percent (25%) of the area of said sign serves as identification of the center. The sign area of said sign shall not be counted as a portion of the total aggregate sign area allowed for single uses in a center. When a directory sign is incorporated into the identification sign, consideration should be given to allow space for uses with limited street frontage or visibility over those with high visibility.

b. Commercial centers with less than fifteen thousand (15,000) square feet of gross leasable floor area shall be permitted one (1) identification monument sign identifying the individual uses within the center, provided that a minimum of twenty-five percent (25%) of the area of said sign serves as identification of the center, the sign does not exceed six (6) feet in height above ground level, the total sign area does not exceed one hundred (100) square feet and no sign face exceeds fifty (50) square feet. The sign area of such sign shall not be counted as a portion of the total aggregate sign area allowed for the uses in a center.

c. A single use or business, not part of a center, shall be permitted one (1) identification monument sign, provided that the sign shall not extend more than six (6) feet in height above ground level, the total sign area does not exceed sixty (60) square feet and no sign face exceeds thirty (30) square feet.

d. All ground or monument signs shall be located in a landscaped area which is of a shape, design and size (equal to at least twice the total sign area of all faces) that will provide a compatible setting for the sign. The landscaped area shall be maintained on a reasonable and regular basis.

e. All ground or monument signs shall match the architectural style, character, materials, color and detail of the building or center they advertise. Ground or monument signs shall indicate the address or address range for the use or center with eight-inch minimum, twenty-four-inch maximum letters and numbers. The address shall not count against the allowable sign area.

(2) Wall signs. Wall signs shall be parallel to the wall and project no more than eighteen (18) inches horizontally, in whole or in part, from the wall to which they are attached. Wall signs shall not exceed the height of the wall to which they are attached.

a. Single uses with frontage on one (1) street or parking lot. Each use within a commercial center shall be allowed a total aggregate wall sign area of thirty (30) square feet.

b. The wall sign area may be increased at a rate of one (1) square foot of sign area for each one (1) linear feet of building frontage in excess of thirty (30) linear feet up to seventy-five (75) linear feet, then at a rate of one (1) square foot of sign area for every two and one-half (2½) linear feet of building frontage in excess of seventy-five (75) square feet or such sign area may be increased at a rate of one (1) square foot of sign area for each two hundred (200) square feet of gross leasable floor area (G.L.A.) in excess of nine hundred (900) square feet, whichever is greater.

c. No single wall sign may exceed one hundred fifty (150) square feet in area except to the extent allowed under the planned sign program.

d. Wall signs must be architecturally integrated into the structure to which they are attached.

(3) Buildings and uses with multiple frontages. Buildings and uses with frontage on more than one (1) street or parking lot shall be permitted to place signs on all building sides with frontage on a street or parking lot, up to four (4), in their calculation of permitted sign area. Determination of frontages, as they relate to the signage, shall be made by the Town Planner. Each side of a business or use with frontage on a street or parking lot shall be allowed a total aggregate wall sign area of thirty (30) square

feet. The calculation and location of wall signs for buildings and uses with multiple frontages shall meet the following criteria:

a. Sign area may be increased at a rate of one (1) square foot of sign area for each one (1) linear feet of building frontage (on the side where the sign is located) in excess of thirty (30) linear feet up to seventy-five (75) linear feet, then at a rate of one (1) square foot of sign area for every two and one-half (2½) linear feet of building frontage in excess of seventy-five (75) square feet.

b. One (1) of the sides containing a sign must contain the main entrance to the property.

c. To qualify as a frontage for purposes of determining sign area, sides must be fully exposed to public view and cannot be obstructed by other buildings, properties or uses.

d. No single wall may exceed the maximum sign area permitted calculated using the linear frontage for that same side of the building or one hundred fifty (150) square feet in area, whichever is more restrictive. Sign areas for wall signs may not be reassigned to other building sides, except to the extent allowed under an approved planned sign program.

e. The total maximum wall sign area shall be four hundred fifty (450) square feet.

f. Signage must be architecturally integrated into the structure to which they are attached.

(4) Window signs. Each use shall be permitted to have up to twenty-five percent (25%) of the total window area for signs, which may be temporary or permanent in nature. Window signs greater than four (4) square feet in area shall require a sign permit.

(5) Directional signs. Private traffic directional signs for the purpose of guiding or directing vehicular or pedestrian traffic onto or off of a parking lot or commercial center or within a parking lot or commercial center, are permitted, provided that each sign complies with the standards of the adopted Model Traffic Code or such other traffic code adopted by the Town, does not exceed three (3) square feet per sign face in area and four (4) feet in height and shall not contain any advertising or trade name identification.

(6) Illuminated signs. For the protection of community appearance and to minimize light pollution and traffic hazards caused by glare, illuminated signs shall be subject to the following conditions:

a. Illuminated signs shall be designed to minimize negative visual impacts on nearby residential neighborhoods.

b. Illuminated signs shall conform to the requirements of Section 16-3-90 of this Chapter.

c. Illuminated signs must be approved as part of a planned sign program.

(7) Flags and flagpoles. One (1) flagpole per lot is permitted without a permit and shall be subject to the following requirements. Any flag or flagpole that does not meet the following requirements may be allowed as part of a planned sign program and sign permit:

a. Flagpoles shall not exceed twenty-five (25) feet in height;

b. Flags shall not exceed four (4) feet by six (6) feet in dimension;

c. No more than two (2) flags of any size shall be permitted upon any single pole;

d. No flag shall be mounted higher than fifteen (15) feet above the maximum height of the building or structure on the property on which the flag will be flown;

e. No flag shall, when fully unfurled, extend over the property boundary onto any adjoining property or public right-of-way;

f. No flag shall be erected or maintained so as to allow a flag at rest to reach a height less than ten (10) feet above the ground;

g. Multiple flagpoles may be permitted when part of an approved planned sign program and shall require a permit;

h. The United States flag must be lowered at dusk or illuminated throughout the night;

i. Illumination of the United States flag on a flagpole shall be regulated by Section 16-3-80 of this Chapter. (Permitted, provided that a narrow spread thirty-nine-watt par-metal halide or fifty-watt par-halogen lamp or an equivalent lamp with a similar narrow spread, is used and aimed to only illuminate the top of the flagpole.) The source of illumination (lamp) must be shielded in a manner so as not to be visible from adjacent property. Illumination shall be re-aimed whenever the flag is flown at half-mast and turned off whenever the flag is taken down;

j. The United States flag must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes;

(8) Banners (architectural). Architectural banners mounted on a pole or streetlight, intended primarily for seasonal use, to identify events or uses within the commercial district are permitted, provided that the banner size shall be appropriate to the pole or streetlight on which it is mounted.

(9) Banners (advertising). Banners shall not exceed forty (40) square feet in total area, shall be nonilluminated, shall be securely attached to a permanent structure and shall not be freestanding. Said signs shall not be placed above the first story of any multi-story building. Banners shall be displayed for no more than fourteen (14) consecutive days per event and fifty-six (56) days per calendar year. Banners for grand openings of a new business shall be permitted for one (1) thirty-day period within the first one hundred eighty (180) days of the opening of the business.

(10) Inflated balloons. Inflated balloons are allowed on a temporary basis, shall not to exceed forty (40) feet in height and shall not to be displayed more than three (3) consecutive days per month.

(11) Temporary signs for new businesses. In the event that a business has opened whose permanent sign is not yet available, in order that such business may alert the public of its presence, a temporary sign may be utilized by such business under the following conditions:

a. Such temporary sign must conform to all height and sign area requirements which would be applicable to the permanent sign.

b. A permanent sign must be on order or being constructed prior to the erection of any temporary sign for a business.

c. No temporary sign for a business shall be displayed more than six (6) months after the date of issuance of the sign permit for the permanent sign.

d. Upon erection of any permanent sign for said business, all temporary signs for such business shall be removed.

(12) Real estate signs:

a. One (1) temporary "for sale/rent/lease" wall or freestanding sign per commercial center or use not part of a center, per street frontage, to a maximum of two (2). Said sign shall not exceed thirty-two (32) square feet per sign face and ten (10) feet in height. Such signs shall not count as part of the total sign area allowed per individual use or commercial center.

b. One (1) unlighted real estate sign per individual use in a center, containing the message that the individual store, business or building on which the sign is located is for sale, lease or rent, together with information identifying the owner or agent, shall be allowed without a permit if the following criteria are met: Such signs may not exceed six (6) square feet in area per face and freestanding signs shall not exceed six (6) feet in height. Said sign shall be removed within thirty (30) days after sale, lease or rental. Such signs shall not count as part of the total sign area allowed for the individual use. No permit is required.

(13) Political signs. Political signs erected in connection with proposition elections or political campaigns or elections may be displayed without a permit. When displayed on private property, said sign may not exceed twenty (20) square feet in surface area or six (6) feet in height or be placed in a public right-of-way. Political signs in any right-of-way shall not exceed four (4) square feet in surface area per face nor exceed three (3) feet in height. The person or organization responsible for the erection or distribution of any election signs or the owner of the property on which such signs are located, shall remove such sign within three (3) days following the election or conclusion of the campaign.

(k) Planned Sign Program. Signs may be allowed in any zoning district as part of a comprehensive planned sign program. The intent of this program is to permit some flexibility in the location, design and materials permitted for signage for business, commercial, institutional and Planned Development uses. A planned sign program shall be in substantial compliance with the general residential and nonresidential sign regulations contained in this Section. It is not the intent of these provisions to alter the permitted sign area for any of these uses.

(1) Approval required. Buildings, commercial centers, institutions and Planned Developments may obtain approval of a planned sign program from the Town Planner prior to any signs being erected in or upon any structure or property. All signs erected or maintained within the structure or property shall conform at all times to the sign program. Any deviations from an approved planned sign program shall be unlawful unless and until a revised planned sign program is approved by the Town Planner. The Town Planner shall have the discretion to require Board of Trustees review of any sign program which may result in a significant visual impact or is located in an area which has a significant impact upon the image of the Town.

(2) Planned sign program application. An application for a planned sign program shall be filed with the Town Clerk. The application shall include a deposit for review of the planned sign program application by the Town Planner as denoted in the Town's Fee Schedule and three (3) copies or a number of copies as directed by Town staff, of at least the following information:

a. A copy of the approved site plan showing all existing or approved buildings with the dimensions of building frontage and square footage for each building on site.

b. Building elevation drawing or sketches indicating the exterior surface design details of all buildings on the site.

c. Drawings or photo simulation, to scale, indicating the size, materials, method and intensity of illumination, height, color, sign area and general location of all signs proposed to be included within the planned sign program.

d. For buildings whose tenants have not been determined, the location, materials, method and intensity of illumination and maximum area for each sign that an individual business will be allowed to display.

(3) Failure to comply with an approved planned sign program. A permit for a new planned sign program shall be obtained within ninety (90) days of receipt of notice from the Town Planner that an existing

sign program for any structure does not satisfy the terms of the approved planned sign program or if signs displayed in or upon any structure do not comply with the provisions of this Section.

(4) The following signs shall only be allowed when approved as part of a planned sign program, a site review or a site plan amendment by the Town Planner.

a. Signs or building accents which use exposed neon.

b. Illuminated window signs.

c. Awnings, canopies and marquees.

d. Projecting signs.

e. Signs with interchangeable copy or electronic message.

f. Gasoline station price. Price signs shall be integrated into a monument sign that identifies the gasoline station.

g. Corporate trademarked identities, logos or colors when integrated into signs, building colors or building themes.

(5) The Town Planner shall have the authority to approve, approve with conditions or deny these applications based upon one (1) or more of the following:

a. The quality of the proposed signs.

b. The visual impact of the proposed signs.

c. Compatibility with the surrounding uses and buildings.

(l) Enforcement. Any sign not expressly allowed by this Section is prohibited. The Town shall be vested with the duty of enforcing this Section and, in performance of such duty, shall be empowered and directed to:

(1) Issue permits. To issue permits to construct, alter or repair signs which conform to the provisions of this Chapter. The expiration date for such permits shall be specified in each permit and, with respect to installation of signs, shall not exceed one hundred eighty (180) days and shall be issued in conjunction with building permits.

(2) Determine conformance. To ascertain that all signs, constructions and all reconstructions or modifications of existing signs are built or constructed in conformance with all Town regulations.

(3) Legal action. In addition to those penalties set forth in Section 16-1-100 of this Chapter, the Town is hereby authorized to take appropriate action in a court of competent jurisdiction, including the Municipal Court, to: (a) abate or remove unsafe or dangerous signs pursuant to the provisions of applicable Town nuisance regulations or any other applicable regulations; and (b) seek removal of illegal signs as a remedy in the Municipal Court. The Town is specifically authorized to impose fines not to exceed four hundred ninety-nine dollars ($499.00) per day per violation and, in addition, to seek restitution for any costs associated with the abatement of illegal signs and the enforcement of these sign regulations. The Town is further authorized to immediately remove any signs placed on Town property not in compliance with these regulations.

(4) Right to appeal. Any person who has been ordered to alter or remove any sign, or any person whose application for a sign permit has been denied because of conflict with regulations stated herein, may appeal to the Board of Adjustment by serving a written notice to the Town within ten (10) working days of the order or denial. An applicant may also appeal to the Board of Adjustment an alleged error by the Town or staff.

(m) Nonconforming Signs.

(1) Definition of nonconforming signs. A *nonconforming sign* shall be any sign which:

a. Was lawfully maintained on the effective date of the ordinance from which the provisions of this Chapter concerning nonconformity derive and had been lawfully erected in accordance with the provisions of any prior zoning ordinance but which sign does not conform to the limitations established by this Chapter in the district in which the sign is located; or

b. Was lawfully maintained and erected on or after the effective date of the ordinance from which the provisions of this Chapter concerning nonconformity derive in accordance with the provisions of this Chapter but which sign, by reason of amendment to this Chapter, after the effective date of said ordinance, does not conform to the limitations established by the amendment in the district in which the sign is located.

(2) Continuance of nonconforming signs. Subject to termination as provided below, any nonconforming sign located on private property may be continued in operation and maintained after the effective date of the ordinance which caused the sign to become nonconforming, provided that the sign shall not be changed in any manner that increases noncompliance of such sign with any Town regulations.

(3) Termination of nonconforming signs.

a. Upon expiration of a lease agreement for said sign, unless extended by the Town.

b. By abandonment. Abandonment of a nonconforming sign shall terminate immediately the right to maintain such sign.

c. By application to change any zoning or use of the property on which the nonconforming sign is located.

d. By destruction, damage or obsolescence. The right to maintain any noncomforming sign shall terminate and shall cease to exist whenever the sign is damaged or destroyed from any cause whatsoever or becomes obsolete or substandard under any applicable ordinance of the Town to the extent that the sign becomes a hazard or a danger.

e. Alteration. The right to maintain a nonconforming sign shall terminate immediately whenever the business name, size, configuration, height, setback or other attribute is altered in any manner or the sign is abandoned.

f. For the purposes of public need or public safety.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §6, 2014)

Sec. 16-3-110. Reserved.

Sec. 16-3-120. Temporary and seasonal uses.

(a) Upon application to the Town Clerk and review by the Town Planner, a temporary use permit may be issued for the uses specified below in any zone district. Such permits shall be valid only for the period of time specified in the permit, as determined by the maximum time periods set forth in the chart below. Failure to terminate such temporary use by the specified time shall be considered a violation of this Code. All temporary uses involved in the sale of goods require a sales tax license. Other licenses may also apply. No application shall be approved until the applicable permit fee is received by the Town.

(b) Stipulations and Conditions. Permits are subject to reasonable stipulations and conditions established at the time of application and review, including but not limited to requirements for: safe and adequate access; sufficient parking without interfering with public rights-of-ways, streets and sidewalks; adequate sanitation facilities; provision for collection, recycling and disposal of all waste; and compliance with all zoning, building, construction and fire codes.

(c) Exceptions. Nothing in this Section shall be construed so as to prohibit persons from conducting garage or yard sales or children's beverage and snack stands in the residential zone districts of the Town, subject to all applicable rules and regulations.

(d) Uses and Permitted Time Periods. The following chart sets forth temporary uses that may be permitted and the maximum time periods for which the uses may be allowed prior to renewal.

Temporary Use	Time Period Permitted	Residential	Nonresidential
Construction and sales office which also can be used as security quarters incidental to construction on the premises	2 years after a site plan is approved as outlined in Section 16-5-40		X
Bazaar, fair, music and art festivals, open air market, farmer's market - which may include retail sales of specialty items	Weekends		X
Temporary facilities related to special events, including, without limitation, grand openings, weddings, parties, luncheons, reunions, award ceremonies, auctions and Town theme events	2 weeks	X	X
Parking for another temporary use	Same as temporary use for which it is permitted	X	X
Christmas tree sales	45 consecutive days		X
Temporary offices, classrooms and bank facilities in modular units designed for that occupancy classification	Not to exceed 2 years after a site development plan is approved		X
Real estate offices and model homes used to promote the sale of property within new housing subdivisions or projects	Not to exceed 2 years after a site development plan is approved		X
Temporary residential or commercials storage containers	40 consecutive days per occurrence, or for the duration of an approved building permit	X	X
Sidewalk sales, which shall be conducted only by the establishment located in a nonresidential zone on the property and shall only include merchandise that is regularly offered for sale or storage inside that establishment	4 separate occasions per calendar year, not to exceed 3 consecutive days per occasion		X
Outdoor sales by charitable organizations; written documentation of charitable status is required	Not to exceed 2 weeks		X
Dumpster (other than in conjunction with a building permit - but must comply with Section 18-11-40(2)(b), C.R.S.))	60 days	X	X
Portable toilets (other than in conjunction with a building permit - but must comply with Section 18-11-	Duration of temporary use or special event	X	X

40(2)(a), C.R.S.))			

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §8, 2014)

Sec. 16-3-130. Site development standards for nonresidential uses and planned developments.

(a) Transition Required between Residential Uses and Streets and Nonresidential Development.

(1) When a nonresidential use which is over fifteen (15) feet in height shares a common lot line with a residential use or the nonresidential use is adjacent to a public street that abuts residential uses, the required buffer for the nonresidential use shall be twenty-five (25) feet and shall provide adequate screening to a combination of walls, fences, berms and landscaped plant material to include trees, shrubs, grasses and low water plant material.

(2) Views: To protect views from single-family dwelling units within the RR District, applicants must provide a view shed analysis with each proposal that indicates how the predominant views from existing single-family dwelling units will be preserved.

(b) Features Allowed Within Setbacks. The following structures and features may be located within required setbacks:

(1) Landscaping, including trees, shrubs, berms and other vegetation.

(2) Fences or walls, subject to permit approval, that do not exceed the standards established in this Article.

(3) Drive aisles, sidewalks and loading spaces or bays.

(4) Signs, if permitted by the sign regulations of this Article.

(5) Bay windows, architectural design embellishments and cantilevered floor areas that do not project more than two (2) feet into the required setback, provided that they do not encroach on public easements.

(6) Eaves that do not project more than two and one-half (2½) feet into the required setback.

(7) Open outside stairways, entrance hoods, terraces, canopies and balconies that do not project more than five (5) feet into a required front or rear setback and/or not more than two (2) feet into a required side setback, provided that they do not encroach on public easements.

(8) Chimneys, flues and ventilating ducts that do not project more than two (2) feet into a required setback and when placed so as not to obstruct light and ventilation, provided that they do not encroach on public easements.

(9) Utility lines, wires and associated structures, such as power poles and fire hydrants.

(c) Site Function Standards. These standards specify the location of buildings on a lot and where parking, refuse areas, storage and other amenities should be located.

(1) Storage and utilities: Adequate provision shall be made for the following storage and utility functions: snow storage, trash containers, general storage and utility cabinets. All trash containers, general storage and utility cabinets shall be screened from view from any public right-of-way or sidewalk.

(2) Parking: To decrease the visual impact of parking areas, parking areas should be located in one (1) of the following ways:

a. Located to the sides and/or rear of buildings;

b. Comprised of several, linked parking areas rather than one (1) large parking area; or

c. Provided in another manner that meets the goal of this standard.

d. Parking areas shall be located to encourage shared-use.

e. Parking areas shall be designed to fit with topography and minimize impacts to the terrain.

(3) Pedestrian and vehicular safety: Care should be taken to provide pedestrian circulation that is separate from and does not conflict with vehicle circulation.

a. Use durable pavers, bricks, scored concrete, raised walkways or other materials that provide a similar texture and character to distinguish pedestrian walkways across public streets and across internal drive aisles from driving surfaces.

b. Consolidate access points with abutting properties through joint access easements or other negotiated means.

c. Improve pedestrian connections within the site and from the site to adjacent uses.

d. Ensure that sidewalks are contiguous with abutting properties.

e. Entrance drives shall be readily recognizable to the first time visitor.

f. Reduce potential points of conflict between service vehicles, private automobiles and pedestrians through changes in paving patterns, landscape design and allowable signage.

(4) Connectivity and multiple transportation modes.

a. All streets and pedestrian paths shall connect with existing or planned streets, trails, public parks and amenities within the Town.

b. Continuous walkways shall provide connections to and between:

1. The primary entrance or entrances to each building, including pad site buildings.

2. All parking lots or parking structures that serve such buildings.

3. Any sidewalks or walkways on adjacent properties that extend to the boundaries shared with the development.

4. Any public sidewalk system along the perimeter streets adjacent to the development.

c. Bike racks and/or bike lockers shall be installed in all nonresidential developments and Planned Developments at a minimum ratio of five (5) bike parking spaces per one hundred (100) parking spaces. Bike parking spaces are considered to be one (1) bike locker or one (1) space on a bike rack.

(5) Street appeal: All nonresidential development and Planned Developments shall provide at least three (3) or more of the following design features as a condition of development approval:

a. Public or private outdoor seating areas.

b. Useable public spaces located in sunny places.

c. Pathways to public facilities and amenities.

d. Primary structure built to the sidewalk.

e. Public art and/or public plazas, which contribute to the overall benefit of the community.

f. Inviting street level storefront that is oriented toward pedestrians and provides visually interesting forms or displays for the pedestrian.

g. Parking placed totally behind the primary structure, below grade, in a parking structure or limit parking to one (1) side of the building.

(d) Topographic Standards.

(1) Locational considerations in the siting of new development.

a. Integrated structures and roadways into the surrounding natural landscape and topography.

b. Avoid visible construction cuts and permanent scarring.

c. Orient lots toward views and vistas.

d. Locate lots at right angles to contour lines.

e. Place development in less sensitive areas of the site.

f. Minimize disturbance of natural features, such as slopes, drainage areas, flood prone areas and open spaces.

g. Engineer grade cuts and fills to imitate natural slope changes with rounded tops of cuts and gradual transitions at the toes of fills.

h. Fit structures into the existing topography of the site. Buildings shall step with the site as opposed to sitting on the site. The building should appear to grow out of the land. This will not only minimize site disturbance, it will also create architectural interest by breaking up the mass of the building.

(2) Grading and site specifications. Prior to submission of a grading plan, the applicant shall meet with Town staff to develop a grading plan which adequately addresses these standards, engineering standards and other applicable ordinances and regulations.

a. All slopes shall be landform graded. Landform grading is defined as a grading method that creates artificial slopes with curves and varying slope ratios. Landform grading is designed to simulate the appearance of surrounding natural terrain.

b. At the intersections of manufactured and natural slopes, abrupt angular intersections shall be avoided. Contours shall be curved to blend with the natural slope.

c. Grading for pads shall follow the contours of the existing underlying landform.

d. Standard prepared building pads resulting in grading outside of the building footprint and driveway area is discouraged.

e. To minimize grading and protect natural contours, roads shall follow the natural contours.

f. All newly graded slopes shall be planted with appropriate erosion control plant materials.

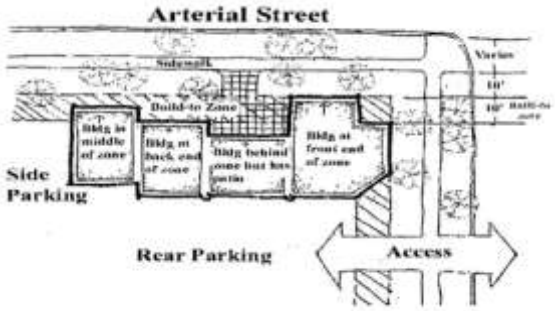
g. Retaining walls located in public rights-of-way or visible from public spaces shall be faced with river rock or natural stone or constructed of interlocking blocks in earth tones and designed as an architectural extension of the primary structure.

h. Areas that will not be graded shall be delineated in the field with fences during construction to ensure that these areas remain undisturbed.

(3) Retaining walls. Retaining walls shall be terraced. Terracing through the use of successive retaining walls shall provide benches to allow for landscaping and maintenance of the landscape materials. Retaining walls and their structural components located in public rights-of-way, when allowed or visible from public spaces should be faced with natural stone or constructed of interlocking blocks in earth tones matching the proposed development. Retaining walls constructed of wood and/or smooth faced concrete are not allowed.

(e) Building Location and Form. Building location and form provides standards regarding building location relative to the street and parking lot, overall building size and shape. The focus is on building function rather than architectural style.

(1) Build-to-zone. Along arterials, major collectors and minor collectors, the facades of buildings shall be placed within the build-to zone. This zone is defined as an area that is a minimum of ten (10) feet from the back of the sidewalk to a maximum of twenty (20) feet from the back of the sidewalk. The area between the building and the back of the curb shall be landscaped. Approved exceptions to the build-to zone shall be permitted in order to create an outdoor space, such as a plaza, courtyard, patio or garden between a building and the sidewalk. Such space shall have landscaping, low walls not to exceed forty-two (42) inches, fencing or railing not to exceed forty-two (42) inches, a tree canopy and/or other similar site improvements along the sidewalk.



(2) Building and roof form.

a. Building forms shall be asymmetric to create a complex building form using overhangs, recesses, dormers, gabled ends, balconies and/or porches.

b. Flat roofs shall be screened with parapets on all sides of the building. The parapet shall be of height sufficient to screen all rooftop mechanical equipment (e.g., HVAC units). If no rooftop mechanical equipment exists, the parapet shall be a minimum of eighteen (18) inches in height. The average height of such parapets shall not exceed fifteen percent (15%) of the height of the supporting wall and such parapets shall not exceed one-third (?) of the height of the supporting wall. Such parapets shall feature three-dimensional cornice treatment.

c. Ground floor facades that face public streets or provide a primary entry to the building shall have display windows or similar transparent area comprising forty percent (40%) to eighty percent (80%) of the first floor facade area.

d. Side and rear walls of all stories that face a public right-of-way or pedestrian way shall be constructed of the same building materials and contain the same architectural treatment as the front of the building.

(f) Building Orientation, Use and Function.

(1) Entrances to buildings shall be designed to ensure smooth and safe pedestrian circulation and ease of snow removal.

(2) Buildings shall be designed to minimize snow shedding and runoff onto pedestrian areas and public ways.

(3) The ground floor of building frontages shall be primarily occupied by active commercial or institutional uses.

(4) Buildings shall orient facades and main entries toward the street, toward a plaza or pedestrian way that leads directly to a street.

(5) Two (2) or more of the following design elements shall be incorporated for each fifty (50) horizontal feet of a building facade or wall:

a. Changes in color, texture or materials.

b. Projections, recesses and reveals, expressing structural bays, entrances or other aspects of the architecture with a minimum change of plane of twelve (12) inches.

c. Grouping of windows or doors.

d. Trellis, arcades or pergolas providing pedestrian interest.

(6) Building facades facing a primary access street shall have clearly defined, highly visible customer entrances that feature no less than two (2) of the following:

a. Canopies or porticos;

b. Overhangs, recesses/projections;

c. Distinctive roof forms;

d. Arches;

e. Outdoor patios;

f. Display windows; or

g. Planters or wing walls that incorporate landscaped areas and/or places for sitting.

(g) Surfacing. All streets, driveways and curb cuts shall be surfaced immediately upon completion. Surface material shall be asphalt or concrete. Surfacing within the right-of-way shall extend from the traveled portion of the street to the right-of-way line.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

ARTICLE 4 Special Requirements

Sec. 16-4-10. Home occupations.

(a) Permitted Accessory Use in the RR (Large Lot Rural Residential) Zone District. Home occupations are a permitted accessory use in the RR District. A home occupation must comply with the following criteria:

(1) The home occupation shall be accessory to the use of the structure as a residence.

(2) The home occupation must be conducted within the residence or an accessory structure.

(3) The business must be conducted by a full-time resident of the property.

(4) There shall be no visible advertising of the home occupation on the premises.

(5) There shall be no outdoor storage of goods, equipment, vehicles including trailers or materials associated with the home occupation except that two (2) business vehicles are allowed.

(6) There shall be no excessive or offensive noise, vibration, smoke, dust, odor, heat, glare, light or dumping of materials produced by the home occupation which can be detected at or beyond the property line.

(7) The receipt or delivery of merchandise, goods or supplies for use in a home occupation shall be limited to the United States Mail, commercial parcel delivery companies or private passenger vehicle, but shall exclude large truck and/or trailer-delivered goods or merchandise.

(8) The home occupation shall not change the appearance or character of the dwelling or neighborhood. There will be no exterior evidence to indicate that the building is being used for any purpose other than that of a dwelling or an accessory structure, including vehicles using the residence or accessory structure as a home base.

(9) No in-person retail sales shall be conducted on the premises. Electronic retailing is allowed. Incidental pick-up of goods is permitted. However, a home occupation shall not generate an amount of traffic that perceptively alters the residential character of the neighborhood.

(10) No solid waste shall be placed or stored on the property in conjunction with the home occupation.

(11) No chemicals or substances that are physical or health hazards as defined in the fire code shall be sold in conjunction with a home occupation, nor shall they be used or stored in quantities that are larger than typical for household use.

(12) One (1) non-resident employee is allowed.

(13) No illegal activity is allowed.

(b) Home Occupations in Other Zone Districts. Home occupations which occupy less than thirty-five percent (35%) of the gross floor area of the principal use and which have no exterior indication of nonresidential activity, except for parking or signage as outlined in Article 3 of this Chapter, are allowed in all other zone districts.

(c) Nothing in this Section 16-4-10 shall be construed as authorizing a home occupation use in any structure that is not authorized under applicable building and fire codes.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 01 § 2, 2017; Ord. 04, §2, 2021)

Sec. 16-4-20. Keeping and raising of animals.

(a) General Provisions. The housing, keeping or sheltering of any domestic farm animal, excluding pet animals, shall be allowed in the RR Zone District only. Animals shall be limited to pet animals, domestic livestock, farm animals, bees and fowl as listed below.

(b) Specific Animal Standards.

(1) Application of standards. The following requirements apply to the keeping or raising of specific types of animals, in addition to all other applicable standards of this Chapter. More than one (1) type of animal may be kept on a single lot, subject also to the provisions of this Section.

(2) Number of animals. Domestic farm animals limited to horses, pot belly pigs, goats, sheep, donkeys and mules, llamas and alpacas, rabbits, fowl and bees are allowed at the following maximum density:

a. One (1) horse, pot belly pig, goat, sheep, donkey, mule, llama or alpaca per acre or portion thereof.

b. Twelve (12) fowl, of which only one (1) may be a rooster, per lot.

c. Five (5) rabbits per lot.

d. Eight (8) colonies of bees per lot.

e. No more than any four (4) pet animals, including but not limited to dogs, cats or small animals older than one hundred eighty (180) days, per lot.

(3) Minimum area standards.

a. Domestic farm animals, as defined in this Section, fowl and bees shall be permitted on lots of at least eighty-five thousand (85,000) square feet, except that offspring of animals on property with two and one-half (2½) acres may be kept until weaned.

b. No domestic farm animals, fowl or bees are allowed within the VC Zone District or any Planned Development District.

(c) Standards.

(1) All horses, mules, llamas, alpacas, sheep, pot belly pigs and goats shall be kept in a fenced area.

(2) No poultry house, coop or hutch shall exceed a total of one hundred twenty (120) square feet of gross floor area.

(3) Poultry houses, pigeon coops, hutches and bee hives shall not be located within twenty-five (25) feet of any property line and shall not be located within fifty (50) feet of any dwelling unit.

(4) Premises upon which animals are kept shall be maintained in such a condition as not to be foul, hazardous or detrimental to the health, safety or welfare of humans or animals. Manure shall not be allowed to accumulate so as to cause a hazard to the health, welfare or safety of humans or animals.

(5) Violations of this Section shall be subject to nuisance abatement procedures.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §9, 2014)

Sec. 16-4-30. Wireless service facilities.

(a) Purposes. The purposes of this Section are: to allow the location of a wireless service facility ("WSF") in the Town while protecting the public health, safety, and general welfare of the community; to act on applications for the location of a WSF within a reasonable period of time; to encourage co-location of WSFs; and to prevent unreasonable discrimination among providers of functionally equivalent services.

(b) Definitions.

Accessory equipment for a WSF means equipment, including buildings and structures, used to protect and enable radio switching equipment, backup power and other devices incidental to a WSF, but not including antennae.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

Base station means a structure or equipment, other than a tower, at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes any equipment associated with wireless communications services,

including radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure, other than a tower, to which any of the equipment described hereof is attached.

Building roof-mounted WSF means a WSF that is mounted and supported entirely on the roof of a legally existing building or structure.

Eligible telecommunications facility request means a request for approval of the modification of an existing tower or base station that involves the colocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

Equipment storage shelter means buildings, storage shelters, and cabinets used to house WSF equipment.

Freestanding WSF means a WSF that consists of a stand-alone support structure such as a tower or monopole, and antennae and accessory equipment.

Microwave antenna means a disk-type antenna used to link communication sites together by wireless voice or data transmission.

Micro wireless facility means a WSF that is no larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

Public right-of-way means all roads, streets and alleys and all other dedicated rights-of-way, access and utility easements of the Town, the state, or any district, utility or roadway.

Small cell facility means either a personal wireless service facility as defined by the federal Telecommunications Act of 1996, or a WSF where:

(1) Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and

(2) Primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: Electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

A small cell facility includes a micro wireless facility.

Small cell network means a collection of interrelated small cell facilities designed to deliver wireless service.

Substantial change means a modification to an existing tower or base station under the following circumstances:

(1) A substantial change in the height of an existing tower or base station occurs as follows:

a. For a tower outside of a public right-of-way, when the height of the tower is increased by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.

b. For a tower located in a public right-of-way or for a base station, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.

(2) Changes in height are measured as follows:

a. When deployments are separated horizontally, changes in height shall be measured from the original support structure, not from the height of any existing telecommunications equipment.

b. When deployments are separated vertically, changes in height shall be measured from the height of the tower or base station, including any appurtenances, as the tower or base station existed on February 22, 2012.

(3) A substantial change in the width of an existing tower or base station occurs as follows:

a. For a tower outside of public rights-of-way, when the addition of an appurtenance to the body of the tower protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.

b. For a tower in a public right-of-way or a base station, when the addition of an appurtenance to the body of the structure would protrude from the edge of the structure by more than six (6) feet.

(4) A substantial change also occurs for an existing tower in a public right-of-way or an existing base station as follows:

a. When the change involves the installation of any new equipment cabinets on the ground, if no ground cabinets presently exist; or

b. When the change involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets.

(5) A substantial change also occurs for any existing tower or base station when any of the following are found:

a. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four (4) new cabinets, whichever is less.

b. When the change entails any excavation or deployment outside the current site.

c. When the change would defeat the concealment elements of the eligible support structure.

d. When the change does not comply with conditions associated with the original siting approval of the construction or modification of the tower, base station or base station equipment. This limitation does not apply if the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in subsections (1) through (5)(b) hereof.

Tower means a structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Whip antenna means an array of antennae that is cylindrical in shape.

(c) Standards for all WSFs.

(1) Applicability. The standards contained in this Section apply to all applications for WSFs. Applicants must also comply with any other applicable provisions of the Code as determined by the Town. The applicant shall demonstrate in writing that its proposed WSF meets all applicable standards of this Section and any other required provisions of the Code.

(2) Co-Location. The Town encourages co-location of WSFs when feasible to minimize the number of WSF sites. To further the goal of co-location:

a. No WSF owner or operator shall unreasonably exclude a telecommunications competitor from using the same facility or location. Upon request by the Town, the owner or operator shall provide evidence explaining why co-location is not possible at a particular facility or site; and

b. If a telecommunications competitor attempts to co-locate a WSF on an existing or approved WSF or location, and the parties cannot reach an agreement, the Town may require a third-party technical study to be completed at the expense of either or both parties to determine the feasibility of co-location.

(3) Consent given to a telecommunications provider or broadband provider to erect or construct any poles, or to locate or co-locate communications and WSF on vertical structures in a right-of-way, does not extend to the co-location of new facilities or to the erection or construction of new poles in a right-of-way not specifically referenced in the grant of consent.

(4) Permitted zoning districts. WSFs shall be considered a permitted use in all zoning districts subject to administrative review as provided in this Section.

(5) Compliance with FCC standards. All WSFs shall meet the current standards and regulations of the FCC and any other agency of the federal government with the authority to regulate WSFs. Upon a request by the Town at any time, WSF owners and operators shall verify that:

a. The WSF complies with the current FCC regulations prohibiting localized interference with reception of television and radio broadcasts;

b. The WSF complies with the current FCC standards for cumulative field measurements of radio frequency power densities and electromagnetic fields; and

c. By adopting this Section, the Town is not attempting to regulate radio frequency power densities or electromagnetic fields, which are controlled by the FCC.

(6) Abandonment. If the WSF ceases operation for any reason for one hundred eighty (180) consecutive days:

a. The owner or operator shall remove the WSF; and

b. Any permit issued for operation of a WSF shall expire.

(7) Height limit. Notwithstanding any other height limitations in this Section, in no case shall a WSF located on property owned by the Town or in any public right-of-way exceed forty (40) feet in height.

(d) Freestanding WSFs.

(1) Letter of credit. Each applicant who obtains approval for location of a freestanding WSF shall, prior to commencing construction, post a letter of credit, in sufficient amount to cover removal of the facility if abandoned.

(2) Minimum setbacks for freestanding WSFs. A freestanding WSF shall be set back from each property line one (1) foot of distance for every foot of facility height, except for facilities located in the public right-of-way.

(3) Maximum height for freestanding WSF. A freestanding WSF, including antennae, shall not exceed the maximum structure height limit in the zone district in which the facility is located. In no case shall a freestanding WSF, including its appurtenances, exceed fifty (50) feet in height. Notwithstanding any

other provision of this Section, no WSF facility located on property owned by the Town or in any public right-of-way shall exceed forty (40) feet in height.

(4) Design standards for freestanding WSFs. A freestanding WSF shall meet the following design standards to minimize impacts:

a. The facility shall be designed to be compatible with surrounding buildings and structures and existing or planned uses in the area.

b. Existing land forms, vegetation, and structures shall be used to screen the facility from view and blend in the facility with the surrounding environment to the extent practicable.

c. Existing vegetation shall be preserved or enhanced.

d. The total area of any equipment storage shelters shall not exceed four hundred (400) square feet for each WSF.

e. Equipment storage shelters shall be grouped as closely together as technically possible.

f. No equipment storage shelter shall exceed fifteen (15) feet in height.

g. All freestanding WSFs shall accommodate co-location of facilities, unless co-location is technically unfeasible as set forth in Section 16-4-30(c)(2).

h. All applicable landscape regulations shall be observed. A landscape plan prepared by a professional landscape architect may be required to demonstrate that such landscape appropriately shields the base and security fencing from view if the base of the facility is otherwise visible from adjacent rights-of-way.

i. Any equipment that could be dangerous to persons or wildlife shall be adequately covered or fenced.

(e) Building roof or wall-mounted WSFs.

(1) A building wall-mounted WSF shall adhere to the following design standards to minimize impacts:

a. The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

b. The mounting of antennae shall be as flush to the building wall as possible, and in no case shall the antennae extend more than three (3) feet out from the building wall.

c. A facility mounted on the wall of a building with a pitched roof shall not extend above the roof line of the building.

d. A facility mounted on the wall of a building with a flat roof shall not extend above the highest point of the building, including already existing facilities on the roof.

(2) A building roof-mounted WSF shall adhere to the following design standards to minimize impacts:

a. A building roof-mounted WSF, including antennae, shall not extend more than twelve (12) feet above the height of the building on which the facility is mounted.

b. The facility shall be screened from view and/or colored to match the building or structure to which it is attached.

c. Antennae, support structures, accessory equipment and all other roof-mounted appurtenances shall not exceed an aggregate total of twenty-five percent (25%) of the total surface area of the building roof.

d. The diameter of a microwave dish antenna shall not exceed four (4) feet.

(3) Accessory equipment for a building roof or wall-mounted WSF shall be placed inside the building if feasible. All equipment storage shelters shall be grouped as closely as technically possible, and the total area of all accessory equipment, including storage shelters, shall not exceed four hundred (400) square feet per WSF.

(f) Small cell facilities.

(1) A telecommunications provider or broadband provider may locate or co-locate small cell facilities or small cell networks on light poles, light standards, traffic signals, or utility polices in the right-of-way owned by the Town, subject to the following:

a. A small cell facility or a small cell network shall not be located or mounted on an apparatus, pole, or signal with tolling collection or enforcement equipment attached.

b. The construction, installation, operation and maintenance of a small cell facility must comply with applicable federal and state law and the provisions of this Section. If upon inspection, the Town concludes that a wireless service facility fails to comply with such laws and constitutes a danger to persons or property, then, upon written notice being provided to the owner of the small cell facility, the owner shall have thirty (30) days from the date of the notice to bring such facility into compliance. Upon good cause shown by the owner, the Town may extend such compliance period not to exceed ninety (90) days from the date of said notice. If the owner fails to bring such facility into compliance within said time period, the Town may remove such facility at owner's expense or prohibit future, noncompliant use of the light pole, light standard, traffic signal or utility.

(2) Micro wireless facilities. No application or permit shall be required for the installation, placement, operation, maintenance, or replacement of micro wireless facilities that are suspended on cable operator-owned cables or lines that are strung between existing utility poles in compliance with the national safety code, subject to the following:

a. The Town may require a permit for installation, placement, operation, maintenance, or replacement of micro wireless facilities where the installation, placement, operation, maintenance, or replacement of micro wireless facilities does any of the following, upon determination of the Town:

1. Involves working within a highway travel lane or requires the closure of a highway travel lane;

2. Disturbs the pavement or a shoulder, roadway, or ditch line;

3. Includes placement on limited access rights-of-way; or

4. Requires any specific precautions to ensure the safety of the traveling public; the protection of public infrastructure; or the operation of public infrastructure; and such activities either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, the approval terms of the existing permit for the facility or structure upon which the micro wireless facility is attached.

(g) Application and approval procedures.

(1) An application for approval of a proposed WSF shall include a written, narrative statement describing in detail how the proposed WSF will comply with each of the applicable design standards set forth in this Section and shall include the following:

a. A site plan on twenty-four-inch by thirty-six-inch sheets, which includes the following:

1. The location of all proposed and existing improvements;

2. A north arrow;

3. Scale (written and graphic);

4. Scaled building elevations; and

5. The legal description of the property.

b. Photographic simulations showing the proposed facility and the structure on which it will be attached.

c. Preliminary structural design drawings and antenna specifications, which drawings shall include the coverage of the facility and the relationship with other existing or proposed facilities.

d. For freestanding WSFs, drawings and a site plan, including the foundation design, method of attachment, location of the facility, elevation drawings and landscape drawings.

e. For building roof or wall-mounted WSFs, structural drawings depicting the method of attachment to the building, including wind load calculations.

(2) Consolidated applications for small cell facilities. A telecommunications provider or broadband provider may file a consolidated application to receive a single permit for small cell networks involving multiple individual small cell facilities within the Town. However, each small cell facility within the consolidated application individually remains subject to review for compliance with the requirements provided in this Section.

(3) Incomplete applications.

a. When an application is incomplete, the Town shall provide written notice to the applicant within thirty (30) days, specifically identifying all missing documents or information.

b. If an application remains incomplete after a supplemental submission, the Town shall notify the applicant within ten (10) days. Second or subsequent notices of incompleteness may not require the production of documents or information that were not requested in the original notice of incompleteness.

(4) Expedited review.

a. An eligible WSF, including an application for location or co-location of a small cell facility or small cell network or replacement or modification of a small cell facility or facilities or small cell network request shall be approved or denied by the Town within sixty (60) days of the date of the Town's receipt of the completed application. This time period may be tolled only by mutual agreement or when an application is incomplete.

b. If the Town fails to approve or deny an eligible WSF request within the sixty (60) days of the date of the Town's receipt of the completed application (accounting for any tolling), the request shall be deemed granted; provided that this automatic approval shall become effective only upon the Town's receipt of written notification from the applicant after the review period has expired (accounting for any tolling) indicating that the application has been deemed granted.

(5) Review.

a. Criteria for approval or denial of application. In considering an application for location or co-location of a WSF, the Town shall base the decision as to the approval or denial of the application on whether the proposed WSF meets the applicable design standards as outlined in this Section.

b. Approval.

1. The Town shall approve an eligible WSF request that does not substantially change the physical dimensions of a tower or base station.

2. The Town may approve an eligible WSF request that substantially changes the physical dimensions of a tower or base station if it complies with the remainder of this Code.

3. The Town may condition the approval of any eligible WSF request on compliance with generally applicable building, structural, electrical, and safety codes or with other laws codifying objective standards reasonably related to health and safety.

c. Denial. A final decision by the Town to deny any application under this Section shall be in writing and supported by substantial evidence contained in a written record.

(Ord. 08 §1, 2017)

Editor's note(s)—Ord. No. 08, § 1, adopted Nov. 16, 2017, repealed the former § 16-4-30 and enacted a new section as set out herein. The former § 16-4-30 pertained to commercial mobile radio service facilities and derived from Ord. 5, § 1, adopted in 2009; Ord. 1, § 1, adopted in 2012; Ord. 04, § 10, adopted in 2014; Ord. 06, § 3, adopted in 2015; and Ord. 04, § 1, adopted in 2016.

Sec. 16-4-40. Cemeteries prohibited.

(a) Legislative Authority. The Town has the specific legislative authority pursuant to Section 31-25-702, C.R.S., to regulate cemeteries and prohibit their establishment within one (1) mile of the Town.

(b) Legislative Findings.

(1) The Board of Trustees hereby finds that there are an adequate number of cemeteries proximate to the boundaries of the Town and that such cemeteries are convenient for residents of the Town and contain sufficient cemetery spaces for the interment of the deceased; and

(2) The Board of Trustees further finds that the Town is a small community and the construction of any cemetery within the corporate boundaries of the Town would be incompatible with the current land uses within the Town and with the Town's Comprehensive Plan.

(c) Cemeteries Prohibited. Establishment of any cemetery within the Town boundaries of any zoning district within the Town is hereby prohibited.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-4-50. Grading, erosion and sediment control requirements.

(a) Purpose. The purpose of this Section is to provide regulations to monitor and control the high rates of erosion and sedimentation due to land disturbance caused by grading (cut or fill). This Section is further intended to ensure the protection of existing drainageways as well as private and/or public property adjacent to any disturbed area regulated by this Article.

(b) Grading Defined. For purposes of this Section, *grading* is any change to the native contours of the surface of the property. This includes grading associated with building permits, the placement of fill material, cutting or

reshaping a slope, berms, landscaping, or revising the area (square footage) and/or the point of discharge of surface drainage to adjacent property.

(c) Overlot Grading Permit Required. An overlot grading permit is required if any one (1) of the following conditions occurs:

(1) The area of grading is greater than ten thousand (10,000) square feet.

(2) More than one hundred (100) cubic yards of fill material is imported or placed from on site cut;

(3) The proposed grading increases or changes the historical flow of surface water to adjacent lots or the Town rights-of-way; or

(4) The disturbed area is within seventy-five (75) feet of an existing drainageway, floodplain or wetlands as determined by the Town Engineer.

(d) Overlot Grading Permit Applications Required.

(1) Project of less than one (1) acre. For any proposed project which requires disturbing an area less than one (1) acre, the following information shall be provided in addition to the overlot grading permit application for approval by the Town Engineer:

a. A sketch of the entire property showing existing improvements (i.e., boundary lines, buildings, driveways, fences, etc.);

b. North arrow and scale of the drawing;

c. The limits of the work area shall be indicated on the sketch with the area square footage and the amount of cut/fill in cubic yards labeled;

d. All surface water hydrologic features within one hundred (100) feet of the proposed work area (i.e., drainageways, floodplains, wetlands);

e. Directional flow arrows indicating stormwater runoff;

f. Temporary and, if applicable, permanent erosion and sediment control BMPs in accordance with the Town's standards and specifications; and

g. If the existing driveway access to the area is not to be used for the construction access, then a temporary construction access from the Town's paved roadway to the applicant's property must be approved by the Town Engineer.

(2) Project of one (1) acre or more. For any site disturbing an area of one (1) acre or more, a Grading, Erosion and Sediment Control (GESC) Report and Plan shall be prepared, stamped and sealed by a registered engineer in accordance with the County's GESC Manual, as adopted by the Town, along with the overlot grading permit application for approval by the Town Engineer.

(e) Fee for Overlot Grading Permit Applications. An application fee in an amount determined by resolution of the Board of Trustees. In addition to the application fee, applications for grading permits must comply with the escrow deposit requirements of Subsection 16-5-100(b) of this Chapter.

(f) Penalty. It shall be unlawful for any person to violate the provisions of this Section. Any person convicted of violating any provision of this Section shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars ($499.00) per day for each separate offence. Each day a violation of this Section continues shall constitute a separate offense. The Town may also seek upon a finding of a violation of this Section an injunction, abatement, restitution or any other remedy to prevent, enjoin, abate or remove the

violation. A person convicted of violating the provisions of this Section shall also be liable for the actual cost of rehabilitating the property.

(Ord. 6 §1, 2007; Ord. 1 §1, 2012; Ord. 04 §11, 2014)

Sec. 16-4-60. Growing of medical marijuana in residential structures.

(a) Purpose. This Section is intended to apply to the growing of medical marijuana in residential structures, whether such growing is done by patients for their own use or by primary caregivers.

(b) Generally. A primary caregiver, for purposes of this Section, and consistent with Article XVIII, Section 14(1)(f) of the Colorado Constitution, is defined as a natural person other than the patient and the patient's physician who is eighteen (18) years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition. In addition to other activities conducted on behalf of the patient, a primary caregiver, a patient or a group of patients cultivating marijuana plants for their own use may cultivate, possess, produce, use or transport marijuana or paraphernalia to administer marijuana for medical purposes, subject to the following:

(1) Such cultivation, production or possession of marijuana plants must be in full compliance with all applicable provisions of Article XVIII, Section 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, Sections 12-43.3-101, et seq., C.R.S., and the Medical Marijuana Program, Section 25-1.5-106, C.R.S.

(2) Such marijuana plants are cultivated, produced or possessed within a licensed patient's or registered caregiver's primary residence, as defined by paragraph (b)(8) below, and no more than a total of twelve (12) total plants, whether for medical or for recreational use, may be cultivated within one (1) primary residence.

(3) The cultivation, production or possession of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:

a. Common visual observation, including any form of signage;

b. Unusual odors, smells, fragrances or other olfactory stimulus;

c. Light pollution, glare or brightness that disturbs the repose of another; and

d. Undue vehicular or foot traffic, including excess parking within the residential zone.

(4) Such marijuana plants shall not be grown or processed in the common areas of a multifamily or attached residential development.

(5) Such cultivation, production or possession of marijuana plants shall be limited to the following space limitations within a primary residence:

a. Within a single-family dwelling unit (Group R-3 as defined by the International Building Code): a secure, contiguous one-hundred-fifty-square-foot area within the primary residence of the licensed patient or registered caregiver.

b. Within a multifamily dwelling unit (Group R-2 as defined by the International Building Code): a secure, defined, contiguous one-hundred-square-foot area within the primary residence of the patient or registered caregiver.

c. Such cultivation, production or possession of marijuana plants shall not occur in any accessory structure.

(6) Such cultivation, production or possession of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes, as the same may be amended from time to time.

(7) Such cultivation, production or possession of marijuana plants shall meet the requirements of all adopted water, sewer and fire district regulations promulgated and applicable to the Town.

(8) For purposes of this Section, *primary residence* means the place that a person, by custom and practice, makes his principal domicile and address and to which the person intends to return following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water and utility billing. A person shall have only one (1) primary residence. A primary residence shall not include accessory buildings.

(9) For purposes of this Section, a *securearea* means an area within the primary residence accessible only to the patient or primary caregiver. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals or anyone not licensed and authorized to possess medical marijuana.

(10) The cultivation, production or possession of marijuana plants in a residential structure pursuant to this Section is and shall be deemed consent by the primary caregiver or patient upon reasonable notice for the Town to inspect the premises to assure compliance with the provisions of this Section.

(Ord. 1 §1, 2012; Ord. 09 §1, 2017)

Sec. 16-4-70. Growing of marijuana in residential structures for personal use.

(a) Purpose. This Section is intended to apply to the growing of marijuana in residential structures for personal use to the extent authorized by Article XVIII, Section 16(3)(b) of the Colorado Constitution.

(b) Generally. Any person, for the purposes of this Section and consistent with Article XVIII, Section 16(3)(b) of the Colorado Constitution, who is twenty-one (21) years of age or older and who is cultivating marijuana plants for his own use may possess, grow, process or transport no more than six (6) marijuana plants, with three (3) or fewer being mature, subject to the requirements that follow.

(1) Such possessing, growing, processing or transporting of marijuana plants for personal use must be in full compliance with all applicable provisions of Article XVIII, Section 16 of the Colorado Constitution.

(2) Such marijuana plants are possessed, grown or processed within the primary residence of the person possessing, growing, or processing the marijuana plants for personal use, as defined by paragraph (b)(8) below, and no more than a total of twelve (12) total plants, whether for medical or for recreational use, may be cultivated within one (1) primary residence.

(3) The possession, growing and processing of such marijuana plants must not be perceptible from the exterior of the primary residence, including but not limited to:

a. Common visual observation, including any form of signage;

b. Unusual odors, smells, fragrances or other olfactory stimulus;

c. Light pollution, glare or brightness that disturbs the repose of another; and

d. Undue vehicular or foot traffic, including excess parking within the residential zone.

(4) Such marijuana plants shall not be grown or processed in the common areas of multi-family or attached residential development.

(5) Such cultivation, production, growing and processing of marijuana plants shall be limited to the following space limitations within a primary residence:

a. Within a single-family dwelling unit (Group R-3 as defined by the International Building Code): A secure, defined, contiguous one-hundred-fifty-square-foot area within the primary residence of the person possessing, growing or processing the marijuana plants for personal use.

b. Within a multi-family dwelling unit (Group R-2 as defined by the International Building Code): A secure, defined, contiguous one-hundred-square-foot area within the primary residence of the person possessing, growing or processing the marijuana plants for personal use.

c. Such possession, growing and processing of marijuana plants shall not occur in any accessory structure.

(6) Such possession, growing and processing of marijuana plants shall meet the requirements of all adopted Town building and life/safety codes, as the same may be amended from time to time.

(7) Such possession, growing and processing of marijuana plants shall meet the requirements of all adopted water and sewer regulations promulgated by the Town.

(8) For purposes of this Section, *primary residence* means the place that a person, by custom and practice, makes his principal domicile and address and to which the person intends to return following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration or credit, water and utility billing. A person shall have only one (1) primary residence. A primary residence shall not include accessory buildings.

(9) For purposes of this Section, a *secure area* means an area within the primary residence accessible only to the person possessing, growing or processing the marijuana plants for personal use. Secure premises shall be locked or partitioned off to prevent access by children, visitors, casual passersby, vandals or anyone not licensed and authorized to possess marijuana.

(10) The possession, growing and processing of marijuana plants in a residential structure pursuant to this Section is and shall be deemed consent by the person possessing, growing or processing the marijuana plants for personal use, upon reasonable notice, for the Town to inspect the premises to assure compliance with the provisions of this Section.

(Ord. 05 §1, 2013; Ord. 09 §2, 2017)

ARTICLE 5 Administration and Procedures

Sec. 16-5-10. Administration.

(a) Intent. It is the intent and purpose of this Article to provide for the efficient, reasonable and impartial enforcement of this Chapter. This Article establishes and prescribes the basic duties and operating procedures of the administrative individuals responsible for administering and enforcing this Chapter and establishes the requirements for development applications and building permit applications with regard to the following:

(1) Administration.

(2) Certificates of occupancy.

(3) Plot plans.

(4) Site development plans.

(5) Special review use.

(6) Changes and amendments to the Chapter.

(7) Variances and appeals.

(8) Nonconforming uses, structures and lots and parking specifications.

(9) Notice of public hearings.

(10) Fees.

(b) Town Planner.

(1) There is hereby established the office of Town Planner. The Town Planner shall be appointed by the Board of Trustees and shall be charged with the responsibility for interpretation of and enforcement of this Chapter. Interpretation of this Chapter includes, but is not limited to, clarification of intention, classification and approval of land uses not specified in this Article, clarification of zoning district boundaries and delegation of procedure.

(2) No oversight or dereliction or error on the part of the Town Planner or on the part of any other official or employee of the Town shall legalize, authorize or excuse the violation of any provisions of this Chapter.

(3) Right of entry. The Town Planner shall have the right to enter any premises or structures at any reasonable time for making an inspection as may be necessary to carry out his duties in the enforcement of this Chapter.

(c) Building Official. The Building Official shall have duties including the inspection of plans, structures and site improvements for compliance with the provisions of this Chapter and for issuance of permits for building construction and site improvements, certificates of occupancy and other duties as herein authorized. In meeting the responsibilities of the above duties, the Building Official may solicit the assistance of other Town officials, other agencies or consultants as deemed necessary.

(d) Planning Commission.

(1) Affirmation: The Planning Commission of the Town is created pursuant to and under the authority of Section 31-23-201, et seq., C.R.S.

(2) Powers and duties: The Planning Commission shall have all powers, discretion and duties established by Section 31-23-201, C.R.S.

(3) The Town declares, pursuant to Section 31-23-203, C.R.S., that the personnel of the Planning Commission may all be members of the Board of Trustees.

(e) Board of Adjustment.

(1) Appointment of the Board of Adjustment. In accordance with the powers and authority of the Board of Trustees, the Board of Adjustment may consist of the Board of Trustees acting as the Board of Adjustment.

(2) The Board of Adjustment shall hear appeals from and review any order, requirement, decision or determination made by any administrative official of the Town charged with the enforcement of this Chapter. The Board may reverse or affirm, wholly or partly or may modify the order, requirement,

decision or determination appealed from and may make such order, requirement, decision or determination as in its own opinion ought to be made in the premises and, to that end, has all the power of the official from whom the appeal is taken.

(3) The Board of Adjustment has the authority to vary or modify the application of this Chapter relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, when the strict application of this Chapter will deprive a property of the privileges enjoyed by other property of the same zoning classification in the same zoning district because of special circumstances applicable to a property, including its size, shape, topography, location or surrounding.

(4) The Board of Adjustment does not have the power to change this Chapter or to change the Zoning District Map of the Town.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-5-20. Certificates of occupancy.

When Required. After the effective date of this Chapter, no change in the use or occupancy of land, nor any change of use or occupancy in an existing building or structure other than for a residential use, shall be made, nor shall any new building or structure be occupied until a certificate of occupancy has been issued by the Building Official. No certificate of occupancy shall be issued by the Building Official unless the proposed use of the building, structure or land and improvements thereto, conforms to the requirements of this Chapter.

Sec. 16-5-30. Plot plans.

(a) Plot Plan Requirements. Every building permit application for detached single-family dwelling units or accessory structures shall be accompanied by three (3) copies of a plot plan. Additional copies may be requested by Town staff. The plot plan shall be drawn to scale and show the following information in sufficient detail to enable the Town Planner to ascertain whether the proposed excavation, construction, conversion, moving or alteration is in conformance with this Chapter:

(1) The actual shape and dimensions of the lot.

(2) The location, size, shape and intended use of all new and existing structures.

(3) The height, setbacks and building coverage of all structures.

(4) Location of easements, natural drainageways and rights-of-ways.

(5) Proposed grading or excavation.

(6) Any other information required by the Town's adopted building code or concerning the lot or adjoining lots as may be essential for determining whether the provisions of this Chapter are being observed.

(b) Public Improvements.

(1) The Town Planner shall review the plot plan to determine whether any public improvements or conveyances, such as streets, street paving, curb and gutter, driveway approaches, sidewalks, rights-of-way or easements, shall be required for detached single-family dwelling units. If it is determined that such public improvements or conveyances are necessitated by the proposed development of the property, the developer or property owner shall be required to construct or convey such public improvements or conveyances to the Town by separate agreement.

(2) The cost of any such public improvements or conveyances shall be borne by the developer or property owner and the construction or conveyance thereof shall be at the sole risk and expense of the developer or property owner. The Board of Trustees may defer any public improvements or conveyances until such time as the Board of Trustees may require the completion of said public improvements or conveyances. In making the determination to defer any public improvements or conveyances, the Board of Trustees shall consider the following criteria:

a. The deferral will not be detrimental to the public good or surrounding properties:

b. Deferral of the public improvements and conveyances would be more practical due to existing conditions in the neighborhood.

c. In granting any deferral, the Board of Trustees may attach such reasonable conditions and safeguards as it may deem necessary to implement the intent and purpose of this Chapter.

(c) Issuance of Permits. All requirements of this Chapter shall be met prior to the issuance of any permit. Any permit issued in conflict with the provisions of this Chapter shall be null and void and may not be construed as waiving any provision of this Chapter.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012)

Sec. 16-5-40. Site development plans.

(a) Site Development Plan Requirement.

(1) Site development plans shall be required for any nonresidential development. All site development plans shall contain the following information.

a. Name of the project located at the top center of the sheet. Below this should be the location of the development by streets adjacent to the zone lot, along with the section, range and township.

b. Legal description of zone lot.

c. North point - the top of the sheet will be north whenever possible.

d. A survey showing property boundary lines and dimensions; existing and proposed public and private easements; and existing easements of record, roadways and rights-of-way adjacent to or crossing the property. Boundary lines of the zone lot shall be shown in heavy solid line. (Also, show the elevation and location of benchmark used, U.S.G.S. datum.).

e. Sheet size shall be 24" x 36" with a preferred scale of 1" = 50'. The top, bottom and sides of the sheet should have a one-inch-wide margin.

f. A general vicinity map drawn to an approximate scale of 1" = 1,000'.

g. The existing and proposed finished grade contour lines of the project area, shown in intervals not to exceed two (2) feet.

h. The present zoning classifications of all abutting properties.

i. The required setbacks shown as dotted lines on the property.

j. The location, size and arrangement of proposed buildings and existing buildings which will remain, if any; the maximum height of buildings in stories and feet; the floor area ratio, total floor area and total square feet of ground area coverage; the number of dwelling units.

k. A minimum of front and side elevations of all buildings showing predominant architectural elements and extension treatments.

l. Location, dimensions and number of all vehicular and pedestrian circulation elements, including streets and roadways, driveways, entrances, curbs, curb cuts, parking stalls, loading spaces and access aisles; sidewalks, walkways, trails and bikeways, including slope and gradient of vehicular elements; the private roads or streets within the project shall be designed to allow reasonable ingress and egress for emergency vehicles.

m. Utility plans, indicating placement of water mains, sanitary sewers and storm sewers, including surface and subsurface drainage.

n. Locations, design, height, size and orientation of all outdoor signs and illumination.

o. Location and height of all walls, fences, screens, berms, buffers and planting areas.

p. Location, height and type of all outdoor lighting.

q. A tabulation of the following information with respect to the area included in the site development plan:

Area included in the Site Development Plan	
Total project area	_____acres
Floor area ratio	_____ FAR
Maximum height of buildings	_____ feet
Number of parking spaces required	_____ spaces
Number of loading spaces required	_____ spaces
Landscaped area	_____ sq. feet
Area of planting beds and landscaping adjacent to parking areas (for commercial developments)	_____ sq. feet
Total paved area within the project	_____ sq. feet

r. Location of all outside facilities for solid waste disposal.

s. Location of all existing and proposed fire hydrants, control facilities, standpipes, etc.

t. Drainage way plans, detention areas and water pollution control devices with the volumes described in cubic feet.

u. Types of surfacing to be used at various locations.

v. All vehicular and pedestrian elements designed and constructed to Town specifications.

w. Generally depict the landscape plan for the site. Include:

1. Locations and general plant types planned therein; types of surface such as asphalt paving, turf, gravel etc.; proposed initial plant sizes;

2. Designation of any snow storage areas and proposed landscaping thereon;

3. Locations and types of any passive or active recreation areas; and

4. Proposed means of plant irrigation.

x. Proposed facilities and method for public transit boarding and unloading where appropriate.

(b) Administrative Review.

(1) Except for special review uses (which require review and approval by the Board of Trustees), site development plans shall be reviewed by the Town Planner within fourteen (14) working days of the submittal of a plan or building permit accompanied by a plan. At the Town Planner's discretion, the site development plan may be reviewed by the Board of Trustees at a regular meeting for their comments. Decisions of the Town Planner and Board of Trustees are final.

(2) Five (5) copies of the site development plan shall be submitted to the Town Clerk, who will forward the site development plan to the Town Planner and, if necessary, the Town Engineer for review either prior to or at the time of application for a building permit. The Town Clerk or Town Planner can request additional copies as necessary.

(3) Upon approval of a site development plan, the Town Planner shall so note by signing and dating the plan and proceeding to issue a building permit as per Town regulations. Failure of the applicant to comply with constructing an approved site development plan arrangement shall have certificates of occupancy withheld until compliance is determined.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 02 § 3, 2017)

Sec. 16-5-50. Special review use.

(a) Intent. The purpose of a special review use is first, to recognize that some uses may or may not be appropriate in a particular district depending upon the circumstances of the individual case; and, second, to allow review of such cases so that the Town is assured that these uses are compatible with their locations and surrounding land uses and will further the purposes of this Chapter. Uses which require a special review use permit are those which may be allowed in the zoning district in which they are listed if it can be demonstrated that the use, in the proposed location, is compatible with the district characteristics, purposes, dimensional regulations and development standards for the zone district in which the use is proposed and the use is compatible with the zoning purposes of the district, the particular site and the surrounding area. Uses stipulated in this Chapter as requiring a special review use permit shall only be allowed with prior issuance of such permit by the Board of Trustees as described below.

(b) Procedures and Processing for a Special Review Use Permit.

(1) Who may apply. Both the owner of the property on which the proposed use will be conducted and the operator of the use for which a special review use permit is required or their authorized representatives, shall be party to the application for a special review use permit.

(2) Process. The application shall be submitted in a letter and shall contain the following minimum information:

a. Name, address and telephone number of the property owner and applicant.

b. Legal description of the property and street address.

c. Lot size, existing zoning and tax schedule number.

d. Description of the proposed special review use.

e. A plot plan of the property as described in Section 16-5-30 above if the property is a single-family dwelling unit or a site development plan as described in Section 16-5-40 above for all other uses.

f. The names and addresses of all adjoining property owners of record.

g. Justification as to why the requested special review use should be approved.

(3) The application shall be signed by the property owner or his duly authorized agent and shall be accompanied by a nonrefundable application fee as determined by resolution of the Board of Trustees to cover costs related to the application.

(4) An application shall not be considered complete until all required information is submitted.

(5) Board of Trustees Review.

a. Public hearing and notice. Upon receipt of the completed application, the Town Clerk shall schedule a public hearing on the proposed special use review.

b. Notice of hearing. The petitioner shall cause written notice of the date, time and place of the hearing, in the form prepared by the Town Clerk, to be given to all interested parties in the following manner:

1. Publication. Notice shall be published by the Town once in a newspaper of general circulation no later than fifteen (15) days prior to the date of the hearing.

2. Mailed notice to adjoining property owners. Notice shall be mailed by the petitioner by first-class mail, postage prepaid, to each adjoining property owner of the property proposed for a special use review, disregarding intervening public streets and alleys, not less than fifteen (15) days before the scheduled date of the hearing.

3. Posting. Notice shall be posted on the property proposed for a special use review no later than fifteen (15) days before the hearing. The sign shall be prepared by the Town and posted by the petitioner on a street frontage so that it is weather-protected and legible from a distance of thirty (30) feet.

4. Proof of notice. Not later than 12:00 p.m. on the Friday immediately preceding the date scheduled for the public hearing, the petitioner shall file with the Town Clerk affidavits demonstrating timely publication, mailing to adjacent property owners and posting of notice in accordance with the foregoing requirements.

(c) Transferable. Special review use permits allow a particular use for which it is granted to operate on the specific property listed in the permit in accordance with approved plans. A special review use permit may be transferred to any other person to operate the same use per the same terms of the permit, with approval by the Town Planner, but may not be transferred to any other property or building.

(d) Duration. A special review use permit shall remain in full force and effect as long as the use for which the permit is granted continues or for the term specified on the permit.

(e) Special Review Use Criteria, Conditions and Modifications.

(1) No approval of a special review use shall be granted unless the special review use conforms to the minimum development requirements and regulations of the applicable zone district. In reviewing the special review use, the Board of Trustees shall consider the following review criteria, where applicable:

a. Is the use consistent with the intent and purpose of this Chapter?

b. Is the use consistent with the intent of the zone district in which the applicant intends to locate such use?

c. Is the use compatible with other uses in the area? Will the impacts generated by the use be abated through the utilization of mitigation measures, such as increased setbacks, screening or buffering?

d. Is the use consistent with the Town's Comprehensive Plan and other approved plans?

e. Will the use create any adverse environmental influences on the surrounding area? For example: will the use generate excessive dust, odors, fumes, noise, glare or vibration?

f. Will the use generate traffic hazards or congestion in the area? Will existing transportation systems be overburdened by the use? Are ingress and egress points appropriately and safely located?

g. Have adequate water, sewer, drainage and other utility facilities been provided?

h. Is the physical appearance of the site, including building orientation, scale, architectural treatment, and landscaping, sensitive to other uses in the area?

i. Is the use reasonably related to the overall needs of the community?

(2) In approving an application for special review use, the Board of Trustees may impose conditions or modifications which it deems reasonably necessary to secure the intent and purpose of this Chapter.

(f) Abandonment of Right. Approval of a special review use in accordance with this Section shall expire in one (1) year from date of approval unless a plot plan or site development plan has been approved or if the rights and privileges granted thereby have not been exercised or utilized or if construction work is involved, the work has actually not commenced on the premises. I(thereafter, any discontinuance of the exercise of any rights or privileges occurs for a continuous period of one (1) year, the special review use shall be considered abandoned.

(g) Revocation of Special Review Use Approval.

(1) All conditions or modifications imposed by the Board of Trustees shall be maintained in perpetuity with the special review use. If at any time the conditions or modifications are not complied with by the applicant or are found to have been altered in scope, application or design, the use shall be in violation of special review use approval.

(2) If and when any use is determined to be in violation of special review use approval, the Town Planner shall notify the applicant in writing of said violation and of a thirty-day period in which to rectify the violation. The notice shall state a time and place after the thirty-day period at which a revocation hearing will be held if the violation is not timely rectified.

(3) Within thirty (30) days after notification of violation of special review use approval, the applicant shall rectify the violation. Upon completion of any required changes, the applicant shall notify the Town Planner in writing that said changes have been made.

(4) Failure of the applicant to rectify said violations within thirty (30) days shall be cause for cancellation and revocation of the special review use approved by the Board of Trustees. A revocation hearing shall be conducted by the Board of Trustees prior to any revocation. The revocation of the special review use approval shall require the applicant to vacate the premises of or stop the use authorized by the special review use approval. After revocation, the applicant may reapply for approval of a special review use pursuant to the procedures outlined in this Section.

(Ord. 02 § 5, 2017)

Editor's note(s)—Ord. 02, § 5, adopted Feb. 16, 2017, repealed the former § 16-5-50 and enacted a new section as set out herein. The former § 16-5-50 pertained to similar subject matter and derived from Ord. 5, § 1, adopted in 2009; and Ord. 1, § 1, adopted in 2012.

Sec. 16-5-60. Changes and amendments.

(a) Authority. The Board of Trustees may, from time to time, on its own motion, on motion of the Planning Commission, on motion of the Town Planner or on petition by any property owner, after notice and public hearings as provided by law and in accordance with the procedures and requirements set forth in this Article, amend, supplement or change the Zoning Map or any provision of this Chapter.

(b) Submittal Requirements for Property Owner Petitions.

(1) Petition. Any petition to establish or change zoning for a specific property shall be filed with the Town Clerk and shall be signed by the owners of one hundred percent (100%) of the property proposed for zoning, rezoning or a Planned Development District designation, exclusive of public streets and alleys. Such petition shall furnish or provide at a minimum the following information:

a. A legal description of the property proposed for zoning.

b. A list of the names and addresses of all owners of property within the area proposed for zoning, together with a legal description of the property within such area owned by each such owner.

c. A statement of the present zoning of the area proposed for zoning.

d. A statement of the type of zoning sought by the petition.

e. A narrative summary of the existing uses within the area proposed for zoning.

f. A narrative summary of the proposed uses within the area proposed for zoning.

(2) Required attachments. Such petition shall be accompanied by the attachments listed below. The number of copies of each shall be as determined from time to time by the Town Clerk or Town Planner.

a. A map prepared at a scale of one hundred (100) feet to one (1) inch or larger, showing the property proposed for zoning, its location and the length and direction of each boundary thereof, the location and use of all buildings on such property and the principal use of all properties within one hundred (100) feet of the boundaries of such lands, disregarding intervening public streets and alleys.

b. A list of the names and addresses of the owners of the surface estate of all properties within one hundred (100) feet of any part of the area proposed for zoning, disregarding intervening public streets and alleys.

c. A statement that the petitioner has performed the records searches and other investigations necessary to comply with Section 24-65.5-103, C.R.S., regarding notice to mineral estate owners and that the petitioner is then fully prepared to give notice of the public hearing on the petition immediately upon scheduling thereof. The petitioner shall attach a complete mailing list of the persons entitled to receive such notice to the statement required by this Paragraph.

d. Application fee. Such petition shall also be accompanied by an application fee in an amount to be determined from time to time by resolution of the Board of Trustees and set forth in such fee resolution to defray the costs of processing and determining the petition.

(c) Planning Commission Review. Upon receipt of a complete property owner submittal or on its own motion or request for the same by the Board of Trustees, the Planning Commission shall review, evaluate and investigate the proposed zoning. The Planning Commission may hold public hearings, solicit comments from interested persons and perform such other investigations as it deems appropriate and shall hold a public hearing if so directed by the Board of Trustees. Upon completion of its investigation, it shall prepare and transmit its report and recommendations concerning the same to the Board of Trustees.

(d) Board of Trustees Review.

(1) Public hearing and notice. Upon receipt of the report and recommendations of the Planning Commission, the Town Clerk shall schedule a public hearing on the proposed zoning, allowing sufficient time to permit notification to mineral estate owners as required by Section 24-65.5-103, C.R.S.

(2) Notice of hearing. The petitioner shall cause written notice of the date, time and place of the hearing, in the form prepared by the Town Clerk, to be given to all interested parties in the following manner:

a. Publication. At least fifteen (15) days prior to a public hearing, a notice shall be published one (1) time in the legal notice section of a general circulation newspaper within the Town.

b. Mailed notice to surface estate owners. Notice shall be mailed by the petitioner by first-class mail, postage prepaid, to each surface estate owner of property located within one hundred (100) feet of any part of the property proposed for zoning, disregarding intervening public streets and alleys, not less than fifteen (15) days before the scheduled date of the hearing.

c. Mailed notice to mineral estate owners. Notice shall be mailed by the petitioner to the mineral estate owners entitled to receive the same, as provided by Section 24-65.5-103, C.R.S.

d. Posting. At least fifteen (15) days prior to a public hearing, a notice shall be posted by the applicant on the property for which the land use application is made. The sign shall be approved by the Town and posted by the applicant on a street frontage so that it is weather-protected and legible form a distance of thirty (30) feet.

e. Proof of notice. Not later than 12:00 p.m. on the Friday immediately preceding the date scheduled for the public hearing, the petitioner shall file with the Town Clerk the certificate of notice to mineral estate owners required by Section 24-65.5-103, C.R.S., and affidavits demonstrating timely publication, mailing to surface estate owners and posting of notice in accordance with the foregoing requirements.

(3) Approval criteria. In determining the zoning, the Board of Trustees shall consider the following factors:

a. Whether the zoning is consistent with the intent and policies of the Comprehensive Plan.

b. Whether there have been material changes in the character or conditions of the neighborhood or in the Town generally, such that the requested zoning would be in the public interest.

c. Whether the proposed zoning will tend to preserve and promote property values in the neighborhood.

d. Whether development of the property in accordance with the proposed zoning will be compatible with the surrounding zoning and land uses.

e. Whether the property can be reasonably used and developed as presently zoned.

f. Whether the proposed zoning will adversely affect traffic circulation.

g. Whether the proposed zoning will adversely affect adjoining properties due to proposed building height or bulk, lack of screening or intrusions on privacy.

h. Whether the intensity of the proposed zoning can be accommodated, given the characteristics of the soils, slopes and other potential hazards in a manner intended to protect the health, safety and welfare of potential users.

i. Whether the property was properly zoned when its current zoning was established.

j. Whether denial of the proposed zoning would preclude any reasonable economic use of the property.

k. Whether any other zoning classification would afford any reasonable use of the property.

(4) Resubmittal after denial. If a property owner petition is denied, a period of one (1) year must elapse from the date of such denial before another property owner petition to establish the same or substantially similar zoning for the same property may be submitted.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 03 §§ 3, 4, 2016)

Sec. 16-5-70. Variances and appeals.

(a) Variances.

(1) The Board of Adjustment may authorize variances from the requirements of this Chapter subject to terms and conditions fixed by the Board of Adjustment. A variance from the terms of this Chapter shall be considered an extraordinary remedy and the conditions set forth below are intended as limitations on the Board of Adjustment's power to authorize variances.

(2) The endorsement of the variance by adjacent landowners does not relieve the applicant of the burden of meeting all of the requirements set forth in this Section. No variance shall be authorized unless the Board of Adjustment finds all of the following:

a. The applicant would suffer hardship as a result of the application of this Chapter, which hardship is not generally applicable to other lands or structures in the same zone district because of the unusual configuration of the applicant's property boundaries, because of unique circumstances related to the location of existing structures thereon or because of the existence of exceptional topographic conditions thereon.

b. There are no design alternatives or alternative locations for structures that would obviate the need for the requested variance or would reduce the amount of the variance required.

c. The enforcement of the provisions of this Chapter deprives the applicant of rights enjoyed by a majority of the other properties in the same zone district under the terms of this Chapter.

d. The need for the variance does not result from the intentional, reckless or negligent actions of the applicant or his agent, a violation of any provision of this Code or a previously granted variance.

e. Reasonable protections are afforded adjacent properties.

f. The requested variance will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property.

g. The variance is the minimum variance that will make possible the reasonable use of the land or structure.

h. The granting of the variance will:

1. Observe the spirit of this Chapter;

2. Secure the public safety and welfare;

3. Ensure that substantial justice is done; and

4. Observe common sense.

i. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Chapter and the Comprehensive Plan and particularly the standards set forth in this Section. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation and punishable under Section 16-1-100 of this Chapter.

j. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not authorized in the district involved or any use expressly or by implication prohibited by the terms of this Chapter in said district. In addition, neither a nonconforming use of neighboring lands or structures in the same district nor a permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance.

k. Every variance shall run with the land.

l. The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.

m. A variance shall be effective for a period of one (1) year from the date it is granted by the Board of Adjustment. Failure to obtain a building permit for the structure for which the variance was granted prior to the expiration of said period will cause lapse of the variance. Requests for an extension of said period shall be presented to the Board of Trustees in writing at least thirty (30) days prior to the scheduled expiration date. The Board of Trustees may authorize up to one (1) additional year if cause exists for the extension and there would be no harm to the adjacent property owners or the community in general arising from the extension.

(b) Appeals.

(1) The Board of Adjustment shall hear and decide where it is alleged that there is an error in any order, requirement, decision or determination made by the Town Administrator in the administration of this Chapter and Chapter 18 of this Code. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made; where the Board of Adjustment finds that the Town Administrator acted:

a. Clearly in a manner inconsistent with this Code; or

b. Beyond the Town Administrator's authority.

(2) Except where specifically provided otherwise, all questions of administration and enforcement of this Chapter and Chapter 18 of this Code shall first be presented to the Town Administrator. Questions shall be presented to the Board of Adjustment only on appeal from the decision of the Town Administrator.

(3) Appeals made to the Board of Adjustment must be made in writing and filed with the Town Administrator within thirty (30) days following the action or decision from which the appeal is taken.

(4) An appeal from an order, requirement, decision or determination made by the Town Administrator shall stay all proceedings unless the Town Administrator certifies that such stay would cause imminent peril to life or property.

(c) Application Requirements and Setting Hearings. No matter shall be set for a hearing before the Board of Adjustment until the applicant:

(1) Submits a letter of application to the Town Clerk.

(2) Pays the application fee in an amount determined from time to time by resolution of the Board of Trustees.

(3) Meets in at least one (1) preapplication conference with the Town Administrator, which conference may result in amendments or corrections to the application.

(4) Submits within thirty (30) days of the final preapplication conference twelve (12) copies of the application or such number of copies as directed by the Town Clerk or revised application as applicable, addressing the Town Administrator's comments made at the preapplication conference.

(5) The official application form must contain the following:

a. Applicant's name, address, telephone, number and facsimile number.

b. Address of the property.

c. Legal description of the property.

d. Citation to or copy of the Section of this Chapter from which the variance is being requested or a copy of the Town Administrator's order, requirement, decision or determination from which an appeal is taken.

e. Reasons for filing an appeal or request for variance. Requests for variances must describe the evidence supporting each of the conditions required in order for a variance to be granted, as set forth above.

f. A list of the names and addresses of the owners of all properties within one hundred (100) feet of any part of the affected property, disregarding intervening public streets and alleys.

g. Any other information pertinent to the application, which addresses issues raised during the review process or which is deemed necessary by the applicant.

h. Notice of the hearing shall be given as provided in Section 16-5-60 of this Article for hearings on zoning matters, except that notice shall not be published.

(d) Hearing Procedures and Action.

(1) All hearings before the Board of Adjustment shall be open to the public.

(2) All evidence and testimony shall be presented publicly. The Board of Adjustment may take notice of and may consider any relevant acts within the personal knowledge of any member of the Board of Adjustment, which are publicly stated on the record.

(3) The Board of Adjustment shall cause a record of its proceedings to be prepared, which shall include all documents and physical evidence considered in each case, together with minutes of the proceedings. Minutes or a written findings and order shall state the grounds for each decision and shall indicate by name the maker and second of each motion and the vote on each motion. The record of proceedings shall be filed in the office of the Town Clerk.

(4) For requests for variances, the Board of Adjustment shall make specific findings on the factors set forth above.

(5) The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse or modify any order, requirement, decision or determination of the Town or to approve an application on any matter upon which the Board of Adjustment has been granted jurisdiction. Any decision of the Board of Adjustment shall be subject to review by a court of competent jurisdiction as provided by the Colorado Rules of Civil Procedure.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §12, 2014)

Sec. 16-5-80. Nonconforming uses, structures and lots.

(a) Purpose. There may exist uses, structures and lots of land which were lawful prior to the adoption or amendment of this Chapter, but which are or have become prohibited, restricted or unlawful as a result of current provisions of this Chapter. It is the intent of this Section to permit these nonconformities to continue until they are removed, abandoned or more than fifty percent (50%) destroyed. It is further intended that nonconforming uses and structures shall not be enlarged upon, expanded or extended or be used as grounds for adding other structures or uses prohibited elsewhere in the zone district.

(b) Nonconforming Uses.

(1) Any use of a building, sign or land lawfully existing at the time of the enactment of this Chapter which does not conform to the regulations of the zoning district in which it is located or with the applicable development standards of this Chapter is a nonconforming use.

(2) The continuance, modification, expansion, improvement or abandonment of all nonconforming uses shall strictly comply with the regulations set forth below in this Section, in addition to all other applicable regulations of this Chapter and the Town's adopted building code.

(3) The continuation of existing legal nonconforming uses may be continued in accordance with the provisions of this Section.

(4) The expansion of a use not permitted in the zoning district in which it is located shall be subject to the following conditions. Any expansion of a nonconforming use in a conforming structure requires a special review use permit from the Board of Trustees and shall meet the following criteria:

a. All expansion of the nonconforming use in a conforming structure shall be confined to and conducted wholly within the structure or portion thereof which is in existence as of the effective date of this Chapter.

b. The total cumulative area of all expansions of the nonconforming use occurring after the effective date of this Chapter shall not increase the gross floor area of the nonconforming use above that in existence prior to the effective date of this Chapter, except for existing residential structures expanded within conforming setbacks not resulting in more units than permitted by the zoning district in which such residential use is located.

c. All new site improvements necessitated by an expansion shall comply with the development standards of the zoning district in which the use is located or governing the use whichever is more restrictive.

(5) Expansion of a nonconforming use in a nonconforming structure shall not be permitted.

(6) Change of a use from nonconforming to any use permitted in the applicable zoning district is allowed in accordance with the following conditions:

a. The change in use shall not create any additional nonconforming situations nor increase the extent of nonconformance.

b. Any new improvements, other than maintenance of existing facilities, necessitated by the change in use shall conform to all applicable regulations of the zoning district in which it is located. Existing site improvements which do not conform to the applicable regulations of the zoning district are not required to be brought into compliance except as required below or in other applicable parts of this Chapter.

c. Any expansion involved with the change in use shall comply with the applicable regulations of this Chapter.

(7) New uses which require a special review use permit shall be allowed only if all proposed and existing improvements, other than existing nonconforming structures, comply with all applicable regulations and development standards of the zoning district in which the use is located as specified in this Chapter.

(8) Any use which is not allowed in the zoning district in which it is located and which is discontinued for a period of six (6) months or more shall be deemed abandoned and such nonconforming use shall not be renewed.

(c) Nonconforming Structures.

(1) All nonconforming structures shall comply with the provisions of the Town's adopted building code.

(2) The continued use of any nonconforming structure shall be subject to the following conditions:

a. Continued use of a nonconforming structure is allowed if the structure is legally nonconforming as of the effective date of this Chapter.

b. If use of a nonconforming structure is ancillary to the primary use on the site, changing the use in the nonconforming structure to any primary use allowed in the zoning district will be considered an increase in intensity of the nonconformance and will not be permitted unless a variance is granted for the nonconforming structure.

(d) Alteration, Repairs or Replacement.

(1) All interior remodeling or any alteration wholly within a nonconforming structure is allowed if the external configuration of the structure is not changed, provided that such alteration does not create any nonconforming use or situations nor increase the intensity of the nonconformance as described above and all other applicable regulations of this Chapter.

(2) Ordinary repairs and maintenance of a nonconforming structure shall be allowed and are encouraged.

(3) Any nonconforming structure extensively damaged by sudden destruction beyond the control of the user or by fire may be reconstructed or replaced if such destruction does not exceed fifty percent (50%) of the total structure (as determined by the Building Official). Such reconstruction shall occur on the same lot and with the same external configuration, only if all other provisions of this Chapter are met and appropriate variances are granted regarding the external configuration of the structure. Prior to the granting of said variance, it shall be demonstrated that reconstructing the structure in accordance with the provisions of this Chapter would deprive the owner use of the property in a manner which is equitable to other uses in the same zoning district.

(4) Alterations or remodeling of a nonconforming structure which changes the use of the nonconforming structure from an ancillary use to a use similar to the primary use shall not be permitted unless a variance is obtained for the structure.

(e) Nonconforming Site or Lot.

(1) Any use in existence at the time of the effective date of this Chapter on a lot which does not conform with the development standards of the zoning district in which it is located shall be allowed to be continued, provided that the use is not discontinued for a period of six (6) months or more, in which case the use shall be deemed abandoned and such use shall not be renewed except in conformance with all applicable Town regulations.

(2) Nonconforming lots of record. Where an individual lot was held in separate ownership from adjoining properties or was platted prior to the effective date of this Chapter in a recorded subdivision approved by the Board of Trustees and has less area or width than required in other sections of this Chapter, such lot may be occupied according to the permitted uses and other requirements set forth in the district in which the lot is located, provided that no lot area or lot width is reduced more than one-third (?) the zoning requirements otherwise specified by this Chapter.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 02 § 4, 2017)

Sec. 16-5-90. Public notice requirements.

(a) Purpose. All land use applications that require a public hearing before the Planning Commission, Board of Trustees or Board of Adjustment shall be subject to the requirements contained in this Section. It is intended to provide for adequate notification ensuring the opportunity for public participation of land use proposals within the Town.

(b) Responsibility.

(1) It is the responsibility of the applicant to meet these requirements prior to the established hearing date. The Planning Commission, Board of Trustees or Board of Adjustment may continue the hearing to a date certain and may keep the hearing open to take additional information to the point a final decision is made. No further notice of a continued hearing need be pursued by the applicant unless a period of six (6) weeks or more elapses between the hearing dates before the same Board. In situations where this time period has passed, the applicant shall be required to publish the "Notice of Public Hearings" again.

(2) These public notice requirements apply to all land within the jurisdiction of the Town.

(3) No public hearing shall commence nor testimony taken until these procedures are met by the applicant.

(c) Public Notice Procedures.

(1) At least fifteen (15) days prior to a public hearing, a notice shall be published at least one (1) time in the legal notice section of a general circulation newspaper within the Town. A publisher's affidavit shall be submitted to the Town Planner prior to the hearing date to verify the publication of the required notice. The notice shall read as follows:

TOWN OF FOXFIELD
NOTICE OF PUBLIC HEARING
PROPOSED AMENDMENT TO _____

Notice is hereby given that the Town of Foxfield (name of board: Planning Commission or Board of Trustees) shall hold a public hearing concerning (type of application request), located on property described in Exhibit A, and generally located at (distance and direction of nearest major intersection) pursuant to the Town of Foxfield Zoning Regulations.

The public hearing shall be held before the (name of board) on (date), at the hour of (time), or as soon as possible thereafter as the agenda of the (name of board) permits, at South Metro Fire Protection District #42, 7320 South Parker Road, Foxfield, Colorado 80016, or at a place otherwise specified by the Town Clerk. Further information is available by calling (303) 680-1544.

ALL INTERESTED PERSONS MAY ATTEND.

EXHIBIT A (legal description)

(2) At least fifteen (15) days prior to a public hearing, a written notice shall be sent by certified mail by the applicant to all Town property owners within seven hundred fifty (750) feet of the site for which the land use application is made. Return receipts shall be submitted with a list of all area property owners to the Town Clerk's office prior to the hearing date. The written notice shall contain the following information:

a. The entire notice of public hearing outlined in Paragraph (1) above, including the legal description; and.

b. Brief narrative outlining the proposed land use application.

(3) At least fifteen (15) days prior to a public hearing, a notice shall be posted by the applicant on the property for which the land use application is made. The notice shall consist of at least one (1) sign facing an adjacent public right-of-way in a manner which provides the most visibility to the public of the sign. These notices shall be in the form of signs measuring not less than three (3) feet by four (4) feet; with lettering a minimum of three (3) inches high and on posts no less than four (4) feet above the ground. All lettering shall be clearly legible from the right-of-way the sign faces. These notices shall read:

NOTICE OF PUBLIC HEARING.

Notice is hereby given that the Town of Foxfield (name of board: Planning Commission or Board of Trustees) shall hold a public hearing concerning (type of application request), located on property described in Exhibit A, and generally located at (distance and direction of nearest major intersection) pursuant to the Town of Foxfield Zoning Regulations.

The public hearing shall be held before the (name of board) on (date), at the hour of (time), or as soon as possible thereafter as the agenda of the (name of board) permits, at South Metro Fire Protection District #42, 7320 South Parker Road, Foxfield, Colorado 80016, or at a place otherwise specified by the Town Clerk. Further information is available by calling (303) 680-1544.

ALL INTERESTED PERSONS MAY ATTEND.

EXHIBIT A (legal description)

(4) For all other amendments to the Chapter, notice shall be by publication only.

(5) For any amendment to the Chapter that requires hearings before the Planning Commission and the Board of Trustees, the Board of Trustees may determine, in its sole discretion, upon request of the applicant or upon its own motion, to combine the hearings of the Planning Commission and the Board of Trustees.

Sec. 16-5-100. Fees.

(a) Intent. The intent of establishing fees is to cover the cost of processing of applications under this Chapter. In certain instances, the Town will contract for the services listed below with a planning professional. Fees shall be established by resolution of the Board of Trustees and include by way of example, but are not limited to:

(1) Preapplication meetings.

(2) Special review use permit variances and appeals.

(3) Rezoning requests.

(4) Zoning code amendments.

(5) Planned developments.

(6) Sign permits.

(b) Payment.

(1) All applications for which there is a fee shall be accompanied by the appropriate fee to the Town Clerk. Applications which are not accompanied by the appropriate fee shall be considered incomplete and shall not be processed nor shall any permit be issued unless the appropriate fee accompanies the application. The applicant shall pay the Town the actual cost to the Town for engineering, planning, surveying, legal services and administrative services rendered in connection with the review of the development. The applicant, upon submission of the development proposal, must sign a cost reimbursement agreement in the form attached as Appendix 16-C to this Chapter.

(2) The Town will send the applicant a statement for the actual costs incurred by the Town for the services described above on a monthly basis. The applicant shall pay the Town the amount due on the statement within fifteen (15) days of the date of issuance of such statement. In the event the applicant fails to pay the amount due on the statement within the time period described above, the Town shall immediately stop the review process for the development. The application will be deemed withdrawn if the statement is not paid in full within thirty (30) days of the date of issuance of the statement, when the application is deemed withdrawn. The Town will not consider another application from the applicant for development until all expenses owed to the Town are paid.

(Ord. 5 §1, 2009; Ord. 1 §1, 2012; Ord. 04 §13, 2014)

ARTICLE 6 Interpretation and Definitions

Sec. 16-6-10. Interpretation and definitions.

All words in this Chapter, except as specifically defined in this Article, shall carry their customary meanings. Words used in the present tense include the future tense; the plural includes the singular; the word *shall* is mandatory; the word *may* is permissive; the words *occupied* or *used* shall be considered as though followed by the words *or intended*, *arrangedor designed to be used or occupied*. For the purposes of this Article, the words and phrases set forth below shall have the meanings ascribed to them as follows:

Abutting. Having a common property line or district line with an adjacent property. Properties separated by a right-of-way or easement shall be deemed abutting if, in the absence of the right-of-way or easement, the properties would have a common boundary.

Accessory equipment for a CMRS facility. Equipment, including buildings and structures, used to protect and enable radio switching equipment, backup power and other devices incidental to a CMRS facility, but not including antennae.

Accessory use or *structure.* A use or structure (exceeding one hundred twenty [120] square feet) subordinate to the principal structure or use which serves a purpose customarily incidental to the principal use and normally incidental to a use by right and complying with all the following conditions:

a. Is clearly subordinate, incidental and customary to and commonly associated with the operation of the use by right.

b. Is operated and maintained under the same ownership as the use by right on the same zone lot

c. Includes only those structures or structural features consistent with the use by right.

d. Fences, gates, walls and utility poles are exempt from dimensional requirements and the number of allowed structures in each zone district.

e. Has no party wall or common wall with another structure. Bridges, tunnels, basements, breezeways and other similar means of connecting one (1) structure to another shall not, for the purpose of this Code, be considered to constitute a party wall or common wall.

Acre, gross. An area in any shape containing forty-three thousand five hundred sixty (43,560) square feet.

Agent. Includes any person acting on behalf of or in place of the owner.

Alley. A public or private vehicular passageway dedicated or permanently reserved as a means of secondary access to abutting property and designated an alley on a final plat.

Alter. To change any of the supporting members of a building, such as bearing walls, columns, beams or girders.

Animals, domestic.Domestic animals includes such animals as may be normally considered household pets, provided that they are not bred and raised for commercial purposes on the property.

Animals, farm or*domestic livestock.Farm animals* or *domestic livestock* includes such animals as are not normally considered household pets that are kept wholly or partially outside of a residential structure.

Animated sign. Any sign which changes or any part of which changes physical position by any movement or rotation.

Antenna. A metallic apparatus used for sending and/or receiving electromagnetic signals.

Authorized inspector. Any police officer, Building Inspector, Tri-County Health Officer, Code Enforcement Officer or any other officer of the Town duly authorized to examine any public or private property within the Town for the purpose of ascertaining the nature and existence of any nuisance.

Auto repair, major. Vehicle repair consisting of assembly or disassembly of engine parts, body parts, transmission, chassis, axles, etc., and/or the process of painting.

Auto repair, minor. Vehicle repair and/or servicing consisting of a minor nature, such as tune-up, oil change, chassis lubrication, tire change or repair, wheel alignment, muffler repair or installation.

Banner. A flexible material (e.g., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

Banner (advertising). A temporary sign, typically of canvas or plastic material which is not attached to a permanent mounted backing but which is securely fastened to a building at all times, which is used for the purpose of announcing a "grand opening," "going out of business," "now hiring" or other commercial purpose.

Banner (architectural). A temporary sign, displayed from a pole, light post or building for a holiday, seasonal or special event, and which does not qualify as an advertising banner sign.

Base station means a structure or equipment, other than a tower, at a fixed location that enables Federal Communications Commission-licensed or authorized wireless communications between user equipment and a communications network. The term includes any equipment associated with wireless communications services, including radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure, other than a tower, to which any of the equipment described hereof is attached.

Bee. Any stage of the common domestic honey bee, *Apis mellifera* species.

Berm. A mound of earth used for screening, definition of space, noise attenuation and/or decoration in landscaping.

Billboard. A sign placed on a pole or similar standard designed so that advertising space can be leased for a business, product or service not available on the premises.

Blade sign. See *Projecting sign.*

Board of Adjustment. A group of individuals appointed or designated by the Board of Trustees as having the responsibility for hearing requests for variances from these regulations or for hearing appeals as to the interpretation of the provisions of these regulations.

Buffer. A horizontal distance or margin of land designed to provide an attractive space or area, obstruct undesirable views, serve as an acoustic barrier or screen from objectionable noise, smoke or visual impact, provide for future public improvements or additional open space or generally reduce the impact of adjacent development.

Building. Any structure built for the shelter or enclosure of persons, animals, chattels, property or substances of any kind (not including fences), having one (1) or more floors and a roof and permanently affixed to the ground.

Building coverage. The amount of land taken up by the building itself on a zone lot. This "footprint" or building line viewed directly from above the structure includes all attached eves, cornices, decks (covered and uncovered), covered patios (ground level and uncovered not included), balconies or other building attachments such as garages, porches, porch covers and the like; also includes the ground coverage of accessory uses. The footprint may not encroach into any setback or yard requirement unless otherwise defined in this Chapter (see also *Projections*). The amount of building coverage per zone lot specified in each zone district is the maximum amount of land that can be covered by all structures, whether they are principal or accessory uses, attached or detached.

Building envelope. An area within the property boundaries of a lot or property within which an allowed building or structure may be placed.

Building roof-mounted CMRS facility. A CMRS facility that is mounted and supported entirely on the roof of a legally existing building or structure.

Building wall-mounted CMRS facility. A CMRS facility that is mounted and supported entirely on the wall of a legally existing building or structure.

Canopy. An accessory roof-type structure which is permanently affixed to the ground and typically not enclosed. As accessory structures, these structures would be exempt from the minimum distance requirements between structures. These structures must meet all other minimum yard requirements within the zoning district.

Canopy sign. A projecting wall sign affixed above a doorway or window and attached to and supported by the wall of the building, by columns extending from the ground or by a combination of a building and columns.

Certificate of occupancy. Official certification by the Building Official that a premises conforms to provisions of the Building Code and may be used or occupied. Such a certificate is granted for new construction or for alterations or additions to existing structures.

Child care facility. A facility, by whatever name known, which is maintained for the whole or part of a day for the care of five (5) or more children under the age of sixteen (16) years and not related to the owner,

operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes facilities commonly known as day care, day care centers, day nurseries, nursery schools, kindergartens, preschools, play groups, day camps, summer camps, centers for mentally retarded children and those facilities which give twenty-four-hour care for dependent and neglected children and includes those facilities for children under the age of six (6) years with stated educational purposes operated in conjunction with a public, private or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system of at least six (6) grades.

Clustered development. A type of land use design concentrating development in one (1) or more areas of the project and allowing for a reduction in lot size below minimum requirements when compensating amounts of open space are provided within the proposed development.

Collector's item. A motor vehicle or implement of husbandry that is at least twenty-five (25) years old and is of historic or special interest. In order to be considered a collector's item, a motor vehicle must meet all criteria of "collector's item" as defined in Section 42-12-101, et seq., C.R.S., in addition to all other applicable statutes and ordinances.

Colony. A hive and its equipment and appurtenances, including bees, comb, honey, pollen and brood.

Commercial mobile radio service (CMRS) facility. An unstaffed facility consisting of antennae, equipment and equipment storage shelters used for reception, switching and/or transmission of wireless telecommunications.

Commercial mobile radio service (CMRS) facility. An unmanned facility consisting of antennae and accessory equipment and used for the reception, switching, transmission or receiving of wireless telecommunications operating at one thousand (1,000) watts or less effective radiated power and using frequencies authorized by the Federal Communications Commission ("FCC"), including but not limited to paging, enhanced specialized mobile radio, personal communication systems, cellular telephone, point-to-point microwave signals and similar technologies.

Commission. The Planning Commission of the Town of Foxfield, Colorado.

Comprehensive Plan. Comprehensive Plan (Master Plan): The Master Plan for the Town of Foxfield, as may be adopted and prepared or which is being prepared for the Town and which includes any part or unit of any such plan separately adopted and any amendment to such plan or parts thereof. It is a plan for the future growth, protection and development of the Town, which makes recommendations and policies to provide adequate facilities for housing, transportation, convenience, public health, safety and the general welfare of its population.

Construction. Any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action.

Convenience store convenience service. A retail or service commercial use which serves the area immediately surrounding the use by providing groceries, sundries and miscellaneous services which do not typically offer comparison shopping opportunities.

Copy. The words, letters, symbols, illustrations or graphic characters used to convey the message of a sign.

Day care. See definition for *Child care facility.*

Density. A unit of measurement, specific to development, to be interpreted as the number of dwelling units per acre of land.

Density, gross. The average number of dwelling units or gross commercial building floor area per acre for the entire development area or site (property boundaries), including all roads and easements within the property boundaries.

Development. Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Directory sign. A sign utilized on a parcel containing more than one (1) legal use that lists the names and/or other information of the individual businesses located on the parcel.

Directional sign. Any sign that directs the movement or placement of pedestrian or vehicular traffic on a lot with or without reference to or inclusion of, the name of a product sold or services performed on the lot or in a building, structure or business enterprise occupying the same.

Drainageway. An open linear depression, whether constructed or natural, which functions for the collection and drainage of surface water.

Drive-through restaurant. A restaurant operation located either within a retail center or situated on its own freestanding pad, which primarily: a) serves food that is prepared and/or packaged within five (5) minutes and is generally intended for consumption away from the premises; b) contains a drive-in or drive-through facility; and/or c) is intended to primarily serve the passerby and/or motoring public.

Dwelling. Any building or portion thereof, used exclusively for residential purposes. *Single-family* - A building containing one (1) kitchen designed and/or used to house not more than one (1) family, including necessary employees of each such family. *Multi-family* - A building designed and/or used to house two (2) or more families, living independently of each other, including necessary employees of each such family. This includes duplexes, condominiums, townhouses and apartments. *Living unit* - A building or portion thereof containing one (1) family, including necessary employees of such family.

Dwelling unit. A single structure with one (1) or more rooms designed to function as a single living unit and containing only one (1) kitchen plus living, sanitary and sleeping facilities.

Easement. A right granted by a property owner permitting a designated part or interest of the property to be used by others for a specific use or purpose. A right to use the land of another for a special purpose not inconsistent with the ownership of that land.

Eave(s). An edge of the lower portion of the roof which projects beyond the face of an exterior wall.

Electronic message center sign. A sign whose alphabetic, pictographic or symbolic informational content can be changed or altered on a fixed display surface composed of electronically illuminated or mechanically driven changeable segments. This includes signs that have to be preprogrammed to display only certain types of information (i.e., time, date, temperature) and signs whose informational content can be changed or altered by means of computer-driven electronic impulses.

Eligible telecommunications facility request means a request for approval of the modification of an existing tower or base station that involves the collocation of new transmission equipment, the removal of transmission equipment or the replacement of transmission equipment.

Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage, which demands immediate action.

Emergency work. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Equipment storage shelter. Buildings, storage shelters and cabinets used to house CMRS facility equipment.

Estate sale. The selling of property at a residence, upon the death of the owner or occupant of said residence, by the executor, administrator, conservator or guardian thereof.

Family. Includes the following:

a. A single individual or a collective body of persons in a domestic relationship based upon blood, marriage, adoption or fostering, living as a separate, independent housekeeping unit, including domestic servants; or

b. A group of not more than six (6) unrelated persons, all living together as a separate housekeeping unit in a single dwelling unit. Excludes boarding or rooming houses, lodges, clubs, hotels, motels or fraternities:

Notwithstanding the above, a family shall be deemed to include no more than (8) persons not related by blood, marriage, adoption or legal custody occupying a residential dwelling unit and living as a single housekeeping unit if the occupants are within the definition of "group home" as defined in Section 31-23-303, C.R.S.

Fence. A linear structure of wood, wire, metal, brick, stone, frame, stucco or other manufactured material or combination thereof, including gates and posts, which is intended to define an area, mark a property boundary, contain animals, provide screening or reduce roadway noise.

Flag. Flags of the United States, the State, the Town, foreign nations having diplomatic relations with the United States and any other flag adopted or sanctioned by an elected legislative body of competent jurisdiction, that is allowed to wave, flap or rotate with the wind. Flags may also be logos or solid color.

Flashing sign. Any directly or indirectly illuminated sign, either stationary or animated, which exhibits changing natural or artificial light or color effects by any means whatsoever.

Flood. A general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland waters; and/or

b. The unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain. The area adjoining any river, stream, watercourse, lake or other body of standing water, which is subject to inundation by a one-hundred-year flood.

Floor area ratio (F.A.R.). The ratio of building gross square footage to the gross square footage of a parcel. The quotient of the gross floor area of all buildings on a lot divided by the area of said lot; for example:

Floor area 15,000 sq. ft. divided by land area = 43,560 sq. ft. = .34 (F.A.R.)

For sale sign. A sign advertising an object or commodity, other than real estate, that is offered for sale.

Freestanding CMRS facility. A CMRS facility that consists of a stand-alone support structure, such as a tower or monopole and antennae and accessory equipment.

Freestanding sign. A sign that is supported by one (1) or more columns, upright poles or braces extending from the ground or from an object on the ground or that is erected on the ground, where no part of the sign is attached to any part of a building, structure or other sign.

Frontage. The frontage of a parcel of land is considered that distance where a property line is common with a road right-of-way line, unless otherwise defined. Also, see *Lot frontage* and *Linear frontage*.

Fully enclosed structure. A fully enclosed structure shall conform to all Town zoning and building regulations regarding principal or accessory structures on a residential lot. Tarps, portable, movable or temporary storage, trash or recycling containers are not allowed as means of enclosing outdoor storage in any residential zoning district.

Garage. An accessory building or a part of a main building used for storage of private vehicles or boats of the family occupying the dwelling unit to which the garage is accessory.

Garage sale or *yard sale.* The selling of items or merchandise owned by the occupants of the residence at which the sale is held.

Garbage. Includes any vegetable or animal refuse, food or food product, matter from a kitchen, offal or carcass of a dead animal which, if deposited within the Town other than in a garbage receptacle, tends to create a danger to public health, safety and welfare or to impair the local environment. The use in this Subsection is not meant to prohibit properly maintained, odorless compost or manure piles.

Grade. The vertical location of the ground surface.

Grade, existing. The surface level of the ground prior to alteration of the land by grading.

Grade, finish. The surface level of the ground after completion of all grading.

Grade plane. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line, or, where the lot line is more than six (6) feet from the building, between the building and a point (6) feet from the building.

Grading. Any excavating, filling or combination thereof.

Gross floor area (GFA). The total floor area of a building or structure enclosed by at least two (2) impervious walls.

Group home. Any structure that provides noninstitutional housing for not more than eight (8) service-dependent or developmentally disabled individuals living as a single housekeeping unit with professional staff who function as surrogate parents and are not considered a family. Certain forms of group housing are specifically regulated by the federal or state government, as defined in Section 31-23-303, C.R.S., including:

a. Group home for handicapped.

b. Group home for developmentally disabled.

c. Group home for mentally ill.

d. Group home for the elderly.

Hazard. A hazard to public health, safety and welfare and includes any activity so recognized by the laws and regulations of the United States, the State of Colorado, Arapahoe County or the ordinances of the Town. Such hazards shall also include, but not be limited to, activities likely to cause foul or offensive odors, promote the growth or propagation of disease-carrying insects, pollute the air or ground waters of adjacent property, create loud or offensive sounds, cause drainage and runoff to occur in other than historical patterns or dead trees or vegetation that constitute such a hazard.

Height, building. The vertical distance from grade plane to the average height of the highest roof surface.

Height, structure. Structure height (not including buildings, fences or berms) is measured from the average finished grade five (5) feet from each support of the structure to the highest point of the structure. Structure height is used to measure structures such as signs.

Hive. A structure intended for the housing of a bee colony.

Home occupation. Any occupation or activity which is clearly incidental to and conducted wholly within a dwelling unit or in an accessory building on the premises by residents of the dwelling unit as more particularly described in section 16-4-10 of the Foxfield Municipal Code.

Hospital. A facility that makes available one (1) or more of the following: medical, surgical, psychiatric, chiropractic, maternity and/or nursing services.

Hotel. A building or group of attached or detached buildings designed for occupancy of specified rooms by short-term or part-time residents who are lodged with or without meals being provided in a restaurant and in which no facilities are provided for cooking in the individual rooms.

House for sale. A sign advertising a residential home located in the Town, which is currently being offered for sale.

Illuminated sign. A sign lighted by or exposed to artificial lighting either by lights on or within the sign or directed towards the sign.

Impervious coverage. Any material that substantially reduces or prevents the infiltration of stormwater or other water into previously undeveloped land.

Implements of husbandry. Every vehicle, farm tractor or machine that is designed, adapted or used for agricultural purposes.

Improvement. Upgrading a piece of land by constructing buildings, streets, utilities and the like upon it or under its surface. Improvements may be either public or private depending upon who is the ultimate owner after construction. Improvements may also be designated as either "on-site" or "off-site" in relation to a development parcel.

Inflated balloon. A membrane device that is inflated and used as a sign by virtue of its shape or letters or figures that are affixed to it and that rests on the ground or is tethered and floats in the air.

Inoperable vehicle. Any vehicle that: a) would be required to be licensed if operated on a public highway, but does not display current, valid license plates; b) does not work, move or run; c) is not functioning; d) is not operable for the function for which it was designed; or e) does not comply with the minimum safety requirements of the Colorado Motor Vehicle Law.

Junk. Includes any old, used or secondhand materials of any kind, including, without limitation, cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, tires, brass, copper or other metal, furniture, refrigerators, freezers, all other appliances, the parts of vehicles, apparatuses and contrivances and parts thereof which are no longer in use, any used building materials, boards or other lumber, cement blocks, bricks or other second-hand building materials or any discarded machinery, vehicles or any other article or thing commonly known and classified as junk.

Kennel. Any building, structure or open space or portion thereof, used for the commercial breeding, raising, boarding or selling of animals that are more than six (6) months old or for more than one (1) litter.

Lineal frontage. The left-to-right maximum front dimension of a building.

Loading area. A parking space other than a public street or alley for the parking of commercial vehicles for the purpose of loading or unloading materials or merchandise.

Logo. Corporate colors, theme or other trademarked content.

Lot. The unit into which land is divided on a subdivision plat or deed, with the intention of offering such unit for sale, lease or separate use, either as an undeveloped or developed site, regardless of how it is conveyed. A lot is the smallest unit into which land is divided on a subdivision plat.

Lot, corner. A lot abutting two (2) or more streets at their intersection or upon two (2) parts of the same street and where in either case the interior angle formed by the intersection of the street lines does not exceed one hundred thirty-five (135) degrees.

Lot coverage. That portion of the lot area covered by a building, including all overhanging roofs and impervious surfaces.

Lot frontage. That boundary of a lot which abuts a dedicated public street. In the case of a corner lot, it shall be the shortest dimension on a public street. If the dimensions of a corner lot are equal, the front line shall be designated by the owner based on the address of the property and filed with the Building Department.

Lot line. The external boundary of a lot.

Lot width. The distance parallel to the front lot line measured between side lot lines through that part of the building or structure where the lot is narrowest. Or, where no building exists, the average distance between two (2) side lot lines.

Marquee. A projecting wall sign affixed above a doorway or window and attached to and supported entirely by the wall of the building.

Microwave dish antenna. A disk-type antenna used to link communication sites together by wireless voice or data transmission via ultrahigh frequency electromagnetic waves.

Monument. A pillar structure or other entryway feature of stone, brick, stucco, wood or similar material.

Monument sign. A freestanding sign that is mounted on and supported by an architecturally compatible solid base. Generally, the length of the sign is greater than the sign height.

Motel. See *Hotel*.

Motorcycle. An unenclosed motor vehicle having a saddle for the use of the operator and two (2), three (3) or four (4) wheels in contact with the ground, including but not limited to motor scooters and mini-bikes.

Muffler. A device for abating the sound of escaping gases of an internal combustion engine and includes all similar sound dissipating devices in accordance with vehicle manufacturer specifications.

Noise. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological effect on humans.

Noise disturbance. Any sound, which: a) endangers or injures the sanity or health of humans or animals; b) is audible at a residential property boundary; c) otherwise violates the specific prohibitions of this Section; or d) endangers or injures personal or real property.

Nonconforming lot. Pertains to a defined lot where the area, width or other characteristic of which fails to meet requirements of the zoning district in which it is located.

Nonconforming structure. A structure legally existing and/or used at the time of adoption of this Chapter, or any amendment thereto, which does not conform to the regulations of the zoning district in which it is located.

Nonconforming use. A use legally existing and/or used at the time of adoption of this Chapter, or any amendment thereto, which does not conform to this Chapter.

Nuisance or *public nuisance.* This includes:

a. The conducting or maintaining of any activity in violation of statute or ordinance:

b. Any unlawful pollution or contamination of any air, water or other substance or material; any activity, operation or condition which, after being ordered abated, corrected or discontinued by a lawful order of an agency or officer of the Town, the Tri-County Health Department, County or State, continues to exist or be conducted in violation of statute, ordinance or regulation of the Town, the County or the State;

c. Any activity, operation, condition, building, structure, place, premises or thing which is injurious to the public health, safety and welfare of the citizens of the Town, which contributes to blight or property degradation or which is indecent or offensive to the senses of an ordinary person, so as to interfere with the comfortable enjoyment of life or property. For the purposes of this Subsection, an accumulation of activities, operations, conditions or things that might individually not arise to the level of a nuisance may be deemed a nuisance if, taken together, they would be indecent or offensive to the senses of the ordinary person; and

d. Any nuisance defined or declared as such by applicable statute or ordinance.

Nursing home, including assisted living. Facilities which make medical services and nursing care available for a continuous period of twenty-four (24) hours or more to three (3) or more persons not related to the operator.

Off-premises sign. Any sign, including, without limitation, a billboard or general outdoor advertising device, that advertises or directs attention to a land use, business, commodity, service or activity not located or available upon the premises whereon the sign is located.

Off-street parking. A site or portion of a site devoted to the off-street parking of motor vehicles, including parking spaces, aisles, access drives and landscaped areas.

Open fence. A fence that is seventy percent (70%) or more open. Examples of open fences include split rail and ornamental iron.

Open space. A parcel of land, an area of water or a combination of land or water within the site designated for a Planned Development or subdivision, designed and intended primarily for the use or enjoyment of residents, occupants and owners of the P.D. and/or the general public for uses, including but not limited to recreation areas and facilities, gardens, parks, walkways, paths and trails and areas of native vegetation left substantially in their natural state or supplemented by additional plant material. The term shall not include space devoted to buildings, streets, roads and other ways, parking and loading areas. Open space credit for nonresidential developments shall be given for treatments such as berms, sodded areas, trees, water features, decorative rock treatments and, in some cases, landscaped plazas and atriums.

a. *Common open space* means open space designed or intended primarily for the common use of the lawful owners, residents and occupants of a P.D. or subdivision, but not necessarily including the general public, which is owned and maintained by an organization established for such purpose or by other adequate arrangements.

b. *Public open space* means an open area developed, designed and dedicated to a public authority for use by the occupants of the development and by the general public. Portions of areas containing steep slopes (angle of incline greater than forty-five [45] degrees) and special sub-areas of floodplains (such as bogs) may not be dedicated as public open space.

Outdoor storage. The storage of materials, equipment or vehicles, which material is either wholly or partially visible from the any right-of-way or abutting lot.

Parking space. That part of a parking area, exclusive of drives, turning areas or loading spaces, devoted to parking of one (1) vehicle or automobile.

Permanent sign. A sign constructed of durable material and affixed, lettered, attached to or placed upon a fixed, nonmovable, nonportable supporting structure.

Person. An individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

Pet animal. Any dog, cat or other animal owned or kept by a person for companionship or protection or for sale to others for such purposes.

Pets. Dogs, cats, small animals, reptiles and birds which are customarily kept in the home or on the premises, as those that may be purchased at local pet stores, for the sole pleasure and enjoyment of the occupants.

Place of worship. A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Planned Development (PD). An area of land controlled by one (1) or more landowners to be developed under unified control or unified plan of development for a number of residential, commercial, educational, recreational or industrial uses or any combination of the foregoing, the plan for which may not correspond to lot size, bulk or type of use, lot coverage, open space and/or restrictions of the existing land use regulations.

Planned sign program. A program designed to provide flexibility in signage for business, commercial, institutional and Planned Development uses.

Plot plan. A surveyed overhead view plan that shows the location of the building on the lot and includes all easements, property lines, setback lines and a legal description of the lot.

Pole-mounted CMRS facility. A CMRS facility that is mounted and supported entirely on a legally existing traffic signal, utility pole, street light, flagpole, CMRS facility, electric transmission line or other similar structure.

Political sign. A sign indicating the name and/or picture of an individual seeking election or appointment to a public office, relating to a proposition or change of law in a public election or referendum or pertaining to the advocating by persons, groups or parties of political views or policies.

Portable sign. A freestanding temporary sign, which is not affixed to the ground, a sign structure, building, canopy or awning and which is capable of being carried or moved about.

Principal use. The primary use located on a given lot or parcel of land, as opposed to an accessory use; also, a use which is listed as a use by right in any given zone district in this Chapter.

Principal use or structure. The primary use or structure located on a given lot or parcel of land, as opposed to an accessory use or structure.

Privacy fence. A fence that is less than seventy percent (70%) open. Examples of solid fences include board on board, stockade, brick, stone and masonry.

Projecting sign. A sign which projects, in whole or in part, more than eighteen (18) inches horizontally beyond the face of the building on which it is displayed. A blade sign is a projecting sign.

Projections. Parts of buildings, such as architectural features that are exempted, to a specified amount, from the setback requirements of this Chapter.

Property boundary. An imaginary line along the ground surface and its vertical extension which separates the real property owned by one (1) person from that owned by another person, but not including intra-building real property divisions.

Public right-of-way. Any street, avenue, boulevard, highway, sidewalk or alley or similar place, which is owned or controlled by a governmental entity. This term includes Town right-of-way.

Public space. Any real property or structures thereon which are owned or controlled by a governmental entity.

Public utility. Every firm, partnership, association, cooperative, company, corporation and governmental agency and the directors, trustees or receivers thereof, whether elected or appointed, which is engaged in providing railroad, airline, bus, electric, rural electric, telephone, telegraph, communications, gas, gas pipeline carrier, water, sewerage, pipeline, street transportation, sleeping car, express or private car line facilities and services.

Rail fence. Typically, an open fence with vertical posts spaced approximately six (6) feet to eight (8) feet apart and two (2) or three (3) horizontal rails.

Real estate sign. A sign indicating the availability for sale, rent or lease of the specific lot, building or portion of a building upon which the sign is erected or displayed.

Recreational facilities. Uses, structures and/or land utilized for the provision of recreational activities and/or open space that may be developed, operated and/or maintained by a public entity.

Residential property. Property that is zoned primarily for residential use.

Rezoning. A revision to the Official Zoning Map.

Right-of-way. An area or strip of land over which a right of passage has been recorded for use by vehicles, pedestrians and/or facilities of a public utility.

Roof sign. A sign that is mounted on or projects above any part of the roof of a building or which is wholly dependent upon a building for support and which projects above the roof of a building with a flat roof, the eave line of a building with a gambrel, gable or hip roof or the deck line of a building with a mansard roof.

Screening. A structure erected or vegetation planted to conceal from viewers the area behind it.

Separation distance. The distance between structures measured from the foundation of one (1) structure to the foundation of an adjoining structure; provided, however, that exterior chimneys, soffits and bay windows may extend into this open area a distance of up to twenty-four (24) inches for each of the structures.

Setback. The distance required between the face of a building and the lot line opposite that building face, measured perpendicularly to the building. Where angled buildings or lots, curved streets, etc., exist, the setback shall be taken as an average distance. *Setback* also refers to the horizontal distance (plan view) between the delineated edge of wetlands, stream/river corridors, riparian areas or wildlife habitat and the closest projection of a building or structure.

Setback, front yard or front lot. A line which forms a vertical plane parallel with a front lot line of a lot, tangent to that part of a building or structure situated on such a lot which is closest to such lot line and intersecting two (2) other lot lines of such lot.

Setback line. A line or lines within a property defining the minimum horizontal distance required between a building or structure and property line.

Setback, rear yard or rear lot. A line which forms a vertical plane parallel with a rear lot line of a lot, tangent to that part of a building or structure situated on such a lot which is closest to such rear lot line and intersecting two (2) other lot lines of such lot.

Setback, side yard or side lot. A line which forms a vertical plane parallel with a side lot line of a lot, tangent to that part of a building or structure situated on such a lot which is closest to such side lot line and intersecting two (2) other lot lines of such lot.

Site development plan. A plan view of land drawn to scale showing accurate dimensions and containing the information required in this Chapter, including uses and structures proposed for a parcel of land as required by the regulations involved. It includes lot lines, streets, parking, building sites, reserved open space, buildings, major landscape features, both natural and man-made, and the locations of proposed utilities and easements.

Sight triangle. An area of land located at intersections of streets, drives and other public and/or private ways situated to protect lines of sight for motorists, within which the height of materials and/or structures is limited.

Sign. Any object or device containing letters, figures and/or other means of communication or part thereof, situated outdoors or indoors, of which the effect produced is to advertise, announce, communicate, identify, declare, demonstrate, direct, display and/or instruct potential users of a use, product, service or event.

Small wind energy conversion system (SWECS). Any mechanism, including blades, rotors or other moving surfaces, designed for the purpose of converting wind energy into mechanical or electrical power. For the purpose of these Regulations, towers, tower bases, guy wires and any other structures necessary for the installation of a small wind energy conversion system are also included.

Solid fence. A fence that is less than seventy percent (70%) open. Examples of solid fences include board on board, stockade, brick, stone and masonry.

Sound. An oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, volume and frequency.

Sound wall. A wall constructed for the purpose of reducing roadway noise.

Special review use. A use that must have approval of the Board of Trustees before being allowed in the specific zoning district.

Stable. A structure to house domestic livestock and farm animals, which shall be limited to the capacity of not more than one (1) domestic livestock and farm animals per acre or portion thereof.

Stealth CMRS facility. A CMRS facility with an alternative design which camouflages or conceals the presence of antennae or towers, such as, but not limited to, artificial trees, clock and bell towers and steeples.

Street. A public right-of-way which provides the principal means of access to abutting property.

Structure. Anything which is built or constructed or the use of which requires permanent location on the ground or attachment to something having permanent location on the ground. Among other things, structures include buildings, mobile homes, fences, gates, walls, swimming pools, and tennis courts.

Subdivision regulations. The Subdivision Regulations duly adopted by the Board of Trustees of the Town of Foxfield.

Substantial change means a modification to an existing tower or base station under the following circumstances.

(1) A substantial change in the height of an existing tower or base station occurs as follows:

a. For a tower outside of a public right-of-way, when the height of the tower is increased by more than ten percent (10%), or by the height of one (1) additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater.

b. For a tower located in a public right-of-way or for a base station, when the height of the structure increases by more than ten percent (10%) or by more than ten (10) feet, whichever is greater.

(2) Changes in height are measured as follows:

a. When deployments are separated horizontally, changes in height shall be measured from the original support structure, not from the height of any existing telecommunications equipment.

b. When deployments are separated vertically, changes in height shall be measured from the height of the tower or base station, including any appurtenances, as the tower or base station existed on February 22, 2012.

(3) A substantial change in the width of an existing tower or base station occurs as follows:

a. For a tower outside of public rights-of-way, when the addition of an appurtenance to the body of the tower protrudes from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.

b. For a tower in a public right-of-way or a base station, when the addition of an appurtenance to the body of the structure would protrude from the edge of the structure by more than six (6) feet

(4) A substantial change also occurs for an existing tower in a public right-of-way or an existing base station as follows:

a. When the change involves the installation of any new equipment cabinets on the ground, if no ground cabinets presently exist, or

b. When the change involves the installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any existing ground cabinets.

(5) A substantial change also occurs for any existing tower or base station when any of the following are found:

a. When the change involves installation of more than the standard number of new equipment cabinets for the technology involved, or more than four (4) new cabinets, whichever is less.

b. When the change entails any excavation or deployment outside the current site.

c. When the change would defeat the concealment elements of the eligible support structure.

d. When the change does not comply with conditions associated with the original siting approval of the construction or modification of the tower, base station or base station equipment This limitation does not apply if the non-compliance is due to an increase in height, increase in width, addition of cabinets, or new excavation that would not exceed the thresholds identified in subsections (1) through (5)(b), hereof.

Temporary sign. A nonpermanent sign, banner or similar device that is intended for a temporary period of use. *Temporary signs* include, but are not limited to, construction signs, real-estate signs, garage sale signs, banners, holiday displays, flags, windsocks, inflatable balloons, political, real estate and for sale signs. A temporary sign does not include a sign display area that is permanent but the message displayed is subject to periodic changes.

Tower means a structure built for the sole or primary purpose of supporting any Federal Communications Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

Town. The Town of Foxfield, Colorado.

Town Engineer. The employee or consultant designated by the Board of Trustees as the Engineer for the Town.

Town Planner. That individual appointed or designated by the Board of Trustees to enforce these Regulations.

Town right-of-way. Same as *Public right-of-way* and *Right-of-way.*

Use. The purpose for which land or premises or a building thereon is designed, arranged or intended or for which it is or may be occupied, and includes the activity or function that actually takes place or is intended to take place on a lot.

Use, principal. The primary use located on a parcel of land.

Variance. A decision of the Board of Adjustment which grants a property owner relief from certain provisions of this Chapter when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.

Vehicle. A machine propelled by power other than human power, designed to travel along the ground, in the air or through water by use of wheels, treads, runners, slides, wings or hulls and to transport persons or property, to pull non-self-propelled vehicles or machinery and includes, but is not limited to: automobile, airplane, boat, bus, truck, trailer, motorcycle, motor home, recreational vehicle, camper and truck tractor. For the purpose of this Section, the term *vehicle* includes implements of husbandry, mobile machinery and self-propelled construction equipment.

Vibration. An oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity or acceleration with respect to a given reference point.

Wall sign. A sign attached to or painted on the wall of a building or structure whose display surface is parallel to the face of the building or structure and whose height does not exceed the height of the wall to

which said sign is attached or painted upon. Awning, marquee and canopy signs are to be considered wall signs.

Weekday. Any day Monday through Friday which is not a legal holiday.

Whip antenna. An array of antennae that is cylindrical in shape.

Window sign. A sign that is painted on, attached to or located within three (3) feet of the interior of a window and that can be seen through a window from the exterior of the structure.

Yard. An open space on the same lot with a building or building group lying between the front, rear or side wall of a building and the nearest lot line, unoccupied except for projections and the specific minor uses or structures allowed in such open space under the provisions of this Chapter.

Yard, front. A yard extending the full width of the lot on which a building is located and situated between the front lot line and a line parallel thereto and passing through the nearest point of the building.

Yard, rear. A yard extending the full width of the lot on which a building is located and situated between the rear lot line and a line parallel thereto and passing through the nearest point of the building.

Yard, side. A yard on the same lot as a building situated between the side lot line and a line parallel thereto and passing through the nearest point of a building and extending from the front yard to the rear.

Zoning district. A portion of the Town within which the use of land and structures and the location, height and bulk of structures are governed; i.e., the RR classification is a district.

Appendix 16-A
Development Stipulations Chart

Development Stipulations	
Existing zoning	
Proposed zoning	
Existing land use	
Proposed land use	
Total site area	
Density (for residential, state total units and dwelling units per acre, for nonresidential, state gross floor area)	
Minimum lot size	
Setbacks (from property lines)	Front - Side - Rear - Between structures - Parking lot -
Maximum building height	
Maximum building coverage	
Area in parking and drives	
Minimum open space	
Other information as requested in letter from Town Planner	

Appendix 16-B
Certifications and Signature Blocks

(a) Intent. The Official Development Plan and the Final Development Plan shall contain executed certificates, notices and statements in the following form. Such certificates, notices or statements may be modified with the permission of the Town Attorney when warranted by special conditions.

(b) Signatures. All signatures must be signed in indelible black ink only as approved by the Clerk and Recorder. No pencils, red ink or ball points.

(c) Board of Trustees Certification. This [Official Development or Final Development] Plan was approved by the Board of Trustees of the Town of Foxfield, Colorado, on the ____ day of _____, 20____ for filing.

(d) Title Verification. I/We (name), a (choose one: qualified title insurance company, title attorney or attorney-at-law), do hereby certify that I/we have examined the title of all land identified hereon and that title to such land is in the owner(s) name free and clear of all liens, taxes and encumbrances, except as follows:

(When signed by an attorney):

_____
(Signature) (Registration No.)

_____
Name of Attorney

Date: _____

(When signed by an official of a title insurance company):

_____
(notarized signature)

_____
Company Name

Date: _____

(e) Clerk and Recorder.

STATE OF COLORADO)

) ss.

COUNTY OF ARAPAHOE)

I hereby certify that this [Official Development or Final Development] Plan was filed in my office on this ____ day of _____, 20__ A.D., at_____ a.m./p.m., and was recorded at Reception Number _____.

_____
(signature)
County Clerk and Recorder

(f) Dedication Statement (if applicable). The undersigned, being all the owners, mortgagees, beneficiaries of deeds of trust and holders of other interests of the lands described herein, have laid out the property subject to this [Official Development or Final Development] Plan as shown hereon under the name and subdivision of _____. The utility easements as shown hereon are hereby dedicated for public utilities and cable communication systems and other purposes as shown hereon. The entities responsible for providing the services for which the easements are established are hereby granted the perpetual right of ingress and egress from and to adjacent properties for installation, maintenance and replacement of utility lines and related facilities. All streets and rights-of-way shown hereon are dedicated and conveyed to the Town of

Foxfield, Colorado, in fee simple absolute, for public uses and purposes. Drainage and detention easements as shown hereon are hereby dedicated to the Town of Foxfield. The Town is hereby granted the perpetual right of ingress and egress from and to the adjacent properties for construction, repair, maintenance, operation and replacement of storm sewers and drainage facilities.

_____
(Owners/Mortgagee)

By _____

Title:_____

ATTEST:

_____
Secretary

Subscribed and sworn to before me this ___ day of_____, 20____, by* (name printed).

WITNESS my hand and official seal.

_____
Notary Public

My commission expires: _____.

* Signatures of officers signing for a Corporation shall be acknowledged as follows: "(Print name as President/Vice-President and (print name) as Secretary/Treasurer of (name of corporation), a (state) corporation."

NOTE: Include signature lines and notary lines for all owners/mortgagees.

Appendix 16-C
Cost Reimbursement Agreement

THIS COST REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____ 20__, by and between the TOWN OF FOXFIELD, a Colorado municipal corporation (the "Town"), and _____ (the "Owner"), regarding _____ at _____, Foxfield, CO 80016.

WHEREAS, the Town of Foxfield Municipal Code requires that the Town be reimbursed for the cost of the time spent for engineering, planning, surveying, inspection, hydrological and legal services in reviewing development proposals, plus fifteen percent (15%) for administrative costs (hereafter "Consultants' Time");

WHEREAS, this obligation to reimburse the Town for Consultants' Time exists regardless of whether the project is completed, and/or regardless of whether the Owner chooses to complete the Town's land review process; and

WHEREAS, this Agreement memorializes the obligation by the Owner to the Town to reimburse the Town for all Consultants' Time as set forth in Town of Foxfield Municipal Code.

NOW, THEREFORE, in consideration of the recitals and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Owner agree as follows:

1. Reimbursement. Owner agrees to reimburse the Town, regardless of completion of the Owner's project, and/or regardless of whether the Town's land review process is completed, for all Consultants' Time, as set forth in the Town of Foxfield Municipal Code for all such costs incurred by the Town which

are incurred as a result of, or which are otherwise related to, Owner's land use submission and its subsequent review.

2. Process for Reimbursement .

   (a) Estimate of Costs. Prior to any work being commenced by the Town's Consultants in processing the application, the Town shall provide to the Owner an estimate of costs (the "Estimate"), indicating the estimated costs associated with processing the application.

   (b) Deposit. Owner shall then provide a cash deposit in the amount of the Estimate, which funds shall be used to reimburse the Town as set forth herein for the Consultants' Time. The Town shall also provide the following:

      i. Whenever necessary, the Town shall send the Owner an invoice titled "Itemized Billing" showing the costs charged to the account for that month and the balance. If there is an outstanding balanced owed by the Owner, the Town will bill the Owner for that amount. Payment shall be within fifteen (15) days of the date of the invoice from the Town.

      ii. After a final decision has been made on the application, or the application has been withdrawn, and reimbursement has been made for all of Consultants' Time, any funds remaining from the deposit shall be refunded to the Owner.

      iii. When the cash deposit is eighty-five percent (85%) exhausted, and the application is still pending, an additional cash deposit will be required.

3. Remedies. In the event Owner fails to reimburse the Town for all Consultants' Time, the Town shall have the following remedies:

   (a) The Town may impose the remedies as set forth by the Ordinance, including the following:

      i. The termination of the review process if payment is not made in full within thirty (30) days of the issuance of the statement indicating the actual cost of Consultants' Time;

      ii. The application being deemed withdrawn if the statement is not paid in full within thirty (30) days of the date of the issuance of the statement indicating the actual cost of Consultants' Time;

      iii. The addition of a penalty equal to ten percent (10%) of the amount due and outstanding within thirty (30) days of the date of the issuance of the statement indicating the actual cost of Consultants' Time, plus interest on the amount due and outstanding at the rate of one-half of one percent (.5%) per month from the date when due.

   (b) The Town may also impose any or all of the following remedies, at its sole discretion:

      i. The filing of a lien on the property which is or was the subject of the proposed development upon which the Town has not been reimbursed for Consultants' Time; and/or

      ii. The refusal to issue a permit for any portion of the proposed development upon which the Town has not been reimbursed; and/or

      iii. The refusal to issue a certificate of occupancy for any portion of the proposed development upon which the Town has not been reimbursed; and/or

      iv. The refusal to accept any further land use applications from any Owner which has failed to reimburse the Town for Consultants' Time for any project.

v. The initiation of an enforcement action for nonpayment of Consultants' Time in either Arapahoe County Court or in the Town of Foxfield Municipal Court to collect unpaid fees.

4. Dispute Resolution. In the event the Owner disagrees with any of the charges in the Itemized Billing, the resolution of the dispute shall be as follows:

   (a) The Owner will submit to the Town Clerk a letter that specifies the particular charges being disputed. The letter will include payment in the amount of the Outstanding Balance less the amount being disputed.

   (b) The Town Clerk will forward a copy of the letter to the Town Consultant(s) who, after reviewing the letter, will adjust the charge and submit a new billing to the Town Clerk or submit a letter to the Town Clerk with a copy to the Owner stating the reasons that no adjustment has been made.

   (c) If the Owner disagrees with the Consultant's actions, the issue will be placed on the agenda for the next available Board of Trustees' meeting. The Board of Trustees shall consider the issue and make a final decision on the dispute.

   (d) The Owner will pay any outstanding balance within fifteen (15) days of the decision by the Board of Trustees.

5. Severability. If any provision of this Agreement is invalid, illegal or unenforceable, such provision shall be severable from the rest of this Agreement, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6. Governing Law. This Agreement shall be governed by and construed in all respects according to the laws of the State of Colorado.

7. Headings . Headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

8. Modifications . No amendments to or modifications of this Agreement shall be made or be deemed to have been made, unless such amendments or modifications are made in writing and executed by the party to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ATTEST:

_____
Town Clerk

ATTEST:

Name: _____

Title: _____

TOWN OF FOXFIELD

By: _____
Mayor

OWNER

_____

CHAPTER 17
Subdivisions

ARTICLE 1 Master Plan

Sec. 17-1-10. Maintenance of Master Plan.

The Master Plan of the Town, approved by the Board of Trustees on December 17, 1998 and amended from time to time, shall be maintained by the Town and copies made available to interested persons at the office of the Town Clerk.

ARTICLE 2 General Subdivision Provisions

Sec. 17-2-10. Short title.

This Chapter shall be known and may be cited as the Subdivision Regulations of the Town of Foxfield, Colorado. For the purpose of this Chapter, the *Subdivision Regulations* or *these regulations* shall mean the Subdivision Regulations of the Town of Foxfield, Colorado.

Sec. 17-2-20. Purpose.

(a) The subdivision of land is the first step in the process of urban development. The arrangement of land parcels for residential and recreational uses, utilities and other public purposes will determine to a large degree the qualities of health, safety and the environment.

(b) These regulations are designed, intended and should be administered in a manner to seek to:

(1) Implement the Town's Master Plan.

(2) Establish adequate and accurate records of land subdivision.

(3) Relate harmoniously the development of the various tracts of land to the existing community and facilitate the future development of appropriate adjoining tracts.

(4) Provide for adequate, safe and efficient public utilities and improvements; and provide for other general community facilities and public places.

(5) Provide for light, air, parks and other spaces for public use.

(6) Protect the health and safety of the residents and preserve the quality of the environment.

(7) Assist in providing for protection from fire, flood and other dangers; and provide for proper design of storm water drainage and streets.

(8) Provide that the cost of improvements which primarily benefit the tract of land being developed be borne by the owners/developers of the tract, and the costs of improvements which primarily benefit the whole community be borne by the whole community.

(Ord. 03 §1, 2014)

Sec. 17-2-30. Jurisdiction.

These subdivision regulations shall apply to all land located in the Town.

Sec. 17-2-40. Interpretation.

In the interpretation and application of the provisions of this Chapter, the following shall govern:

(1) Provisions are minimum requirements. In their interpretation and application, the provisions of this Chapter shall be regarded as the minimum requirements for the protection of the public health, safety, comfort, morals, convenience, prosperity and welfare. This Chapter shall be regarded as remedial and shall be liberally construed to further its underlying purposes.

(2) Application of overlapping regulations. Whenever both a provision of this Chapter and any other provision of this Chapter or any provision of any other law, ordinance, resolution, rule or regulation of

any kind contains any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern.

(3) Existing permits. This Chapter is not intended to and shall not abrogate or annul any permits issued before the effective date of the initial ordinance codified herein.

Sec. 17-2-50. Definitions.

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

Alley means a strip of land dedicated to public use, located at the side or rear of lots and providing a secondary means of vehicular access to the property.

Block means a parcel of land intended to be used for urban purposes, which is entirely surrounded by public streets, highways, public walks, parks or green strips, rural or vacant land or drainage channels or a combination thereof.

Board of Trustees means the Board of Trustees of the Town of Foxfield.

Cul-de-sac means a short street having only one (1) end open to traffic and being terminated at the other end by a vehicular turnaround.

Disposition means a contract of sale resulting in the transfer of equitable title to an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land which is not made pursuant to one (1) of the foregoing.

Easement means a right in the public of any person to use the land of another for a special purpose not inconsistent with the general property rights retained by the owner.

Evidence means any map, table, chart, contract or any other document or testimony prepared or certified by a qualified person to attest to a specific claim or condition, which evidence must be relevant and competent and must support the position maintained by the subdivider.

Floodplain means the relatively flat or lowland area adjoining a river, stream, watercourse, lake or other body of standing water which has been or may be covered temporarily by flood water. For the purpose of this Chapter, the *floodplain* is defined as the area that would be inundated by the base flood and is used interchangeably with the term *one-hundred-year flood* and the term *special flood hazard area*.

Improvements means street grading; paving and curbing; fire hydrants; water mains; sanitary sewers; storm sewers and drains; pedestrian ways; crosswalks; and such other construction as may be designated by the Board of Trustees.

Lot means a block or other measured parcel intended as a unit for the transfer of ownership or for development.

Lot, double frontage means a lot which runs through a block from street to street and which abuts two (2) or more streets.

Master Plan means the Master Plan and amendments thereto for the Town, which has been officially adopted to provide development policies for current and long-range development within the Town.

National Cooperative Soil Survey means the soil survey conducted by the U.S. Department of Agriculture in cooperation with the State Agriculture Experiment Stations and other federal and state agencies.

Planning Commission means the Town of Foxfield Planning Commission. In the absence of a separate appointed Planning Commission, the Board of Trustees is hereby authorized to act as the Planning Commission for purposes of these regulations within the meaning of Part 2 of Article 23 of Title 31, C.R.S.

Plat, final means the map of a proposed subdivision and specific supporting material drawn and submitted in accordance with the requirements of adopted regulations as an instrument for recording of real estate interests with the County Clerk and Recorder.

Plat, preliminary means the map of a proposed subdivision, drawn and submitted in accordance with the requirements of adopted regulations, to permit the evaluation of the proposal prior to detailed engineering and design.

Plat, sketch means a map of a proposed subdivision, drawn and submitted in accordance with the requirements of the subdivision regulations, to evaluate feasibility and design characteristics at an early state in the planning.

Public hearing means a meeting of the Planning Commission for the purpose of hearing comments, testimony, recommendations and other responses from the applicant, other interested parties and the general public regarding the applicant's proposal or appeal. Notice of the date, time, place and purpose of the public hearing shall be published at least once in a newspaper of general circulation in the Town at least fifteen (15) calendar days prior to the public hearing, shall be posted on the property, if practical, on a sign at least two (2) feet by three (3) feet for a period of fifteen (15) days prior to the public hearing, and posted by the applicant on the property for which the subdivision application is made. Publication and posting costs shall be paid by the applicant. The above-mentioned signs shall be removed no later than one (1) week following the hearing or continued hearing.

Regular meeting means any regularly scheduled or special meeting of the Board of Trustees acting as the Planning Commission or the Planning Commission that conforms to the requirements of state statutes and this Code for a legal meeting.

Resubdivision means the changing of any existing lot on any subdivision plat previously recorded with the County Clerk and Recorder.

Right-of-way means all streets, roadways, sidewalks, alleys and all other areas reserved for present or future use by the public as a matter of right, for the purpose of vehicular or pedestrian travel.

Street means a dedicated public right-of-way which provides vehicular and pedestrian access to adjacent properties. This definition shall include the terms *road*, *lane*, *place*, *avenue*, *drive* and other similar descriptions.

Subdivider or *developer* means any person, firm, partnership, joint venture, association or corporation who shall participate as owner, promoter, developer or sales agent in the planning, platting, development, promotion, sale or lease of a subdivision, and who either owned the land or has written authorization from the owner of the land to proceed with the subdivision.

Subdivision means the division of a lot, tract or parcel of land into two (2) or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale or of building development. It includes resubdivisions and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

Subdivision improvements agreement means one (1) or more security arrangements which may be accepted by the Town to secure the construction of such public improvements as are required by the subdivision regulations within the subdivision, and shall include collateral such as, but not limited to,

performance or property bonds, private or public escrow agreements, loan commitments, assignments of receivables, liens on property, deposit of certified funds or other similar surety agreements.

Sec. 17-2-60. Severability.

It is hereby declared to be the legislative intent of the Board of Trustees that the provisions of this Chapter shall be severable in accordance with the provisions set forth below:

(1) If any provision is declared invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that:

a. The effect of such decision shall be limited to that provision or those provisions which are expressly stated in the decision to be invalid; and

b. Such decision shall not affect, impair or nullify this Chapter as a whole, or any other part thereof, but the rest of this Chapter shall continue in full force and effect.

(2) If the application of this Chapter to any tract of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that:

a. The effect of such decision shall be limited to that tract of land immediately involved in the controversy, action or proceeding in which the judgment or decree of invalidity was rendered; and

b. Such decision shall not affect, impair or nullify this Chapter as a whole or the application of any provision thereof to any other tract of land.

Sec. 17-2-70. Enforcement and penalties.

(a) It is unlawful for any person, being the owner or agent of the owner of any land located within the Town, to transfer, sell, agree to sell or offer to sell any land which would constitute a subdivision as described herein, or to refer to, exhibit or use a plat of a proposed subdivision, before such plat has been approved by the Planning Commission and recorded or filed in the office of the County Clerk and Recorder. The penalties for a violation of this Section shall be as described in Subsection (c) below. The description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction.

(b) All departments, officials and public employees of the Town vested with the duty or authority to issue permits shall conform to the conditions of these regulations and shall issue no permits or certificates for the use or construction of buildings or other improvements requiring a permit, upon any land for which a plat is required by this Chapter, unless and until the requirements thereof have been duly complied with. It shall be the duty of the Board of Trustees, the Town Administrator, the Town Attorney, the Town Planner and the Building Inspector to enforce the provisions of these regulations.

(c) Penalties.

(1) It is a misdemeanor for any person to violate any of the provisions stated or adopted in this Chapter. Every person convicted of a violation of any provision stated or adopted in this Chapter shall be punished as set forth in Section 1-4-20 of this Code for each lot or parcel so transferred or sold, agreed or negotiated to be sold, or offered to be sold.

(2) The Town may further enjoin such transfer or sale or agreement by appropriate action brought in any court of competent jurisdiction and may recover therein all penalties provided for herein and all reasonable costs, expenses and attorney's fees incurred therein.

(Ord. 03 §1, 2014)

ARTICLE 3 Subdivision Procedures

Division 1 General Provisions

Sec. 17-3-10. General procedure.

(a) The subdivision of land within the Town shall be accomplished by the combined actions of the subdivider and the Planning Commission. Only the Planning Commission has authority to accept a plat for filing, thereby permitting the subdivision.

(b) The first step in the process is for the subdivider to submit a sketch plat to the Planning Commission. The Planning Commission shall review the submittal and advise the subdivider of whatever comments or recommendations it deems appropriate.

(c) The second step is for the subdivider to submit the preliminary plat to the Planning Commission. After proper notice is given to neighboring property owners and referrals made to appropriate agencies, the Planning Commission will review the submittal at a public hearing. The Planning Commission, following a public hearing, shall approve, approve conditionally or disapprove the plat. Approval shall be valid for twelve (12) months only.

(d) The last step is for the subdivider to submit the final plat to the Planning Commission. The final plat must correspond in every significant respect with the preliminary plat as previously approved. The Planning Commission shall review the final plat at a regular meeting and shall approve, disapprove or approve conditionally the final plat.

(Ord. 03 §1, 2014)

Sec. 17-3-20. Fees.

(a) There shall be paid to the Town Treasurer at the time of submission of the preliminary plat a fee in an amount determined by resolution of the Board of Trustees.

(b) Applicants for subdivision approval, including plat amendments, shall also pay for planning and engineering review services, attorney and consultant fees and other costs and expenses incurred by the Town and made necessary as a result of said application. Applicants shall sign a Cost Reimbursement Agreement in the form attached as Appendix 17-A to this Chapter. The Town shall have the right and authority to make disbursements from said escrow account at its sole discretion for planning and engineering review services, attorney and consultant fees, administrative costs and other costs and expenses incurred with regard to said application. Any balances remaining in the escrow account following approval, denial or withdrawal of said application shall be returned to the applicant without interest. In the event said funds are exhausted before final disposition of said application, the applicant shall make a supplemental deposit to said escrow account in a reasonable amount to cover future costs and expenses, as determined by the Town Administrator, based on past expenditures. Failure to make necessary supplemental deposits shall cause the application process to cease until the required deposits are made. The Town Administrator, with cause, may reduce the amount of the initial escrow deposit; however, the applicant shall remain responsible for the actual cost of the planning and engineering review services and other consultant fees, including, without limitation, legal fees and other costs and expenses incurred by the Town. If the Town incurs costs and expenses beyond the amount deposited with the Town and the applicant does not pay those costs and expenses within ten (10) days after

written notice from the Town, then, in addition to the other remedies the Town may have, the Town shall be entitled to a lien on the property that is the subject of the application, or the Town may elect to certify the assessed costs and expenses to the office of the County Treasurer for collection in the same manner as general property taxes are collected. Such lien shall be perfected and foreclosed upon in accordance with applicable state laws. Nothing herein shall authorize the Town to charge the applicant for costs and expenses the Town incurs as a result of litigating a matter against the applicant or against a third party.

(c) The subdivider shall pay actual costs for county filing fees. This fee may be paid after approval of the final plat.

(Ord. 03 §1, 2014)

Sec. 17-3-30. Land dedication or cash payment in lieu thereof.

In addition to provisions for roads and easements for drainage and utilities, every subdivider, in order to facilitate the acquisition and development of open space, parks and trails as contemplated by the Town's Master Plan and Parks and Trails Master Plan, and other community recreational, cultural, educational and civic amenities and facilities, shall convey to the Town an area of land from within the subdivision that is not less than seven and one-half percent (7.5%) of the gross area of all land being subdivided. The Town may, in its discretion, accept in lieu of such land dedication either land located outside of the land being subdivided or a payment equivalent to the fair market value of the land required for dedication hereunder, or some combination thereof. In the event the Town elects to require the dedication of land from the land being developed, the Town and the subdivider shall determine what land shall be dedicated and whether in fee simple or by easement, taking into account the existing and anticipated parks, trails and other recreational amenities as provided in the Town's Master Plan and Parks and Trails Master Plan, provided that the Town's reasonable determination of what land shall be dedicated shall control in the event the Town and the subdivider do not agree. Land dedications and cash payments in lieu thereof under this provision shall be used to provide, improve and maintain open space, parks, trails and other recreational amenities for the benefit of all residents of the Town. In addition, every subdivider shall pay to the Town a development fee in an amount determined by resolution of the Board of Trustees.

(1) Such development fees shall be devoted to the development of open space, parks and trails as contemplated by the Town's Master Plan and Parks and Trails Master Plan and other community recreational, cultural, educational and civic amenities and facilities.

(2) All cash fees payable to the Town under this Section shall be due to the Town prior to the recording of the plat or per contract. They shall be placed in the Land Dedication Fund of the Town for future disbursal by the Board of Trustees.

Sec. 17-3-40. Sketch plat and submittal.

(a) The subdivider shall submit to the Planning Commission the sketch plat reflecting such information and in the form as required by Section 17-4-40 of this Chapter, and the dated sketch plat shall be retained by the Town.

(b) The subdivider may submit such additional material or information which the subdivider or the Planning Commission deems supportive of the proposed subdivision.

(c) The Planning Commission shall review the sketch plat submittal to determine if it is consistent with the standards set forth in this Chapter, and will suggest to the subdivider whatever changes, if any, are recommended in the plan. The Planning Commission shall respond to the applicant within a period of sixty (60) days.

(Ord. 03 §1, 2014)

Division 2 Preliminary Plat and Submittal

Sec. 17-3-110. Requirements for subdivider.

(a) The subdivider shall submit to the Planning Commission the preliminary plat reflecting such information and in the form required by Section 17-4-40 of this Chapter. The plat shall comply with the principles, standards and criteria of Section 17-4-30 and Article 5 of this Chapter. All plats shall be dated when they are received to avoid confusion at a later time.

(b) The subdivider shall furnish a letter addressing the land dedication requirement of Section 17-3-30 of this Article and outlining in preliminary fashion how he proposes to satisfy this requirement.

(c) The subdivider shall furnish documentary evidence of at least a preliminary nature, indicating the manner in which the following essential items will be provided to the subdivision. The essential items are:

(1) Water supply.

(2) Sewage disposal.

(3) Electricity.

(4) Gas.

(5) Storm drainage.

(6) Telephone.

(d) The subdivider shall submit, at least in summary or outline form, any agreements as may be required by Sections 17-4-10 and 17-4-20 of this Chapter relating to improvements.

(1) In the event any portion of the land to be subdivided lies within the boundary of the one-hundred-year frequency floodplain, the subdivider shall submit a floodplain development plan consisting of a map and supporting data. The map shall show:

a. All lots in the subdivision, any part of which lies within the one-hundred-year floodplain.

b. All lands adjacent to the above-described lots for a distance of two hundred (200) feet in all directions.

c. Location of all reasonably anticipated structures on lots in the subdivision, when any part of the lot lies within the one-hundred-year floodplain.

(2) The floodplain development plan must show to the satisfaction of the Planning Commission that all lots, any part of which falls within the one-hundred-year floodplain, do provide or can be improved to provide for the structures reasonably anticipated for the lot and that such structures can be constructed in compliance with existing ordinances or regulations approved by the Town.

(e) In the event that the preliminary plat covers only a portion of the subdivider's entire holding, a sketch plat of the prospective street systems and the approved zoning for the entire tract shall accompany said plat. Filing fees will not be paid on the additional area until such time that a preliminary plat is actually submitted for such area.

(f) Written notice of the forthcoming Planning Commission hearing at which the plat will be considered shall be given at least ten (10) days in advance by the subdivider by receipted personal service or receipted certified mail to the owners of all property (exclusive of streets, alleys and easements) within five hundred (500) feet of any portion of the proposed subdivision, and a certificate of mailing shall be filed with the Town Clerk.

Such written notice shall specify that the proposed plat may be inspected at the Town offices by appointment prior to the hearing and that any person may appear at said meeting to protest such subdivision. If a variance is requested by the subdivider in accordance with Section 17-3-420 of this Article, the written notice shall make specific reference thereto.

(Ord. 03 §1, 2014)

Sec. 17-3-120. Action required by Planning Commission.

(a) Distribution. The Town Planner, on behalf of the Planning Commission, shall submit the preliminary plat to such of the following agencies, and to other agencies as he deems appropriate, with a request for prompt return of comments and recommendations.

(1) Town Engineer.

(2) Fire District.

(3) Arapahoe County.

(4) Adjacent municipalities.

(5) Water and/or Sanitation District.

(6) Telephone company.

(7) Gas and electric company.

(8) Tri-County Health.

(9) Colorado Department of Public Health and Environment.

(10) State Engineer regarding water wells.

(11) Colorado Department of Transportation.

(12) Arapahoe County Sheriff's Office.

(13) School district.

(14) Arapahoe County Open Space Department.

(b) Failure of a reviewing agency to forward its comments to the Town within twenty (20) calendar days after receiving a plat may be interpreted to indicate there are no objections to said plat.

(c) Public hearing. The Planning Commission shall schedule a public hearing to consider the proposed subdivision. Notice of this date shall be given to the subdivider at least fifteen (15) days in advance of the hearing.

(d) Following the public hearing referred to in the preceding Subsection, the Planning Commission may approve, conditionally approve or disapprove the preliminary plat.

(e) Approval of a preliminary plat shall be effective for a period of twelve (12) consecutive months. Twelve-month extensions may be granted by the Planning Commission. The extensions may be for an unlimited number of twelve-month periods. If a preliminary plat extension is not granted, a new preliminary plat must again be submitted before action may be taken on a final plat. Any fees that have previously been paid are forfeited.

(Ord. 03 §1, 2014)

Division 3 Final Plat and Submittal

Sec. 17-3-210. Requirements for subdivider.

(a) Within the time limits prescribed in Section 17-3-120 of this Article following approval of the preliminary plat, the subdivider shall submit to the Planning Commission the final plat, prepared in accordance with the requirements of Section 17-4-40 of this Chapter and consistent in every significant respect with the preliminary plat as approved and, in addition, complying with conditions if conditionally approved.

(b) The subdivider shall also submit the following where appropriate:

(1) A current commitment for title insurance showing the ownership to the property in the proposed subdivision, together with liens, encumbrances and restrictions thereon, if any.

(2) Treasurer's certificate of taxes, reflecting that taxes are not delinquent.

(3) A general warranty deed which deeds to the Town, or other appropriate public agency, all lands other than streets which are to be held for or used for public purposes.

(4) Subdivision improvement agreements in accordance with Sections 17-4-10 and 17-4-20 of this Chapter.

(5) Certified check representing the amount in lieu of land donation required of the subdivider pursuant to Section 17-3-30 of this Article.

(6) Attorney's certificate.

(7) Proof satisfactory to the Planning Commission that all essential services, as specified in Subsection 17-3-110(c) of this Article, will be provided to the subdivision.

(8) Street profiles in accordance with Section 17-4-30 of this Chapter.

(9) Two (2) sets of pavement design computations in accordance with Section 17-4-30 of this Chapter.

(10) One (1) sepia with approved house numbers and two (2) prints of the same.

(Ord. 03 §1, 2014)

Sec. 17-3-220. Action required by Planning Commission.

(a) The Planning Commission shall seek such comments on the final plat submittal from such other governmental units, utilities, service companies or consultants as it deems appropriate. The Planning Commission may request from the Town Attorney and Town Engineer their written opinions as to the legal and engineering sufficiency of the final plat submittal.

(b) The Planning Commission shall, at a regular meeting, review the final plat submittal and whatever information is obtained pursuant to Subsection (a) above and Section 17-3-210 above, and approve, conditionally approve or disapprove the final plat.

(c) Following the approval of the final plat by the Planning Commission, the plat shall be signed by the Chairman of the Planning Commission and attested by the Town Clerk. The Town Clerk shall then record the final plat and any other documents required in the office of the County Clerk and Recorder. All costs of recording shall be paid by the applicant.

(d) Any conditional or final approval of a final plat by the Planning Commission shall be effective for a period of twelve (12) consecutive months. In the event all required conditions are not fully met or the plat is not signed by the appropriate Town officials within said period of time, the subdivider shall submit a new

proposed final plat before any further action may be taken. Any fees that have been previously paid are forfeited. In considering the new proposed final plat, the Planning Commission may impose any reasonable additional conditions to the approval of same and may require a review and re-evaluation of the land dedication provisions as set forth in Section 17-3-30 of this Article. For good cause shown, the Planning Commission may grant an applicant a twelve-month extension of this time limitation. This Section shall apply to any final plat now pending or hereinafter submitted.

(Ord. 03 §1, 2014)

Division 4 Minor Subdivisions and Amended Plats

Sec. 17-3-310. Purpose.

The purpose of this Division is to establish a subdivision process applicable to certain small and simple divisions of property as well as minor amendments to existing subdivision plats. This Division is intended to provide for the faster processing of final and amended subdivision plats without the need to pursue sketch plan or preliminary plan processing or approvals by the Town.

Sec. 17-3-320. Definition of minor subdivision and minor amendment.

(a) A *minor subdivision* is any division of land that:

(1) Divides a parcel of land held in single or common ownership into two (2) parcels; and

(2) Does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to lot area, building height, setback, private road or private drive standards, parking, drainage requirements or access or public amenities, including public roads, easements, rights-of-way, parks, open spaces or trails.

(b) A *minor amendment* is any amendment to or modification of an existing subdivision plat that:

(1) Does not relocate previously established lot lines;

(2) Does not result in a lot consolidation or minor lot adjustment (as defined in Section 17-6-20 of this Chapter); and

(3) Does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to lot area, building height, setback, private road or private drive standards, parking, drainage requirements or access or public amenities, including public roads, easements, rights-of-way, parks, open spaces or trails.

(Ord. 03 §1, 2014)

Sec. 17-3-330. Application fee.

The fee for a minor subdivision or amended plat application shall be in an amount determined by resolution of the Board of Trustees. In addition to the application fee, applications for minor subdivisions or amended plats must comply with the escrow deposit requirements of Subsection 17-3-20(b) of this Article and the land dedication or cash payment requirements of Section 17-3-30 of this Article.

Sec. 17-3-340. Contents of plat and application.

(a) The contents of the minor subdivision plat or amended plat and the application for approval are the same as the contents and application for a final plat contained in Article 4 of this Chapter, except that the title of the subdivision plat shall prominently identify the proposed name of the subdivision, together with the phrase *minor subdivision* or *minor amendment*. A minor amendment shall carry over from the existing subdivision plat all notations, easements and conditions that are not the subject of the amendment request.

(b) Minor subdivision. The following application materials must be submitted for any minor subdivision request:

(1) An application in a form approved by the Town, which may be in the form of a letter signed by the owner or owners requesting approval of the minor subdivision pursuant to this Article.

(2) Current commitment for title insurance required by Paragraph 17-3-210(b)(1) of this Article or, in the alternative where no dedication of property to the public is proposed by the plat, all of the following:

a. A copy of a recorded deed for all of the property described in the application evidencing that the applicant is the fee owner of the property;

b. A written, executed and notarized statement of the applicant representing to the Town that he is the fee owner of the property; and

c. A certified copy of documentation from the County Assessor or County Clerk and Recorder evidencing that the applicant is the owner of record of the property.

(3) Topography for the entire property subject to subdivision expressed in one-foot contours in USGS datum.

(4) A statement or tabulation reflecting the total acreage of the subdivision and breakdown as to land uses; such as building lots, streets, deeded public areas and easements.

(5) A study by a professional engineer licensed to practice in the State, detailing the method for moving storm water through the subdivision. The study shall include:

a. Detailed description of existing ditches, culverts and irrigation facilities, including the condition or quality of such improvements;

b. Calculations of projected quantity of storm water naturally entering the proposed subdivision;

c. Quantities of flow from each pickup point;

d. Locations, size and grades of required culverts, drain inlets and storm drainage sewers;

e. Elevations of any adjacent or on-site delineated floodplains;

f. Projected impacts on any downstream property; and

g. Details of on-site detention of storm water if required. Storm water detention is required unless no adverse impact is shown downstream to a delineated floodplain.

(6) Construction details for any public improvements.

(7) An agreement relating to public improvements as required by Sections 17-4-10 and 17-4-20 of this Chapter.

(8) Documentary evidence of water supply, sewage disposal, electricity, gas and telephone.

(9) Floodplain development plan consisting of map and supporting data if the property is in a floodplain.

(10) Letter addressing land dedication requirements outlining how the subdivider proposes to meet the land dedication requirements of Subsection 17-3-30(a) of this Article.

(11) Additional information deemed necessary by the Town to evaluate the proposed application or plat.

(c) Minor amendment. The following application materials must be submitted for any minor amendment request:

(1) An application in a form approved by the Town, which may be in the form of a letter signed by the owner or owners requesting approval of the minor amendment pursuant to this Article.

(2) Current commitment for title insurance required by Paragraph 17-3-210(b)(1) of this Article or, in the alternative where no dedication of property to the public is proposed by the plat, all of the following:

a. A copy of a recorded deed for all of the property described in the application evidencing that the applicant is the fee owner of the property;

b. A written, executed and notarized statement of the applicant representing to the Town that he is the fee owner of the property; and

c. A certified copy of documentation from the County Assessor or County Clerk and Recorder evidencing that the applicant is the owner of record of the property.

(Ord. 03 §1, 2014)

Sec. 17-3-350. Minor subdivision and minor amendment approval procedure.

The Planning Commission shall hold a public hearing to consider the subdivision's conformance with the requirements of this Chapter and this Article. The Planning Commission shall render a decision to recommend approval, conditional approval or denial of the minor subdivision or minor amendment.

Sec. 17-3-360. Standards for minor subdivision and minor amendment approval.

The approval or conditional approval of any minor subdivision or minor amendment by the Planning Commission shall require a finding that the applicant established each of the following by competent and sufficient evidence:

(1) The proposed subdivision meets the definition of a minor subdivision or minor amendment contained in this Division;

(2) The proposed subdivision fully conforms to all applicable requirements for the zone district in which the property is located, including but not limited to requirements for setbacks and minimum lot sizes;

(3) The proposed subdivision meets or satisfies all other applicable requirements of this Code;

(4) The streets, whether public or private, and all public improvements necessary to serve the subdivision meet or exceed the requirements of the Town;

(5) Adequate utility easements are established within the affected property to provide service to the lots created by or illustrated upon the minor plat;

(6) Existing public trails located within the lots illustrated upon the minor plat are preserved or new trails are dedicated by the plat that will provide, in the opinion of the Town, a substantially similar or improved trail system in terms of route, grade, access, surface quality, ease of maintenance and safety;

(7) The proposed configuration, shape, arrangement and layout of the lots, conditions placed on the lots and any streets do not, in the opinion of the Town, create a lot or street that is inconsistent or

incompatible with other lots or streets within the neighborhood or the vicinity, or do not substantially and adversely affect adjacent properties; and

(8) The proposed subdivision substantially conforms to the goals and policies of the Town's Master Plan to the extent that such goals and policies establish requirements that are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that the application and subdivision plat meets or fails to meet such goal or policy.

Sec. 17-3-370. Conditions for approval.

The Planning Commission may impose reasonable conditions upon any approval of a minor subdivision or minor amendment that are necessary to ensure continued conformance with these standards of approval, this Code or other conditions deemed necessary based on the evidence presented to the Planning Commission to protect the health, safety and welfare of the Town and its residents.

Division 5 Additional Provisions

Sec. 17-3-410. Building permits.

(a) No building or construction permit shall be issued covering unplatted property unless the property has been specifically exempted from the subdivision process by definition or by official action of the Board of Trustees.

(b) Prior to the issuance of a building permit, the Town will require the following subdivision improvements to be completed:

(1) Survey monuments. As required by Town specifications.

(2) Water mains. If provided, the subdivider shall provide adequate mains and stubs to each lot in such a manner that street and sidewalk cuts will not be required to hook up.

(3) Fire hydrants. As required according to Town or Fire District specifications.

(4) Site and street grading. As required by Town specifications.

(c) Prior to issuance of a certificate of occupancy, the Town will require the following improvements to be completed:

(1) Sanitary sewers. If provided, the subdivider shall provide adequate lines and stubs to each lot in such a manner that street and sidewalk cuts will not be required to hook up.

(2) Storm drainage. The subdivider shall provide storm sewers, culverts and bridges where required.

(3) Streets. Base construction will be completed.

(4) Street signs. As required according to Town specifications.

(5) Utilities (telephone, electric services and gas lines). These shall be installed underground and shall be in place.

(Ord. 03 §1, 2014)

Sec. 17-3-420. Variance procedure.

(a) Application for variance. A subdivider may submit an application for a variance to this Chapter or Chapter 16 in writing to the Board of Adjustment, setting forth the extent of the requested variance supported with reasons for the request.

(b) Time and place of regular meeting. The Board of Adjustment shall, upon receipt of such application, set a public hearing and notify the applicant of the time and place of such hearing. Notice shall be given of the public hearing pursuant to the requirements of this Chapter.

(c) Board of Adjustment action. Following the public hearing referred to in Subsection (b) above, the Board of Adjustment shall issue a final determination approving or denying the variance within sixty (60) days.

(d) Criteria for granting variances. Approval of variances shall be based fundamentally on findings that unusual topographical or other exceptional conditions or circumstances not caused by action of the subdivider require such variance, modification or waiver; and that the granting thereof will not adversely affect the general public nor have the effect of nullifying the intent and purpose of these regulations. In addition to those findings, no approval of any variance under this Section shall be granted unless the Board of Adjustment finds that:

(1) Reasonable protections are afforded adjacent properties;

(2) The requested variance will not have an adverse impact on the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding properties; and

(3) The variance is the minimum variance necessary to alleviate the exceptional condition or circumstance.

(e) Limitation of variances. In no case shall a variance be granted for a lot that is not lawful under the provisions of this Code. In no case shall any variance, modification or waiver be more than a minimum change in requirements and, except for a variance of the minimum lot area and, upon the grant of a minimum lot area variance, the minimum yard requirements, in no case shall it be in conflict with Chapter 16 of this Code or objectives of the Town's Master Plan.

(Ord. 03 §1, 2014)

ARTICLE 4 Improvement and Plat Requirements

Sec. 17-4-10. Public improvements.

(a) Prior to the approval of the final plat, the Town will require from the subdivider a written agreement to construct any required public improvements shown in the final plat documents, as well as repairs occasioned by such improvements. Such agreement shall reflect an estimate of the cost of the various improvements, repairs and a time schedule for their completion. The form of the agreement is attached as Appendix 17-B to this Chapter, and incorporated herein by this reference.

(b) The subdivider shall deposit with the Town a performance and payment bond, maintenance bond, irrevocable letter of credit or other collateral which is sufficient, in the judgment of the Board of Trustees, to assure financial capability for the completion of the improvements or repairs required under Subsection (a) above.

(c) As improvements are completed, the subdivider may apply to the Town for a release of part or all of the collateral deposited with the Town. Upon inspection and approval, the Board of Trustees shall release said collateral. If the Town determines that any of such improvements are not constructed in substantial compliance with specifications, it shall furnish to the subdivider a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure substantial compliance. If the Town determines that the subdivider has not constructed any or all of the improvements in a timely manner and in accordance with all of the specifications, the Town may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvement or improvements in accordance with specifications.

(d) Notwithstanding any provisions to the contrary, public ways, including but not limited to streets, roads, lanes and drives ("public ways"), or other public improvements, including but not limited to improvements on or in recreational trails, parks or open space, dedicated to the Town for public use must remain free from defect for a period of one (1) year from the date that the respective public way or other public improvement is complete as determined by the Town. The subdivider shall provide the Town with a letter of credit issued by a bank acceptable to the Town, in an amount equal to the cost of the public way or other public improvement plus a reasonable amount for contingencies, which shall be no less than ten percent (10%) of such cost. Said letter of credit shall remain in place until the anniversary of the completion of the public way or other public improvement, at which time, depending upon the condition of the public way or other public improvement, the Town may, in its sole discretion, do what it deems necessary for the public health, safety and welfare, including but not limited to:

(1) Accept the same for maintenance;

(2) Require the subdivider to correct any defects in the public way or other public improvement; or

(3) Draw on the letter of credit to correct any defect in the public way or other public improvement.

The subdivider shall be responsible for paying the Town for any shortfall in the letter of credit.

Sec. 17-4-20. Private improvements.

(a) In the event the subdivision is to contain any property or facility that is not for public use but which is for the private use of the owners or occupants of two (2) or more lots or dwelling units, the maintenance and operation of such privately owned common facility shall be covered by an agreement with the Town. Examples of such property or facility might be tennis courts, swimming pools, parkways, roadways, gates, greenbelts and stables.

(b) The agreement between the subdivider and the Town will provide to the Town whatever it deems necessary to assure that:

(1) Construction. The proposed facilities will be constructed as proposed.

(2) Future operation. The future operation and maintenance of the facility are properly provided for both as to management and funding. Such agreement may require approval of covenants, escrow deposits, performance and payment bonds or any other method of assurance required by the Town.

(3) Maintenance of drainage facilities.

a. The subdivider and all of the owners of the properties drained by or draining into any drainage facility, including but not limited to private drainage facilities and private and public drainage easements, located on the property that is the subject of the final plat ("benefited owners") shall be jointly and severally responsible for maintaining the structural integrity and operational functions of said drainage facility. If, at any time following certification of any such drainage facility, or any time following approval of the final plat, the Town deems that any such drainage facility no longer complies with the approved plans, the subdivider and the benefited owners shall restore such facility to the standards and specifications as shown on the approved drainage plans. Failure to maintain the structural integrity and operational function of any such drainage facility will result in the Town notifying the subdivider and the benefited owners as to the nature of the work required to bring the facility into compliance, together with a request for the work to be performed in a reasonable time period. If the subdivider and benefited owners fail to bring the drainage facility into compliance with the approved drainage plans or an emergency situation exists, the Town may enter onto the property and cause the necessary work to be performed at the expense of the subdivider and benefited owners.

b. The Town shall invoice said subdivider and benefited owners for its costs and expenses. The subdivider and benefited owners shall, within thirty (30) days of the date of the invoice, remit full payment to the Town. If full payment is not made by the thirtieth day, the Town Administrator may elect to have the Town's costs and expenses become a lien against the properties drained by or draining into any such drainage facility as of the date the Town Administrator certifies the costs and expenses to the office of the County Treasurer for collection in the same manner as general property taxes are collected. A notice of the lien shall be recorded in the office of the County Clerk and Recorder. The amount of the costs and expenses may be paid to the Town at any time prior to certification of the same by the Town Administrator to the office of the County Treasurer, but thereafter payments shall be made only to the office of the County Treasurer. Upon receipt of the certified costs and expenses, the County Treasurer shall proceed to collect the amounts so certified against said properties in the same manner as the collection of general property taxes and the redemption thereof.

(Ord. 03 §1, 2014)

Sec. 17-4-30. Engineering and construction criteria.

Pursuant to and in the manner provided by law, the Board of Trustees shall adopt by resolution the Town of Foxfield Infrastructure Design and Construction Standards, of which one (1) copy is now filed in the office of the Town Clerk and may be inspected by appointment.

Sec. 17-4-40. Table of plat requirements.

The plats submitted shall contain the following information:

Plat Requirements

#	Description	Sketch	Preliminary	Final
1	Sheet size 24" x 36".			
	Original on film or linen (final only).			1
	Copies - number required.	10	24	20
2	Proposed name of subdivision.	X	X	X
3	Names and addresses of:			
	a. Subdivider.	X	X	X
	b. Owners.		X	X
	c. Land planner.	X	X	
	d. Registered land surveyor in State of Colorado.		X	X
4	North point and date of preparation.	X	X	X
5	Scale, written and graphic, 1" = 50' or 1" = 100'.	X	X	X
6	Vicinity map showing major land use divisions, street and major drainage features for at least ¼ mile on all sides of proposed subdivision located in relation to governmental section lines.	X	X	X
7	Indication of existing zoning.	X	X	X
8	A key or index shall be on the first page if the plat consists of more than 1 page.		X	X
9	Legal description of subdivision.		X	X
10	A statement or tabulation reflecting the total acreage of the subdivision and breakdown as to land uses, such as building lots, streets deeded public	X	X	

	areas and recreation easements.			
11	Boundary lines of the subdivision in a heavy solid line.	X	X	X
12	Topographic contouring by a registered land surveyor or engineer.			
	a. Existing topography, with 10-foot intervals covering the subdivision and ¼ mile in all directions.	X		
	b. Existing topography and a grading plane, with 2-foot intervals covering the subdivision and 100 feet in all directions.		X	
13	Drainage channels, wooded areas and other significant natural features within the tract or at least 100 feet immediately adjacent thereto.	X	X	X
14	Boundary of existing 100-year floodplains, if applicable.	X	X	
15	Lines depicting any proposed modifications to drainage channels or floodplains.	X	X	X
16	General land plan reflecting land use divisions, including residential, streets, recreational easements and other significant features.	X		
17	Specific land use plan for site and at least 100 feet adjacent thereto, reflecting existing and proposed lot and property boundaries, streets, utility lines, drainage structures with easements and dedications, all significant dimensions to nearest foot; show the square footage within each lot.		X	
18	A preliminary layout map showing the method of moving storm water through the subdivision will be needed. This map should also show runoff concentrations in acres of drainage area on each street entering each intersection. (This may be combined with topographic map.) Flow arrows should clearly show the complete runoff flow.		X	
	a. Details of ditch and culverts.			
	b. Calculations of projected quantity of storm water entering subdivision naturally from area outside of subdivision.			
	c. Quantities of flow from each pickup point.			
	d. Location, size and grades of required culverts, drain inlets and storm drainage sewers.			
	e. Details of on-site retention of storm water if required by Town.			
19	Specific land plan, fully surveyed, reflecting exact location of all boundaries, streets, recreational easements, utility easements, public areas and any other proposed divisions.			X
20	Subdivision boundary and interior streets: An accurate and complete boundary survey and survey of interior street lines shall be made of the land to be subdivided. A traverse of the exterior boundaries and interior streets of the tract and of each block, when computed from field measurements on the ground, must close within a limit of 1 foot to 10,000 feet of perimeter. The boundary of the subdivision shall be clearly indicated on the final plat. All lines shown on the plat which do not constitute a part of the subdivision shall be dashed. Any area enclosed by the subdivision, but not a part thereof, shall be labeled *Not a part of this subdivision*. Adjacent subdivisions shall be identified by official names.			X
21	Dimensions, bearing or angles, curve data: The final plat shall show all survey and mathematical information and data necessary to locate all monuments and to locate and retrace any and all interior and exterior boundary lines appearing thereon, including bearings or angles, continued			X

	with distances and deflection angles for all circular curves. Where, under unusual circumstances, curves other than circular are used, the final plat must indicate type of curve and all pertinent data.			
22	Lots and blocks: All lots and blocks and all parcels offered for dedication for any purpose shall be particularly delineated and designated with all dimensions, boundaries and courses clearly shown and defined in every case. Parcels offered for dedication other than for streets or easements shall be designated by letter or number which shall be explained on the map. Sufficient linear, angular and curve data shall be shown to determine readily the bearing and length of the boundary lines of every block, lot and parcel which is part thereof. All lots and, wherever practicable, blocks, in their entirety shall be shown on 1 sheet. No ditto marks shall be used for lot dimensions. All lots and blocks shall be numbered systematically.			X
23	Streets: The plat shall show the right-of-way lines and names of each street, the width of any portion being dedicated and widths of any existing dedications. The widths, locations and names of adjacent streets and other public properties within 50 feet of the subdivisions shall be shown. If any street in the subdivision is a continuation of an existing street, the conformity or the amount of nonconformity of such street, to such existing streets shall be accurately shown. Whenever the centerline of a street has been established or recorded, the data shall be shown on the final plat.			X
24	Easements: The sidelines of all easements, including easements for utilities and drainage, shall be shown by fine dashed lines. If any easements already of record cannot be definitely located, a statement of the existence, the nature thereof and its recorded reference must appear on the title sheet. Distances and bearings on the sidelines of lots which are cut by easements must be arrowed or so shown that the plat will indicate clearly the actual length of the lot lines. The widths of all easements and sufficient ties thereto to definitely locate the same with respect to the subdivision must be shown. All easements must be clearly labeled and identified. If an easement shown on the plat is already of record, its recorded reference must be given. If an easement is being dedicated by the plat, it shall be set out in the owner's certificate of dedication and dedicated to the Town.			X
25	Building setback line: The plat shall show building setback lines by long thin dash lines.		X	
26	The location and description of all section corners and permanent survey monuments in or near the tract, to at least 1 of which the subdivision shall be referenced.			X
27	Owner's and mortgagee's certificate and dedication, signed.			X
28	Surveyor's certificate of survey, signed and with seal, and the date of the survey.		X	X
29	Title certificate.			X
30	Street maintenance agreement, if applicable.			X
31	Street lighting agreement, if applicable.			X
32	Certificates of Planning Commission approval.			X
33	Certificate of Town's acceptance of ways, easements and public land dedications.			X

34	County Clerk and Recorder's Certificate.			X
35	Town Attorney's and Town Engineer's written opinions on legal and engineering sufficiency of plat when applicable.			X
36	Subdivider's written agreement on public and/or private improvements and assurance of financial capability.			X
37	Agreement in summary or outline form required by Sections 17-4-10 and 17-4-20 of this Chapter relating to public improvements.		X	
38	Documentary evidence of water supply, sewage disposal, electricity, gas, storm drainage, telephone.		X	
39	Floodplain development plan, consisting of map and supporting data.		X	
40	Letter addressing land dedication requirements outlining how subdivision proposes to meet 10% requirement.		X	
41	In the event cash in lieu of land is required, documentation substantiating fair market value shall be provided.			X
42	A current commitment for title insurance showing the ownership to the property in the proposed subdivision, together with liens, encumbrances and restrictions thereon, if any.			X
43	Treasurer's certificate of taxes, reflecting that taxes are not delinquent.			X
44	A general warranty deed which deeds to the Town, or other appropriate public agency, all lands other than streets which are to be held or used for public purposes.			X
45	Certified check representing amount in lieu of land donation required of subdivider pursuant to Section 17-3-30 of this Chapter.			X
46	Attorney's certificate.			X
47	Proof satisfactory of the Planning Commission that all essential services, as specified in Subsection 17-3-110(c) of this Chapter, will be provided to the subdivision.			X
48	Street profiles in accordance with Section 17-4-30 of this Article.			X
49	2 sets of pavement design computations in accordance with Section 17-4-30 of this Article.			X
50	1 sepia with approved house numbers and 2 prints of same			X

(Ord. 03 §1, 2014)

Sec. 17-4-50. Certificates required.

Certificates required to appear on the final plat of a subdivision shall be in form substantially as set forth herein:

(1) Certificate of dedication and ownership:

Know all men by these presents, that the undersigned hereby certify that they are all of the Owner(s), Mortgagee(s) and Lienholder(s) of certain lands in the Town of Foxfield, Arapahoe County, Colorado, described as follows:

Beginning _____ etc., containing _____ acres, more or less. The undersigned have by these presents laid out, platted and subdivided the same into lots, blocks and tracts, as shown on this plat, under the name and style of _____ and do hereby dedicate to the Town of Foxfield for public use the public ways shown hereon, including but not limited to, streets, roads, drives and lanes; the public lands shown hereon for their indicated public use; and the recreational trails shown hereon for non-motorized, recreational use by the public in the manner

similar to other public trails throughout the Town of Foxfield, subject to the applicable laws and ordinances of the Town of Foxfield, and for use by vehicles appropriate for the maintenance of the trail easements by the Town or its contractors. The undersigned hereby further dedicate to the Town of Foxfield the utility easements shown hereon for utility purposes only. The undersigned hereby further dedicate to the Town of Foxfield all drainage easements shown hereon for drainage purposes only.

The undersigned hereby further dedicate to the public utilities the right to install, maintain and operate mains, transmission lines, service lines and appurtenances to provide such utility services within this subdivision of property contiguous thereto, under, along and across public ways, including but not limited to, roads, streets, lanes and drives as shown hereon, and also under, along and across utility easements as shown hereon.

The lands comprising this subdivision are subject to certain covenants which are recorded in Book _____ at Page _____, of the records of Arapahoe County, Colorado.

Executed this _____ day of _____, 20___. _____

_____

Owner(s): Mortgagee(s) and Lienholder(s):

State of Colorado,)

) ss.

County of Arapahoe)

The foregoing dedication was acknowledged before me this_____ day of _____, 20___, by _____.

Witness my hand and seal.

_____

Notary

My commission expires _____.

(2) Surveying certificate:

I, _____, a Registered Professional Land Surveyor in the State of Colorado, do hereby certify that the survey represented by this plat was made under my supervision and the monuments shown thereon actually exist and this plat accurately represents said survey.

_____

Registered Land Surveyor

(3) Title certificate:

I, _____, an attorney licensed to practice law in the State of Colorado, certify that I have examined title to the above-described land dedication to the Town of Foxfield, and that the party(ies) executing the dedication have merchantable title to the above-described real property and are well seized of the property dedicated by this plat and have good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple and have good right, full power and lawful authority to dedicate the same in manner and form as aforesaid, and that same is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature except those of record and acceptable to the Town.

By _____

Attorney at Law

(4) Or, in the alternative:

Title Certificate:

I, _____, as authorized agent for _____ Title Company, and having the power and authority to legally bind _____ Title Company with respect to the certification made herein, hereby certify that I have examined

title to the above-described land dedication to the Town of Foxfield, and that the party(ies) executing the dedication have merchantable title to the above-described real property and are well seized of the property dedicated by this plat and have good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple and have good right, full power and lawful authority to dedicate the same in manner and form as aforesaid, and that same is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature except those of record and acceptable to the Town.

By _____
Agent

(5) Standard plat notes:

1. Street maintenance: It is mutually understood and agreed by the subdivider and the Town of Foxfield that the dedicated public ways, including but not limited to streets, roads, lanes and drives, shown on this plat will not be accepted finally for maintenance by the Town until and unless the owner(s) construct the same in accordance with the subdivision agreement, if any, and subdivision regulations in effect at the date of the recording of this plat and approval of the Town has issued to that effect.

2. Covenant concerning maintenance of drainage facilities: The owner(s), its legal representatives, heirs, executors, administrators, successors in interest and assigns shall be jointly and severally liable and responsible for maintaining the structural integrity and operational functions of all drainage facilities located on the property shown hereon unless otherwise specified herein, including, but not limited to, private drainage facilities other than easements and public and private drainage easements. The benefits and burdens described in this covenant shall run with the land and bind the present owner(s), its successors and assigns.

(6) Street lighting (optional):

All lots are subject to and bound by tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this subdivision, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The owner or owners shall pay, as billed, a portion of the cost of public street lighting in the subdivision according to _____ rates, rules and regulations, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

(7) Town approval:

This plat is approved for filing and the Town hereby accepts the dedication of the public ways shown hereon, including, but not limited to, the streets, roads, drives and lanes for public use subject to the provisions contained in the Street Maintenance note herein, the dedication of public lands shown hereon, and the dedication of the utility easements, drainage easements and recreational trails shown hereon.

Signed this _____ day of _____, 20___.

Town of Foxfield Planning Commission

By _____
Chairman

(8) As to Acceptance of Dedication of Public Ways and Public Improvements

Town of Foxfield Board of Trustees:

By _____
Mayor

Recorder's certificate:

This plat was filed for record in the office of the County Clerk and Recorder of Arapahoe County at _____.m. on the _____ day of _____, 20___, in Book _____, Page _____, Map _____, Reception number _____.

Arapahoe County Clerk and Recorder

By _____
Deputy

(9) Standard notes:

1. Maintenance of drainage facilities: The owner(s) in possession shall be responsible for maintaining the structural integrity and operational functions of all drainage facilities located thereon. If at any time, following certification of said drainage facilities, the Town deems that said drainage facilities no longer comply with the approved plans, the owner(s) in possession shall restore such facilities to the standards and specifications as shown on the approved drainage plans. Failure to maintain the structural integrity and operational function of said drainage facilities following certification will result in the Town notifying all property owners whose property contributes to the facility as to the nature of the work required to bring the facility into compliance, together with a request for the work to be performed in a reasonable time period. If the drainage facility is not subsequently brought into compliance with the approved drainage plans by the owner(s) in possession, or an emergency situation exists, the Town may enter onto the property, cause the necessary work to be performed and file a lien against all properties contributing to the drainage facility.

(Ord. 03 §1, 2014)

ARTICLE 5 Design Principles

Sec. 17-5-10. General provisions.

In order to achieve the intent and purpose of these regulations, the following design principles shall be followed, and as such will constitute a portion of the evaluative criteria to be met before approval of a plat:

(1) Minimum standards for development are contained in Chapter 16, Chapter 18, Article 1 and this Chapter. However, the Town's Master Plan expresses policies designed to achieve an optimum quality of development in the Town. If only the minimum standards are followed, as expressed by the various ordinances and codes regulating land development, a standardization of development will occur. Subdivision design shall be of a quality to carry out the purpose and spirit of the policies and special reports expressed in the Master Plan (and amendments thereto) and in this Chapter.

(2) The layout of lots and blocks should provide desirable settings for structures by making use of natural contours, maintaining existing views and affording privacy for the residences and protection from adverse noise and vehicular traffic. Natural features and vegetation of the area must be preserved if at all possible.

(3) Tree masses and large individual trees should be preserved. The system of roadways and the lot layout should be designed to take advantage of visual qualities of the area.

(4) Pedestrian and recreational ways should be separated from roadways and be designed to provide all residential building sites with direct access to all neighborhood facilities.

(5) Tracts subdivided into large parcels which offer the possibility of further subdivision shall be arranged to allow the opening of future streets and logical further subdivision.

(6) Tracts of land or portions thereof lying within the one-hundred-year floodplain shall not be subdivided except for open space until the subdivider has complied with the requirements of Subsection 17-3-110(d) of this Chapter.

(7) Whenever a proposed subdivision is not served by proper community access roads, utilities and other basic needs of the future residents, the Board of Trustees may deny the subdivision until such needs are properly met.

Sec. 17-5-20. Streets and traffic patterns.

(a) Streets shall be located with appropriate regard for topography, creeks, wooded areas and other natural features which would enhance attractive development.

(b) Existing streets, including preliminary platted streets, in adjoining territory shall be continued at equal or greater width and in similar alignment by streets proposed in the subdivision, unless variations are approved by the Board of Trustees.

(c) Streets within subdivisions shall be designed as a system of circulation routes, so that the use of local streets by through traffic will be discouraged.

(d) Where a subdivision borders on or contains a state highway right-of-way, the Board of Trustees shall require provisions for reduction of noise. Masonry walls, landscaped berms, a parallel street, landscaping or screening easement, greater lot depth and increased rear yard setbacks, among others, are recommended solutions.

(e) Streets shall intersect as nearly at right angles as possible.

(f) When a tract is subdivided into larger than normal building lots or parcels, such lots or parcels shall be so arranged as to permit the logical location and opening of future streets and appropriate resubdivision, with provision for adequate utility easements and connectors for such resubdivision.

(g) Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be prohibited.

(h) Long cul-de-sacs should be avoided whenever possible.

(i) Where a street will eventually be extended beyond the plat but is temporarily dead-ended, an interim turnaround may be required.

(j) No street names shall be used which will duplicate or be confused with the names of existing streets. All street naming shall be subject to approval by the Board of Trustees.

(k) Subdivision streets shall have such curbs, gutters, sidewalks, culverts and pavements as may be required by the Planning Commission. These streets shall be constructed to specifications as set forth in Section 17-4-30 above.

(l) All streets abutting a subdivision shall have such curbs, gutters, sidewalks and pavements as may be required by the Planning Commission to be constructed to specifications in Section 17-4-30 above at the cost of the subdivider.

(m) Street name signs must be in accordance with Town specifications and shall be furnished and installed at the cost of the subdivider.

(n) Access ways to arterial streets shall be limited so far as possible to protect the capacity of the arterial street and improve traffic safety.

(o) Subject to approval by the Planning Commission, streets that are extensions of or obviously in alignment with existing streets shall bear the same names of the existing streets.

(p) Intersecting collector and local streets shall not empty into the same side of an arterial street at intervals of less than eight hundred (800) feet.

(q) When a subdivision abuts and controls access to public lands or existing streets, access shall be provided in the form required by the public agency involved. When a subdivision abuts private lands, the Town may require the developer to provide access thereto.

(r) The planting area, or that unpaved portion of the right-of-way between the curb and the property line, shall be landscaped and maintained by the abutting property owners unless provided otherwise by the Board of Trustees.

(s) Reverse curves on arterials and collectors shall be joined by a tangent at least one hundred (100) feet in length.

(Ord. 03 §1, 2014)

Sec. 17-5-30. Drainage.

The rainfall frequency rate used in determining the flow of storm water shall be based on the following principles. The flow of stormwater shall be computed in anticipation of full development of the area upstream in the applicable drainage basin as allowed by present zoning, or, where upstream zoning changes are reasonably anticipated, then the drainage resulting from the highest reasonable density should be used in computing flow of storm water.

(1) A fifty-year frequency storm shall normally be carried within the dedicated street right-of-way. In the event a quantity of water in excess of these limits is calculated to exist, a storm system will be provided either in the form of an underground system or a formal drainageway to prevent excessive ponding.

(2) A generally accepted rational formula and tabulation shall be used to calculate individual drainage areas, time of flow and ultimate quantities at each collection point.

(3) In general, culvert sizes shall be sufficient to accommodate the flow computed with no head at the inlet and no less than the equivalent of an eighteen-inch-diameter pipe.

(4) The velocity of flow in an unlined ditch shall be compatible with the soil erosion characteristics or the treatment to be afforded the ditch.

(5) The quantity and velocity of flow in streets shall be computed from acceptable flow charts or by the usual methods used in computing flows in open channels.

(6) Whenever a subdivision is traversed by a drainageway which is approved by the Town for surface drainage, provision shall be made for the dedication to the public of adequate rights-of-way for access and maintenance.

Sec. 17-5-40. Lots.

(a) The size, shape and orientation of lots shall be appropriate to the location of the proposed subdivision and to the type of development contemplated.

(b) Lots should front only on local streets; however, when necessary, lots designated to face a collector street shall provide adequate means for automobile turnaround within the lot.

(c) Side lot lines should be approximately at right angles or radial to street lines.

(d) Double frontage and reverse frontage lots should be avoided except where they are needed to provide for the separation of residential development from major streets or to overcome specific disadvantages of topography or orientation. A planting and screening easement of at least ten (10) feet shall be provided along the portion of the lots abutting such a traffic artery or other use where screening is required. There shall be no right of access across a planting and screening easement. The Planning Commission may require a permanent ornamental fence of a height and architectural design which will appropriately screen and be harmonious with the neighborhood and residential character.

(e) The building area of lots should not face directly into the oncoming traffic of an intersecting street of a "T" intersection.

(Ord. 03 §1, 2014)

Sec. 17-5-50. Utilities.

Utilities (telephone, electric services and gas lines) shall be installed underground and shall be in place prior to street surfacing. Aboveground facilities necessarily appurtenant to underground facilities or other installation or peripheral overhead electrical transmission and distribution feeder lines, or other installation of either temporary or peripheral overhead communications, distance, trunk or feeder lines, may be above ground.

Sec. 17-5-60. Recreation easements.

A Parks and Trails Master Plan for development of an off-street system of recreational easements for pedestrians, horseback riders and non-motor-driven vehicles has been approved by the Board of Trustees and will be modified periodically. All subdividers are expected to cooperate with this program by providing dedicated public easements for the stated purposes in the Parks and Trails Master Plan. In addition, the subdivider will be encouraged to provide private or public easements within the subdivision so that safe access to public recreational easements will be provided to lots within the subdivision.

ARTICLE 6 Lot Consolidation

Sec. 17-6-10. Purpose.

The purpose of this Article is to establish administrative review procedures to facilitate the efficient processing of applications for simple adjustment of lots and lot lines that will bring property into greater conformance with the requirements of this Code. The following applications shall be subject to administrative processing in accordance with this Article:

(1) Lot consolidation.

(2) Minor lot adjustment.

Sec. 17-6-20. Definitions.

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

Lot consolidation means any proposal and accompanying application that is determined by the Town to meet all of the following criteria:

a. The proposal consolidates property owned by the applicant only;

b. The proposal consolidates or combines two (2) or more contiguous lots into a fewer number of lots by the elimination of one (1) or more lot lines;

c. The proposal does not relocate previously established lot lines;

d. The proposal does not consolidate or combine property into a lot that would be divided by a public street or road; and

e. The proposal, if approved, does not create, result in or leave a contiguous lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to minimum lot area, building height, setbacks, access standards or parking standards.

Minor lot adjustment means any proposal and application that is determined by the Town to meet all of the following criteria:

a. The proposal adjusts, reconfigures or otherwise relocates a lot line dividing properties owned by the applicant only;

b. The proposal does not alter or affect any public street, road, trail or other publicly owned property or publicly owned property interest; and

c. The proposal, if approved, will not create, result in or leave a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to minimum lot area, building height, setbacks, access standards or parking standards.

Sec. 17-6-30. Contents of administrative review application and plat.

All applications subject to administrative processing in accordance with this Article shall meet all the submittal, material and information requirements of this Section. The applicant shall submit to the Town one (1) original and five (5) copies of all documents. The Town may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals. All submittals, materials and information required by this Article for the processing of a lot consolidation or minor lot adjustment shall be prepared at the applicant's cost and expense. The application and plat shall include:

(1) An application in a form approved by the Town, which may be in the form of a letter signed by the owner requesting approval of the application and plat pursuant to this Article.

(2) Payment of an application fee for administrative review and processing of in an amount determined by resolution of the Board of Trustees. In addition, the applicant shall deposit with the Town an amount determined by resolution of the Board of Trustees for the Cost Reimbursement Agreement, which shall be administered in accordance with the provisions of Subsection 17-3-20(b) of this Chapter.

(3) A current commitment for title insurance showing the ownership of the property described in the application, together with liens, encumbrances and restrictions thereon, if any, prepared by a Colorado title insurance company.

(4) A survey plat prepared by a registered Colorado land surveyor in a sheet size of twenty-four (24) inches by thirty-six (36) inches, with the original on Mylar, illustrating or including the following information:

a. The lots proposed for consolidation or adjustment with clearly identified surveyed boundaries of the new lots and an identifying block and lot number sufficient to identify the new lots. Permanent boundary monuments and benchmarks shall be set in the field in accordance with applicable law before the plat is recorded.

b. A complete and sufficient legal description of the proposed new lots.

c. The title of the plat shall prominently identify the name of the recorded subdivision in which the lots are located, together with the phrase "Lot Consolidation" or "Minor Lot Adjustment," as applicable.

d. Identification of all easements, including but not limited to easements for water, sewer, electric, telephone, cable, trail, recreation, access and drainage, encumbering the property described on the plat or necessary to provide services to the lots affected by the application.

e. A plat note stating:

1. For a lot consolidation:

This Lot Consolidation is for the purpose of combining former lots [insert legal descriptions] of the [name of recorded subdivision)] into [insert number of new lots to be created] lots to be known as [identify new lot and block designations]. Other than this consolidation and the creation of new easements, if any, identified on this plat, no other amendment or modification of the final plat for the [identify original recorded plat title] is intended by this Lot Consolidation.

2. For a minor lot adjustment:

This Minor Lot Adjustment is for the purpose of adjusting, reconfiguring or otherwise relocating a lot line dividing Lots [insert lot and block designations] of the [name of recorded subdivision]. Other than the lot line adjustment identified on this plat and the creation of new easements, if any, as identified on this plat, no other amendment or modification of the final plat for the [identify original recorded plat title] is intended by this Minor Lot Adjustment.

f. A surveyor's certificate identified in Subsection 17-4-50(2) of this Chapter.

g. A certificate of ownership and dedication stating:

Know all men by this presents, that the undersigned hereby certifies/certify that he/she/they is/are all of the Owners of the lands described in this plat in the Town of Foxfield, Arapahoe County, Colorado, and hereby dedicates/dedicate to the Town of Foxfield, Colorado, the utility and other easements shown hereon, if any.

Executed this ____ day of _____, 20___.

Owner(s): _____

_____

State of Colorado,)

) ss.

County of Arapahoe)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____.

Witness my hand and official seal.

_____
Notary Public

My commission expires: _____

h. A certificate of Town approval stating:

APPROVED by the Town of Foxfield and approved for recordation with the Arapahoe County Clerk and Recorder's Office pursuant to Chapter 17, Article VI of the Municipal Code for the Town of Foxfield this ____ day of _____, 20___.

Signature: _____

Title: _____

i. A certificate for the County Clerk and Recorder's acceptance as identified in Subsection 17-4-50(8) of this Chapter.

j. A certificate of consent to and approval of the lot consolidation or minor lot adjustment by those mortgagees and lienholders deemed necessary by the Town in a form stating:

The undersigned mortgagee(s) and/or lienholder(s) consent and approve of the [insert lot consolidation or minor lot adjustment, as applicable] described on this plat:

Executed this _____ day of _____, 20___.

Mortgagees/Lienholders:

_____

_____

State of Colorado,)

) ss.

County of Arapahoe)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____.

_____
Notary Public

Witness my hand and official seal.

My commission expires:_____

(5) Additional information deemed necessary by the Town to evaluate the proposed application or plat, including but not limited to written releases from utility service providers of unused and unnecessary utility easements encumbering the lots within the platted area.

Sec. 17-6-40. Administrative review procedures.

All applications subject to this Article shall be administratively reviewed by the Town without notice or a public hearing and may be approved by the Town in accordance with this Article. Following proper submission of an application and plat, the Town shall determine whether the application and plat are complete as required by this Article. Following receipt of a completed application and plat, the Town shall reach a final decision concerning the application within fifteen (15) days of the date of submission of the completed application and plat. Such deadline may be extended upon agreement of the applicant and the Town. Unless otherwise extended, a failure by the Town to reach a final decision within fifteen (15) days shall be deemed an administrative decision to deny the application.

Sec. 17-6-50. Standards for approval.

An application and plat subject to this Article shall be administratively approved by the Town where the Town finds all of the following to be established by the application and plat:

(1) The proposed consolidation or lot adjustment meets the applicable definition of a lot consolidation or minor lot adjustment and all application and plat content requirements of this Article are met or satisfied;

(2) The approval of the application is requested by all owners of record of the affected lots and the owners have properly executed the plat;

(3) The proposed application and plat fully conform to all applicable requirements for the zone districts in which the affected property is located, including but not limited to minimum lot size requirements;

(4) Adequate utility easements are established within the affected property to provide service to the lots created by or illustrated upon the plat;

(5) Existing public trails located within the lots illustrated upon the plat are preserved or new trails are dedicated by the plat that will provide, in the opinion of the Town, a substantially similar or improved trail in terms of route, grade, access, surface quality, ease of maintenance and safety;

(6) The proposed configuration, arrangement and layout of the lots do not, in the opinion of the Town, create illogically shaped lots or lots that are inconsistent or incompatible with other lots within the neighborhood; and

(7) The proposed application and plat do not, in the opinion of the Town, substantially and adversely affect adjacent lots or raise significant issues of policy that are not addressed by the Master Plan or this Code.

Sec. 17-6-60. Town's decision and appeal.

(a) Upon a finding by the Town that the application and plat meet the standards for approval set forth in Section 17-6-50 above, the Town shall cause a fully executed plat to be recorded with the County Clerk and Recorder at the applicant's expense.

(b) The Town shall deny an application for failure to meet the standards set forth in Section 17-6-50 above. Any decision to deny an application shall be made in writing stating the specific reasons for denial, and the decision shall be promptly mailed or delivered to the applicant. The applicant may appeal a denial by the Town to the Planning Commission by delivering a written request for appeal to the Town Administrator not more than thirty (30) days following the date of the applicant's receipt of the Town's written notice of denial. The Planning Commission shall administratively consider an applicant's timely request for an appeal at a regular meeting. Following its consideration of the application and plat, the Planning Commission may affirm the Town's decision or, upon a finding that the application meets all the standards set forth in Section 17-6-50 above, the Planning Commission may reverse the Town's decision and order the Town to approve the application and plat. In the event that the Planning Commission orders the Town to approve the application and plat, the Town shall cause the plat to be recorded in accordance with Subsection (a) above.

(Ord. 03 §1, 2014)

Sec. 17-6-70. Conditions of approval.

The Town may impose reasonable conditions upon any approval of a plat that are necessary to ensure continued conformance with the standards of approval of this Article or this Code.

APPENDIX 17-A COST REIMBURSEMENT AGREEMENT

Cost Reimbursement Agreement

THIS COST REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, 20__, by and between the TOWN OF FOXFIELD, a Colorado municipal corporation (the "Town"), and _____ (the "Owner"), regarding _____ at _____, Foxfield, CO 80016.

WHEREAS, the Town of Foxfield Municipal Code requires that the Town be reimbursed for the cost of the time spent for engineering, planning, surveying, inspection, hydrological and legal services in reviewing development proposals, plus fifteen percent (15%) for administrative costs (hereafter "Consultants' Time");

WHEREAS, this obligation to reimburse the Town for Consultants' Time exists regardless of whether the project is completed, and/or regardless of whether the Owner chooses to complete the Town's land review process; and

WHEREAS, this Agreement memorializes the obligation by the Owner to the Town to reimburse the Town for all Consultants' Time as set forth in Town of Foxfield Municipal Code.

NOW, THEREFORE, in consideration of the recitals and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Owner agree as follows:

1. Reimbursement . Owner agrees to reimburse the Town, regardless of completion of the Owner's project, and/or regardless of whether the Town's land review process is completed, for all Consultants' Time, as set forth in the Town of Foxfield Municipal Code for all such costs incurred by the Town which are incurred as a result of, or which are otherwise related to, Owner's land use submission and its subsequent review.

2. Process for Reimbursement .

   (a) Estimate of Costs. Prior to any work being commenced by the Town's Consultants in processing the application, the Town shall provide the Owner an estimate of costs (the "Estimate"), indicating the estimated costs associated with processing the application.

   (b) Deposit. Owner shall then provide a cash deposit in the amount of the Estimate, which funds shall be used to reimburse the Town as set forth herein for the Consultants' Time. The Town shall also provide the following:

      i. Whenever necessary, the Town shall send the Owner an invoice titled Itemized Billing showing the costs charged to the account for that month and the balance. If there is an outstanding balance owed by the Owner, the Town will bill the Owner for that amount. Payment shall be within fifteen (15) days of the date of the invoice from the Town.

      ii. After a final decision has been made on the application, or the application has been withdrawn, and reimbursement has been made for all of Consultants' Time, any funds remaining from the deposit shall be refunded to the Owner.

      iii. When the cash deposit is eighty-five percent (85%) exhausted and the application is still pending, an additional cash deposit will be required.

3. Remedies . In the event Owner fails to reimburse the Town for all Consultants' Time, the Town shall have the following remedies:

   (a) The Town may impose the remedies as set forth by the Ordinance, including the following:

      i. The termination of the review process if payment is not made in full within thirty (30) days of the issuance of the statement indicating the actual cost of Consultants' Time;

      ii. The application being deemed withdrawn if the statement is not paid in full within thirty (30) days of the date of the issuance of the statement indicating the actual cost of Consultants' Time;

      iii. The addition of a penalty equal to ten percent (10%) of the amount due and outstanding within thirty (30) days of the date of the issuance of the statement indicating the actual cost of Consultants' Time, plus interest on the amount due and outstanding at the rate of one-half of one percent (.5%) per month from the date when due.

   (b) The Town may also impose any or all of the following remedies, at its sole discretion:

      i. The filing of a lien on the property which is or was the subject of the proposed development upon which the Town has not been reimbursed for Consultants' Time; and/or

ii. The refusal to issue a permit for any portion of the proposed development upon which the Town has not been reimbursed; and/or

iii. The refusal to issue a certificate of occupancy for any portion of the proposed development upon which the Town has not been reimbursed; and/or

iv. The refusal to accept any further land use applications from any Owner which has failed to reimburse the Town for Consultants' Time for any project.

v. The initiation of an enforcement action for nonpayment of Consultants' Time in either Arapahoe County Court or in the Town of Foxfield Municipal Court to collect unpaid fees.

4. Dispute Resolution . In the event the Owner disagrees with any of the charges in the Itemized Billing, the resolution of the dispute shall be as follows:

(a) The Owner will submit to the Town Clerk a letter that specifies the particular charges being disputed. The letter will include payment in the amount of the Outstanding Balance less the amount being disputed.

(b) The Town Clerk will forward a copy of the letter to the Town Consultant(s) who, after reviewing the letter, will adjust the charge and submit a new billing to the Town Clerk or submit a letter to the Town Clerk with a copy to the Owner stating the reasons that no adjustment has been made.

(c) If the Owner disagrees with the Consultant's actions, the issue will be placed on the agenda for the next available Board of Trustees' meeting. The Board of Trustees shall consider the issue and make a final decision on the dispute.

(d) The Owner will pay any outstanding balance within fifteen (15) days of the decision by the Board of Trustees.

5. Severability . If any provision of this Agreement is invalid, illegal or unenforceable, such provision shall be severable from the rest of this Agreement, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

6. Governing Law . This Agreement shall be governed by and construed in all respects according to the laws of the State of Colorado.

7. Headings . Headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

8. Modifications . No amendments to or modifications of this Agreement shall be made or be deemed to have been made, unless such amendments or modifications are made in writing and executed by the party to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ATTEST:

_____
Town Clerk

ATTEST:

Name: _____

Title: _____

TOWN OF FOXFIELD

By: _____
Mayor

OWNER

_____

(Ord. 03 §1, 2014)

APPENDIX 17-B FORM OF SUBDIVISION AGREEMENT

Subdivision Agreement

THIS AGREEMENT is made this _____ day of _____, 20___, by and between the TOWN OF FOXFIELD, COLORADO, a Colorado municipal corporation (the "Town") and _____ (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Foxfield, known as _____, which is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. On _____, 20___, the Board of Trustees of the Town of Foxfield, after holding all necessary public hearings and having received a recommendation of approval from the Foxfield Planning Commission, approved the final plat for the Property. A copy of the final plat is attached hereto as Exhibit B and incorporated herein.

C. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the parties hereto agree as follows:

1. Purpose . The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Foxfield Subdivision Ordinance and Zoning Ordinance, any and all state statutes and any other ordinances of the Town of Foxfield, and are not intended to supersede any requirements contained therein.

2. Fees . The following fees shall be paid to the Town by the Developer.

    a. The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review prior to and during the Development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "Actual Costs") rendered in connection with the review of the subdivision of the Property, including related administrative fees not to exceed one hundred fifteen percent (115%) of the Actual Costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to

the master copy of the official Town map and for the fee for recording the final plat and accompanying documents with the Arapahoe County Clerk and Recorder.

b. The Developer acknowledges and agrees that the Town, pursuant to this Agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

3. Specific Conditions . The Developer hereby agrees that:

a. ;hg;_____
_____
_____

4. Title Policy . A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is or shall be subsequent to the execution and recording of the plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable) which would make the dedications unacceptable as the Town in its sole discretion determines. The title policy evidenced by the title commitment shall be provided thirty (30) days after the recording of the final plat.

5. Breach by the Developer; the Town's Remedies . In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Board of Trustees shall be notified immediately and the Town may take such action as permitted and/or authorized by law, this Agreement or the ordinances of the Town as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

a. The refusal to issue any building permit or certificate of occupancy;

b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;

c. A demand that the security given for the completion of the public improvements be paid or honored; or

d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the public improvements, the Town shall provide to the Developer thirty (30) days' written notice of its intent to take any action under this Paragraph, during which thirty day period the Developer may cure the breach described in the notice and prevent further action by the Town.

6. Public Improvements and Warranty . All drainage structures, paved streets, including curb, gutter and slope easements, and necessary appurtenances as shown on the subdivision plat and the associated construction documents (the "Public Improvements"), as approved by the Town, shall be installed and completed at the expense of the Developer and dedicated and/or conveyed to the Town. The improvements required by this Agreement and shown on the final subdivision plat submittal, as well as associated construction documents approved by the Town and the costs of these improvements, are set forth on Exhibit C attached hereto and incorporated herein. All Public Improvements covered by this Agreement shall be made in accordance with the subdivision plat and associated construction documents drawn according to regulations and construction standards for such improvements and approved by the Town.

The Developer shall warrant any and all Public Improvements which are conveyed to the Town pursuant to this Agreement for a period of two (2) years from the date the Town grants probationary acceptance of the Public Improvements as approved by the Town. The warranty period shall extend to the date final acceptance is granted

in writing by the Town. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, the Developer shall warrant the following:

a. That the title conveyed shall be marketable and its transfer rightful;

b. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and

c. Any and all facilities so conveyed shall be free of defects in materials or workmanship for a period of two (2) years, as stated above.

The Town will accept for maintenance all Public Improvements after the warranty period has expired, provided that all warranty work has been completed. The Town shall accept for snow removal purposes only all dedicated public streets after probationary acceptance has been granted in writing by the Town.

7. Observation . The Town shall have the right to make reasonable engineering observations at the Developer's expense as the Town may request. Observation, acquiescence in or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the construction of such Public Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

8. Completion of Public Improvements . The obligations of the Developer provided for in Paragraph 3 of this Agreement, including the inspections hereof, shall be performed on or before _____, and proper application for acceptance of the Public Improvements shall be made on or before such date. Upon completion of construction by the Developer of such Public Improvements, the Town or its designee shall inspect the improvements and certify with specificity their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications. Once approved by the Town, the Town shall accept said improvements upon conveyance pursuant to Paragraph 10; provided, however, that the Town shall not be obligated to accept the Public Improvements until the Actual Costs described in Paragraphs 2.a. and b. of this Agreement are paid in full by the Developer.

9. Related Costs - Public Improvements . The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the construction of the Public Improvements at its sole cost and expense, including reproducible "as built" drawings certified accurate by a professional engineer registered in the State of Colorado.

10. Improvements to Be the Property of the Town . All Public Improvements for roads, concrete curbs and gutters, storm sewers and drainage improvements accepted by the Town shall be dedicated to the Town and warranted for a period of two (2) years following probationary acceptance by the Town, as provided above. Upon completion of construction and conformity with the subdivision plat and associated construction plans, and any properly approved changes, the Developer shall convey to the Town, by bill of sale, all installed physical facilities.

11. Performance Guarantee . In order to secure the construction and installation of the Public Improvements, the Developer shall, prior to recording the final plat in the real estate records of Arapahoe County, which recording shall occur no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's expense, with the Performance Guarantee described herein. The Performance Guarantee provided by the Developer shall be an irrevocable letter of credit in which the Town is designated as beneficiary in an amount equal to one hundred ten percent (110%) of the estimated costs of the Public Improvements to be constructed and installed as set forth in Exhibit C, to secure the performance and completion of the Public Improvements. The Developer agrees that approval of the final plat of the Town is

contingent upon the Developer's provision of an irrevocable letter of credit to the Town within ninety (90) days of the execution of this Agreement in the amount and form provided herein. Failure of the Developer to provide an irrevocable letter of credit to the Town in the manner provided herein shall negate the Town's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in Exhibit D, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The Developer shall not start the construction of any public or private improvement on the Property, including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the irrevocable letter of credit.

The estimated costs of the Public Improvements shall be a figure mutually agreed upon by the Developer and the Town as set forth in Exhibit C attached hereto. If, however, they are unable to agree, the Town's estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates, and the Developer agrees to pay the Actual Costs of all such Public Improvements.

The estimated costs of the Public Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index as published by the Engineering News Record. If the Town adjusts the cost estimate for the Public Improvements, the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended letter of credit in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended letter of credit, the Town may exercise the remedies provided for in Paragraph 5 of this Agreement; provided, however, that, prior to increasing the amount of additional security required, the Town shall give credit to the Developer for all required Public Improvements which have actually been completed so that the amount of security required at any time shall relate to the cost of required Public Improvements not yet constructed.

In the event the Public Improvements are not constructed or completed within the period of time specified by Paragraph 8 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the letter of credit to complete the Public Improvements called for in this Agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Developer has not yet provided a satisfactory replacement, the Town may draw on the letter of credit and either hold such funds as security for performance of this Agreement or spend such funds to finish the Public Improvements or correct problems with the Public Improvements as the Town deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town, the Developer shall issue an irrevocable letter of credit to the Town in the amount of twenty percent (20%) of the total cost of construction and installation of the Public Improvements, to be held by the Town during the two-year warranty period. If the Public Improvements are not completed within the required time, the monies may be used to complete the improvements.

12. Nuisance Conditions . The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by the ordinances of the Town of Foxfield. In the event the authorized inspector/designated Town authority for the Town determines that a nuisance exists, the Developer shall be subject to the provisions set forth in ordinances of the Town of Foxfield regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the Performance Guarantee specified in Paragraph 11 of this Agreement. The Town may draw on the Performance Guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the ordinances of the Town of Foxfield. The Town may exercise this right in addition to, or in lieu

of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the Performance Guarantee shall be subject to the sole discretion of the Town, provided that the Developer has received thirty (30) days' notice as provided herein.

The Town shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same Planned Unit Development until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings or conducting reviews of projects.

13. Indemnification . The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Public Improvements; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of Public Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

14. Waiver of Defects . In executing this Agreement, the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

15. Modifications . This Agreement shall not be amended, except by subsequent written agreement of the parties.

16. Release of Liability . It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Town of Foxfield Municipal Code and the laws of the State of Colorado.

17. Captions . The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

18. Binding Effect . This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

19. Invalid Provision . If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Agreement is capable of two (2) constructions, one (1) of which would render the provision void, and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

20. Governing Law . The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Arapahoe County, Colorado.

21. Attorney Fees . Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in

default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

22. Notice . All notice required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the Town:

Town of Foxfield
P.O. Box 461450
Foxfield, CO 80046

With copy to:

Corey Y. Hoffmann, Esq.
Hayes, Phillips, Hoffmann & Carberry, P.C.
1530 16th Street, Suite 200
Denver, CO 80202

Notice to Developer:

_____
_____
_____
_____

23. Force Majeure . Whenever the Developer is required to complete the construction, repair or replacement of Public Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including but not limited to acts of God, weather, fires and strikes.

24. Approvals . Whenever approval or acceptance of the Town is necessary pursuant to any provision of this Agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

25. Assignment or Assignments . There shall be no transfer or assignment of any of the rights or obligations of the Developer under this Agreement without the prior written approval of the Town. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the transfer or assignment of any of the rights and obligations of the Developer under this Agreement.

26. Recording of Agreement . This Agreement shall be recorded in the real estate records of Arapahoe County and shall be a covenant running with the Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

27. Title and Authority . The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

TOWN OF FOXFIELD, CO

By: _____
Mayor

DEVELOPER

By: _____
Name: _____
Title: _____

CHAPTER 18
Building Regulations

ARTICLE 1 Building Code[1]

Sec. 18-1-10. International Building Code adopted.

The International Building Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 35 inclusive, are hereby adopted by reference thereto and incorporated into and made part of the Foxfield Municipal Code. The purpose and subject matter of the International Building Code include comprehensive provisions regulating construction aspects of building and providing uniform building standards for the purpose of protecting the public health, safety and general welfare. In all sections of this code where a reference is made to the International Building Code, said reference shall be to the 2015 Edition of said Code.

Sec. 18-1-20. Copy on file.

At least one (1) copy of the International Building Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-1-30. Amendments.

The International Building Code as adopted by the Town is hereby amended as follows:

(1) **Section 101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Section 101.4.3 (Plumbing)** is amended by deletion of the last sentence.

(3) **Section 105.1 (Required)** is amended by replacing the words "building official" with "Town".

(4) **Section 105.2(2)** is hereby deleted in its entirety.

(5) **Section 109.2 (Schedule of permit fees)** is amended by deleting the section in its entirety and replacing the section with the following:

"On buildings, structures, gas, mechanical, and plumbing systems or alterations requiring a permit, a fee for each permit shall be set by the Board of Trustees in a Fee Schedule adopted by resolution, which may be amended periodically as needed."

(6) **Section 109.4 (Work commencing before permit issuance)** is amended by replacing the words "building official" with "Town" and adding the words "the fee shall be equal to 100% of the original building fee in addition to the required permit fees."

(7) **Section 109.6 (Refunds)** is amended by deleting the section in its entirety and replacing the section with the following:

"The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan

[1]Editor's note(s)—Ord. No. 07, § 1, 2016, adopted Nov. 17, 2016, repealed the former Art. 1, §§ 18-1-10—18-1-40, and enacted a new article as set out herein. The former Art. 1 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 12, adopted in 2014.

reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment."

(8) **Section 111.3 (Temporary occupancy)** is amended by deleting the words "building official" in the first and second sentence and replacing it with "Town".

(9) **Section 113.1 (General)** is amended by deleting the last two sentences and inserting the following:

"The members of the Board of Appeals shall be comprised of the members of the Town Board of Trustees."

(10) **Section 113.3 (Qualifications)** is amended by deleting the section in its entirety.

(11) **Section 202 (Definitions)** is amended by addition of the following:

"Sleeping Room" (Bedroom) is any enclosed habitable space within a dwelling unit, which complies with the minimum room dimension requirements of IBC Section 1208 and contains a closet, an area that is useable as a closet, or an area that is readily convertible for use as a closet. Living rooms, family rooms and other similar habitable areas that are so situated and designed so as to clearly indicate these intended uses, shall not be interpreted as sleeping rooms."

(12) **Section 1612.3 (Establishment of flood hazard areas)** is amended by the insertion of "Town of Foxfield" where indicated in [Name of Jurisdiction] and the date of the latest flood insurance study for the town, where indicated in [Date of Issuance].

(13) **Section 3401.3 (Compliance with other codes)** is amended by deleting International Private Sewage Disposal Code, and deleting ICC Electrical Code and inserting in its place "National Electrical Code as adopted by the State of Colorado".

Sec. 18-1-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §1, 2016)

ARTICLE 2 Residential Code[2]

Sec. 18-2-10. International Residential Code adopted.

The International Residential Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 43 inclusive and Appendix Chapters G and H, are hereby adopted by reference thereto and incorporated into and made a part of the Foxfield Municipal Code. The purpose and subject matter of the International Residential Code include comprehensive provisions regulating construction of residential areas and providing uniform standards for the purpose of protecting the public health,

[2]Editor's note(s)—Ord. No. 07, § 2, 2016, adopted Nov. 17, 2016, repealed the former Art. 2, §§ 18-2-10—18-2-40, and enacted a new article as set out herein. The former Art. 2 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 13, adopted in 2014.

safety and general welfare. In all sections of this code where a reference is made to the International Residential Code, said reference shall be to the 2015 Edition of said Code.

Sec. 18-2-20. Copy on file.

At least one (1) copy of the International Residential Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-2-30. Amendments.

The International Residential Code as adopted by the Town is hereby amended to read as follows:

(1) **Section R101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Section R105.1 (Required)** is amended by replacing the words "building official" with "Town".

(3) **Section R105.2(2)** is hereby deleted in its entirety.

(4) **Section R108.5 (Refunds)** is amended by deleting the section in its entirety and replacing the section with the following:

"The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment."

(5) **Section 108.6 (Work commencing before permit issuance.)** Any person who commences any work on a building, structure, electrical, gas, mechanical or plumbing system before obtaining the necessary permits shall be subject to a fee established by the Town. The fee shall be equal to 100% of the original building fee in addition to the required permit fees.

(6) **Section R110.4 (Temporary occupancy)** is amended by deleting the words "building official" in the first and second sentence and replacing it with "Town".

(7) **Section R112.1 (General)** is amended by deleting the last three sentences and inserting the following:

"The members of the Board of Appeals shall be comprised of the members of the Town Board of Trustees."

(8) **IRC Section R112.3 IRC Section R112.3 (Qualifications)** is amended by deleting this section in its entirety.

(9) **Section R202 (Definitions)** is amended by addition of the following:

"Sleeping Room" (Bedroom) is any enclosed habitable space within a dwelling unit, which complies with the minimum room dimension requirements of IRC Sections R304 and R305 and contains a closet, an area that is useable as a closet, or an area that is readily convertible for use as a closet. Living rooms, family rooms and other similar habitable areas that are so situated and designed so as to clearly indicate these intended uses, shall not be interpreted as sleeping rooms."

(10) **IRC Table R301.2 (1)** is filled in to provide the following:

Table R301.2(1)
Climatic and Geographic Design Criteria

Ground Snow Load	Wind Speed (mph)	Seismic Design Category	Subject to Damage From			Winter Design Temp	Ice Shield Underlayment Required	Flood Hazard	Air Freezing Index	Mean Annual Temp
			Weathering	***Frost Line Depth***	***Termite***					
30 psf	115 X "C"	B	Severe	30 in.	Slight to Moderate	1	NO	Per Town Ordinance	1000	45°F

(11) **Section R310.1 (Emergency Escape and Rescue Openings)** is amended by the deletion of the first paragraph and replacing it with the following: "All windows located in basements, habitable attics and sleeping rooms shall meet all the requirements of section R310.1 through R310.2.2."

(12) **Section R313 (Automatic Fire Sprinkler Systems)** is deleted in its entirety and amended to read as follows:

R313.1 Townhouse automatic fire sprinkler systems.

A builder of a townhouse shall offer to any purchaser on or before the time of entering into the purchase contract with the purchaser, the option, at the purchaser's cost, to install an automatic residential fire sprinkler system in such dwelling. No purchaser of such a townhouse shall be denied the right to choose or decline to install an automatic residential fire sprinkler system in such dwelling being purchased.

Exception: An automatic residential fire sprinkler system shall not be required where additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed.

R313.1.1 Design and installation.

If the installation of an automatic residential fire sprinkler system is selected as an option by the initial purchaser of a dwelling, the automatic residential fire sprinkler system for townhouses shall be designed and installed in accordance with IRC Section P2904 or NFPA 13D.

R313.2 One- and two-family dwellings automatic fire systems.

A builder of one- or two-family dwellings shall offer to any purchaser on or before the time of entering into the purchase contract with the purchaser, the option, at the purchaser's cost, to install an automatic residential fire sprinkler system in such dwelling. No purchaser of such a one- or two-family dwelling shall be denied the right to choose or decline to install an automatic residential fire sprinkler system in such dwelling being purchased.

Exception: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic residential sprinkler system.

R313.2.1 Design and installation.

If the installation of an automatic residential fire sprinkler system is selected as an option by the initial purchaser of a dwelling, the automatic residential fire sprinkler system shall be designed and installed in accordance with IRC Section P2904 or NFPA 13D.

(13) **Section R401.2 (Requirements)** is amended by the addition of the following:

"Foundations shall be designed and the construction drawings stamped by a Colorado registered Engineer. The foundation design must be based on an engineer's soils report. The drawings must be noted with the engineering firm name, specific location for design and soils report number. A site

certification prepared by State of Colorado registered design professional is required for setback verification on all new Group R Division 3 occupancies."

(14) **Section G2415.12 (Minimum burial depth)** is amended by the addition of the following: "All plastic fuel gas piping shall be installed a minimum of 18 inches (457 mm) below grade."

(15) **Section G2417.4.1 (Test pressure)** is amended by changing "3 psig" to "10 psig."

(16) **Section P2503.5.1 (Rough plumbing)** is amended by deleting the first paragraph and replacing with "DWV systems shall be tested on completion of the rough piping installation by water or air with no evidence of leakage."

(17) **Section P2603.5.1 (Sewer depth)** is amended by filling in both areas where indicated to read "12 inches (305 mm)".

(18) **Section P3103.1 (Roof extension)** is amended by filling in both areas where indicated to read "6 inches (152.4 mm)".

Sec. 18-2-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §2, 2016)

ARTICLE 3 National Electrical Code[3]

Sec. 18-3-10. Adoption.

The National Fire Protection Association standard number 70, hereafter known as the National Electrical Code, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts, 02169-7471, is hereby adopted by reference as the Town of Foxfield Electrical Code as if fully set out in the ordinance codified herein with the additions, deletions, insertions and changes as follows, and such adoption is to have the same force and effect as if set forth herein in every particular. The effective edition of such National Electrical Code shall be the 2014 Edition or the succeeding edition currently adopted by the State Electrical Board, Division of Professions and Occupations, Department of Regulatory Agencies as updated from time to time. The National Electrical Code provides for the issuance of permits, inspections and the collection of fees therefor. Except as otherwise provided herein, the National Electrical Code is adopted in full, including the outline of contents, index and all appendices thereto.

Sec. 18-3-20. Copy on file.

A copy of the provisions of the National Electrical Code, currently adopted by the State Electrical Board, is available for public inspection during regular business hours at the State Electrical Board office at the Division of Professions and Occupations, Department of Regulatory Agencies, 1560 Broadway, Suite 1350, Denver, Colorado,

[3]Editor's note(s)—Ord. 02 , § 1, adopted July 7, 2016, repealed the former Art. 3, §§ 18-3-10—18-3-40, and enacted a new article as set out herein. The former Art. 3 pertained to Electrical Code and derived from Ord. 4 § 3, adopted in 2008; Ord. 1 § 1, adopted in 2012; and Ord. 01 § 14, adopted in 2014.

80202. In addition, at least one (1) copy of the edition of the National Electrical Code, currently adopted by the State Electrical Board, has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-3-30. Amendments.

The National Electrical Code as adopted by the Town is hereby amended as follows: The electrical permit fees shall be as set forth by the State of Colorado Electrical Board as the same may be amended from time to time.

Sec. 18-3-40. Violation, penalty.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in section 1-4-20 of this Code.

(Ord. 02 § 1, 2016)

ARTICLE 4 Mechanical Code[4]

Sec. 18-4-10. International mechanical code adopted.

The International Mechanical Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 15 inclusive, is hereby adopted by reference thereto and incorporated into and made a part of the Foxfield Municipal Code. The purpose and subject matter of the International Mechanical Code include minimum standards relating to the mechanical installations in or in connection with the construction, alteration and repair of new and existing structures including design, construction, installation, quality of materials, locations, operation and maintenance or use of heating, ventilation, cooling refrigeration systems, incinerators and other miscellaneous heatproducing appliances. In all sections of this code where a reference is made to the International Mechanical Code, said reference shall be to the 2015 Edition of said Code.

Sec. 18-4-20. Copy on file.

At least one (1) copy of the International Mechanical Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-4-30. International Mechanical Code—Amendments.

The International Mechanical Code as adopted by the Town is hereby amended as follows:

(1) **Section 101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Section [A] 106.5.2 IMC Section [A] 106.5.2 (Fee Schedule)** is amended to read "The fees for work shall be as indicated on the Town Fee Schedule adopted by the Board of Trustees."

[4]Editor's note(s)—Ord. No. 07, § 3, 2016, adopted Nov. 17, 2016, repealed the former Art. 4, §§ 18-4-10—18-4-40, and enacted a new article as set out herein. The former Art. 4 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 15, adopted in 2014.

(3) **Section [A] 106.5.3 IMC Section [A] 106.5.3 (Fee Refunds)** is amended by deleting the section in its entirety and replacing the section with the following:

"The Town may authorize refunding of any fee paid hereunder that was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment."

Sec. 18-4-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §3, 2016)

ARTICLE 5 Plumbing Code[5]

Sec. 18-5-10. International Plumbing Code adopted.

The International Plumbing Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 13 inclusive, is hereby adopted by reference thereto and incorporated into and made part of the Foxfield Municipal Code. The purpose and subject matter of the International Plumbing Code include comprehensive provisions regulating plumbing installations in or in connection with new and existing structures and providing uniform plumbing standards for the purpose of protecting the public health, safety and general welfare. In all sections of this code where a reference is made to the International Plumbing Code, said reference shall be to the 2015 Edition of said Code.

Sec. 18-5-20. Copy on file.

At least one (1) copy of the International Plumbing Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-5-30. International Plumbing Code—Amendments.

The International Plumbing Code as adopted by the Town is hereby amended as follows:

(1) **Section 101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Section [A] 106.6.2 IPC Section [A] 106.6.2 (Fee Schedule)** is amended to read "The fees for work shall be as indicated on the Town Fee Schedule adopted by the Board of Trustees."

[5]Editor's note(s)—Ord. No. 07, § 4, 2016, adopted Nov. 17, 2016, repealed the former Art. 5, §§ 18-5-10—18-5-40, and enacted a new article as set out herein. The former Art. 5 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 16, adopted in 2014.

(3) **Section [A] 106.6.3 IPC Section [A] 106.6.3 (Fee Refunds)** is amended by deleting the section in its entirety and replacing the section with the following:

"The Town may authorize refunding of any fee paid hereunder that was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment."

(4) **Section 305.4.1 (Sewer depth)** is amended by filling in both areas where indicated to read "12 inches (305 mm)".

(5) **Section 312.3 (Drainage and vent air test)** is amended by deleting the first sentence.

(6) **Section 903.1 (Roof extension)** is amended by inserting the number "6" (152.4 mm) where indicated in the second sentence.

Sec. 18-5-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §4, 2016)

ARTICLE 6 Fire Code[6]

Sec. 18-6-10. International Fire Code adopted.

The *International Fire Code,* 2015 Edition, 1st printing, as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, Chapters 1 through 80 inclusive and Appendices B, C and D only ("IFC"), is hereby adopted by reference thereto and incorporated into and made part of the Foxfield Municipal Code as if fully set out in this Ordinance with the additions, deletions, insertions and changes as set forth in this Article. No building shall be hereafter constructed, erected, enlarged, altered, or moved into the City unless the same shall, as to design, construction, quality of materials and workmanship, conform with the IFC, as adopted and as amended. The purpose of the IFC is to provide minimum standards to safeguard life or limb, health, property and public welfare from the hazards of fire explosion, and dangerous conditions arising from the storage, handling and use of hazardous materials and devices, and from conditions hazardous to life or property in the use or occupancy of buildings or premises and provisions to assist emergency response personnel.

[6]Editor's note(s)—Ord. No. 07, § 5, 2016, adopted Nov. 17, 2016, repealed the former Art. 6, §§ 18-6-10—18-6-40, and enacted a new article as set out herein. The former Art. 6 pertained to similar subject matter and derived from Ord. 2, §§ 1, 2, adopted in 2007; Ord. 1, § 1, adopted in 2012; and Ord. 01, §§ 17, 18, adopted in 2014.

Sec. 18-6-20. Copy on file.

At least one (1) copy of the International Fire Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-6-30. International Fire Code—Amendments.

The following deletions, additions, insertions, and changes are hereby made to the IFC as adopted by reference by Section 18-6-10:

(1) **Section 101.1** shall read as follows:

"IFC Section 101.1. Title These regulations shall be known as the Fire Code of the Town of Foxfield, hereinafter referred to as 'this code.'"

(2) **Section 108.1** shall read as follows:

"108.1 Regional Fire Code Board of Appeals established. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this Code, there shall be created a Regional Fire Code Board of Appeals by the entry of various fire districts into an intergovernmental agreement ("IGA"). Said Regional Fire Code Board of Appeals shall be appointed through the operation of the IGA. The fire code official shall be an ex officio member of said Board but shall have no vote on any matter before the Board. The Board shall adopt rules of procedure for conducting its business, and shall render all decisions and findings in writing to the appellant with a duplicate copy to the fire code official."

(3) **Section 109.4** shall read as follows:

"109.4 Violation Penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be in violation of state statutes and this code, and shall be subject to penalties as prescribed by law."

(4) **Section 111.4** shall read as follows:

"111.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as specified in Section 1-4-20 of this Code."

(5) **Section 503.2** shall read as follows:

"503.2 Specifications. Fire apparatus access road shall be installed and arranged in accordance with Sections 503.2.1 through 503.2.8, Appendix D, and the Town of Foxfield Roadway Design Standards."

(6) **Section 503.4.1** shall read as follows:

"503.4.1 Traffic calming devices. Fire code official approval is required before a traffic-calming device can be constructed."

(7) **Section 507.3** shall read as follows:

"507.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B or an approved method."

(8) **Section 507.5** shall read as follows:

"507.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections 507.5.1 through 507.5.6 and Appendix C."

(9) **Section 903.2.9** shall read as follows:

"903.2.9. Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. [no change]
2. [no change]
3. [no change]
4. [no change]
5. A Group S-1 fire area used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 m^2)"

(10) **Section 1103.7.6** shall read as follows:

"1103.7.6 Group R-2. A manual and automatic fire alarm system that activates the occupant notification system in accordance with Section 907.5 shall be installed in existing Group R-2 occupancies more than three stories in height or with more than 16 dwelling or sleeping units.

Exceptions:

1. [no change]
2. [no change]
3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open-ended corridors designed in accordance with Section 1027.6, Exception 3, items 3.2 to 3.5.
4. [no change]"

(11) **Section 5601.1.3** shall read as follows:

"5601.1.3 Fireworks. The possession, manufacture, storage, sale. handling and use of fireworks are prohibited.

Exceptions:

1. [no change]
2. Delete in its entirety
3. [no change]
4. The possession, storage, sale, handling, and use of permissible fireworks as defined by Section 12-28-101, C.R.S."

(12) **Section 5704.2.9.6.1** shall read as follows:

"5704.2.9.6.1 Locations of above-ground tanks. Above-ground tanks shall be located in accordance with this section."

(13) **Section 5706.2.4.4 Locations where above-ground tanks are prohibited.** Deleted in its entirety.

(14) **Section 5806.2 Limitations.** Deleted in its entirety.

(15) **Section 6104.2 Maximum capacity within established limits.** Deleted in its entirety.

(16) Only those appendix chapters of the International Fire Code listed herein are adopted as follows:

APPENDIX B, Fire-Flow Requirements for Buildings.

APPENDIX C, Fire Hydrant Locations and Distribution.

APPENDIX D, Fire Apparatus Access Roads, with the following amendments:

(1) **IFC Section D103.1. IFC Section D103.1 (Access road width with a hydrant)** is deleted in its entirety.

(2) **IFC Section D103.4.** IFC Section D103.4 (Dead ends) is amended to read as follows:

D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4 and the Town of Foxfield Roadway Design Manual.

(3) **IFC Section D105.3.** IFC Section D105.3 (Proximity to building) is amended to read as follows:

D105.3 Proximity to building. At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet (4572 mm) and a maximum of 30 feet (9144 mm) from the building, and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial fire apparatus access road is positioned shall be approved by the fire code official.

Exception: The proximity of an aerial fire apparatus access road may be altered by the fire code official based on the specifications and capabilities of the fire protection district's apparatus.

Sec. 18-6-40. Violations and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §5, 2016)

ARTICLE 7 Fuel Gas Code[7]

Sec. 18-7-10. International Fuel Gas Code adopted.

The International Fuel Gas Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 8 inclusive is hereby adopted by reference

[7]Editor's note(s)—Ord. No. 07, § 6, 2016, adopted Nov. 17, 2016, repealed the former Art. 7, §§ 18-7-10—18-7-40, and enacted a new article as set out herein. The former Art. 7 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 19, adopted in 2014.

thereto and incorporated into and made a part of the Foxfield Municipal Code. The purpose and subject matter of the International Fuel Gas Code include the provision of standards for the design and installation of fuel gas systems and gas fired appliances. Any reference to the International Fuel Gas Code within this title shall be to the 2015 Edition of said code.

Sec. 18-7-20. Copy of file.

At least one (1) copy of the International Fuel Gas Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-7-30. International Fuel Gas Code—Amendments.

The International Fuel Gas Code as adopted by the Town is hereby amended as follows:

(1) **Section 101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Sections 103** (Department of Inspection), **104** (Duties and powers of the code official), **105** (Approval), **106** (Permits), **108** (Violations), and **109** (Means of appeals) are deleted and replaced with the corresponding and applicable provisions contained within Chapter 1 (Administration) of the International Building Code, as adopted and amended by the Town of Foxfield in this Title.

(3) **IFGC Section [A] 106.6.2 (Fee Schedule)** is amended to read "The fees for work shall be as indicated on the Town Fee Schedule adopted by the Board of Trustees."

(4) **Section [A] 106.6.3 (Fee Refunds)** is amended by deleting the section in its entirety and replacing the section with the following:

"The Town may authorize refunding of any fee paid hereunder that was erroneously paid or collected. The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or cancelled before any plan reviewing is done. The Town shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment."

(5) **Section 404.12 (Minimum burial depth)** is amended by the addition of the following: "All plastic fuel gas piping shall be installed a minimum of 18 inches (457 mm) below grade."

(6) **Section 406.4.1 (Test pressure)** is amended by changing "3 psig" to "10 psig."

Sec. 18-7-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §6, 2016)

ARTICLE 8 Energy Conservation Code[8]

Sec. 18-8-10. International Energy Conservation Code adopted.

The International Energy Conservation Code, 2105 Edition as published by the International Code Council, West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 6 inclusive is hereby adopted by reference thereto and incorporated into and made a part of the Foxfield Municipal Code. The purpose and subject matter of the International Energy Conservation Code include provisions that encourage energy conservation through efficiency in envelope design, mechanical systems, lighting systems and the use of new materials and techniques. Any reference to the International Energy Conservation Code within this title shall be to the 2015 Edition of said code.

Sec. 18-8-20. Copy on file.

At least one (1) copy of the International Energy Conservation Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-8-30. International Energy Conservation Code—Amendments.

The International Energy Conservation Code as adopted by the Town is hereby amended as follows:

(1) The International Energy Conservation Code is amended by replacing all references to "ICC Electrical Code" with "National Electric Code as adopted by the State of Colorado".

(2) Section 101.1 (Title) is amended by the addition of the term "Town of Foxfield" where indicated.

Sec. 18-8-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §7, 2016)

[8]Editor's note(s)—Ord. No. 07, § 7, 2016, adopted Nov. 17, 2016, repealed the former Art. 8, §§ 18-8-10—18-8-40, and enacted a new article as set out herein. The former Art. 8 pertained to similar subject matter and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 20, adopted in 2014.

ARTICLE 9 Reserved[9]

Secs. 18-9-10—18-9-40. Reserved.

ARTICLE 10 Reserved[10]

Secs. 18-10-10—18-10-40. Reserved.

ARTICLE 11 Dangerous Buildings Code[11]

Sec. 18-11-10. International Property Maintenance Code adopted.

The International Property Maintenance Code, 2015 Edition as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478, Chapters 1 through 2 inclusive, is hereby adopted by reference thereto and incorporated into and made a part of the Foxfield Municipal Code. The purpose and subject matter of the International Property Maintenance Code include the provision of just, equitable and practical procedures for the continued maintenance of property. In all sections of this code where a reference is made to the International Property Maintenance Code, said reference shall be to the 2015 Edition of said Code.

Sec. 18-11-20. Copy on file.

At least one (1) copy of the International Property Maintenance Code has been and is now on file in the office of the Town Clerk and may be inspected by appointment with the Town Clerk.

Sec. 18-11-30. International Property Maintenance Code—Amendments.

The International Property Maintenance Code as adopted by the Town is hereby amended as follows:

(1) **Section 101.1 (Title)** is amended by the addition of the term "Town of Foxfield" where indicated.

(2) **Section 103.5 (Fees)** is amended by deleting the section in its entirety.

(3) **Section 111.2 (Membership of board)** is amended by deleting the section in its entirety and inserting the following:

"The members of the Board of Appeals shall be comprised of the members of the Town Board of Trustees."

[9]Editor's note(s)—Ord. No. 07, § 8, 2016, adopted Nov. 17, 2016, repealed the former Art. 9, §§ 18-9-10—18-9-40, which pertained to ANSI Manual and derived from Ord. 4, §§ 1, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 21, adopted in 2014.

[10]Editor's note(s)—Ord. No. 07, § 9, 2016, adopted Nov. 17, 2016, repealed the former Art. 10, §§ 18-10-10—18-10-40, which pertained to elevator and escalator code and derived from Ord. 4, §§ 2, 5, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 22, adopted in 2014.

[11]Editor's note(s)—Ord. No. 07, § 10, 2016, adopted Nov. 17, 2016, repealed the former Art. 11, §§ 18-11-10—18-11-40, and enacted a new article as set out herein. The former Art. 11 pertained to similar subject matter and derived from Ord. 4, §§ 4, 6, adopted in 2008; Ord. 1, § 1, adopted in 2012; and Ord. 01, § 23, adopted in 2014.

(4) **Section 111.2.1 (Alternate members)** is amended by deleting the section in its entirety.

(5) **Section 111.2.2 (Chairman)** is amended by deleting the section in its entirety.

(6) **Section 111.2.3 (Disqualification of member)** is amended by deleting the section in its entirety.

(7) **Section 111.2.4 (Secretary)** is amended by deleting the section in its entirety.

(8) **Section 111.2.5 (Compensation of members)** is amended by deleting the section in its entirety.

Sec. 18-11-40. Violation and penalties.

(a) It is unlawful and constitutes a public nuisance for any person to maintain any property, building or any other structure in the Town in a condition which is in violation of this Article.

(b) Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

(Ord. 07 §10, 2016)

ARTICLE 12 Construction Practices

Sec. 18-12-10. Applicability and intent.

(a) Applicability. This Article shall apply to all construction activity within the Town.

(b) Intent. It is the Town's intent by the adoption of this Article to reasonably minimize the detrimental health, safety and general welfare impacts of construction activities on the residents of the community and to ensure that each construction activity is conducted in such a manner so as to avoid unnecessary inconvenience and annoyance to the general public and the occupants of neighboring property.

(Ord. 06 §1, 2014)

Sec. 18-12-20. Definitions.

For purposes of this Article and unless the context clearly indicates otherwise, certain terms and words used herein shall be interpreted as follows:

Construction activity means any site preparation, landscaping, building construction, sign erection, paving, fencing, planting or other improvement or modification of any real property or existing improvement thereon.

Construction site means all of a real property, as defined by its boundary lines, over any part of which there is a construction activity, along with the public or private right-of-way adjacent to such property.

Construction site facilities means a portable toilet, a trash receptacle or Dumpster and any other structure or facility erected or installed as a job office, material storage facility or other facility or installation on or within a construction site that is used for or in connection with a construction activity or that is required to be depicted on a construction staging plan pursuant to this Article.

Construction staging plan means a site plan of a construction site that shows the location for all construction site facilities and all other items that are required to be shown on such plan pursuant to the requirements of this Article.

Construction vehicle means any car, truck, tractor, trailer or other vehicle or equipment of any type that is used to perform any part of a construction activity or to transport equipment, supplies or workers to a construction site.

Right-of-way means any street, way, place, alley, easement, median, parkway or boulevard, whether public or private, the principal purpose of which is the provision of vehicular access to real property.

Town Administrator means the duly appointed Town Administrator of the Town, or the Town Administrator's designee.

Vehicle tracking control means an effective method or methods of preventing vehicles from tracking soil, mud or gravel from a construction site to a right-of-way, which method or methods may include, but not be limited to, the use of temporary paving or a washing or mud-clearing station.

Sec. 18-12-30. Administration.

(a) A construction staging plan shall be submitted along with the application for a permit for any construction activities. In instances when a building permit or other permit from the Town is not required for a construction activity, or for any work being conducted pursuant to a permit issued for a project consisting solely of electrical work, plumbing work or mechanical work, such construction activity shall still be subject to the minimum requirements outlined in Subparagraphs 18-12-40(2)a. through i. of this Article even though a construction staging plan may not be required. The Town Administrator may require that a construction staging plan be submitted for review and approval for proposed or current construction activities, if the Town Administrator determines that a construction staging plan is necessary to ensure that construction is conducted in such a manner so as to minimize the impacts resulting from the construction activity on the general public and the occupants of neighboring property. It shall be unlawful to perform, or for the owner of any construction site to allow to be performed, any construction activity prior to the Town's full approval of the construction staging plan when such construction staging plan is required by this Article.

(b) The construction staging plan shall be subject to the review and approval of the Town Administrator. Such review shall be conducted to ensure that the construction activities will be conducted in compliance with the requirements of this Article; provided, however, that, if the Town Administrator determines that a deviation of a construction staging plan from the requirements of this Article will result in no greater adverse impacts on adjacent properties than would occur if the plan were to fully comply with the provisions of this Article, then the Town Administrator may approve the plan in his reasonable discretion.

(c) The Town Administrator may impose reasonable conditions upon any approval of a construction staging plan to ensure that the construction activities will be conducted in compliance with the requirements of this Article.

(d) A construction staging plan may be modified or amended upon the written approval of the Town Administrator. Any modification to or amendment of a construction staging plan shall be reviewed and approved under the same standards, and shall be subject to the same conditions, as are set forth in this Section for the review, approval and conditioning of the initial construction staging plan.

(e) Any construction activity performed by a property owner or occupant of property without the assistance of a contractor, or any landscaping, planting or grading work that disturbs less than five hundred (500) square feet of property area and less than ten (10) cubic yards of soil, shall not be subject to the requirements of this Article.

(Ord. 06 §1, 2014)

Sec. 18-12-40. Construction staging plan.

The construction staging plan shall include all of the following information:

(1) A to-scale, accurate depiction of all existing and proposed improvements.

(2) A to-scale, accurate depiction of the location of all construction site facilities and, when applicable, a description of construction site facilities, including but not limited to the following:

a. Portable toilets.

1. Except for construction sites that contain an operable, permanent toilet that is made available for the use of every construction worker, at least one (1) portable toilet shall be provided on each construction site and the location of such portable toilet shall be shown on the construction staging plan.

2. A portable toilet shall not be located within any right-of-way.

3. Portable toilets shall not be located within any right-of-way, and in no event shall a portable toilet be located within ten (10) feet of any public right-of-way or within twenty-five (25) feet of any other property line.

4. Every portable toilet shall at all times be maintained in a sanitary and odor-free condition.

b. Trash receptacles and Dumpsters.

1. A trash receptacle and/or Dumpster of a size adequate to contain the construction waste materials anticipated in connection with a construction activity shall be provided on each construction site to contain solid waste materials, and the location of such trash receptacle and/or Dumpster shall be shown on the construction staging plan. Liquid and hazardous waste materials shall be disposed of at a proper waste depository.

2. Trash receptacles or Dumpsters shall not be located within any right-of-way, and in no event shall a trash receptacle or Dumpster be located within ten (10) feet of any public right-of-way or within twenty-five (25) feet of any other property line.

3. Trash receptacles and Dumpsters shall at all times be maintained in an odor-free condition and in such a manner as to prevent waste materials from being blown out of them. Trash receptacles and Dumpsters shall be emptied on a regular basis so as to comply with the requirements of this Section.

c. Construction trailers. Temporary construction trailers shall be permitted, operated and maintained in accordance with the provisions of Section 16-3-120 of this Code. If a temporary construction trailer is to be used on a construction site, its location shall be depicted on the construction staging plan.

d. Vehicle tracking control.

1. No construction vehicle shall track soil, mud or gravel off of a construction site and onto a right-of-way. Vehicle tracking control shall be used at ingress and egress points on all construction sites that have the potential for construction vehicles to track soil, mud or gravel off of a construction site and onto a right-of-way.

2. The construction staging plan shall depict the location for, and describe the type of, vehicle tracking control that will be utilized for the construction site.

e. Silt fencing.

1. Silt fencing shall be placed downgrade of all areas of a construction site that are to be disturbed and that have the potential for sediment to be transported off of a construction site by runoff, and the location and type of such silt fencing shall be shown on the construction staging plan.
2. A minimum of nine (9) inches of the bottom of the silt fence shall be anchored using gravel or dirt.

f. Parking.

1. The locations of all parking and loading/unloading areas for construction vehicles associated with a construction site shall be shown on the required construction staging plan.
2. For any lot, parcel or other real property that contains one (1) or more acres, the parking of construction vehicles shall occur only within the boundaries of such lot, parcel or other real property. It shall be unlawful for any construction vehicle associated with any lot, parcel or other real property that contains one (1) or more acres of gross lot area to be parked within a right-of-way.
3. For any lot, parcel or other real property that contains less than one (1) acre of gross lot area, the parking of construction vehicles shall occur only within the boundaries of such lot, parcel or other real property if reasonably feasible.
4. In the event that the parking of construction vehicles within the boundaries of a lot, parcel or other real property containing less than one (1) acre of gross lot area is not reasonably feasible, the construction staging plan may provide:
    a) That the parking area shall be located within the right-of-way area that is immediately adjacent to the subject property and not adjacent to any other property; and
    b) That vehicular access on the right-of-way shall be maintained at a minimum width of twenty (20) feet (for emergency response purposes), assuming the contemporaneous use of the right-of-way for the parking of vehicles immediately across the right-of-way from the area in which the construction vehicles are to be parked. In the event that such minimum width cannot be maintained, the parking of construction vehicles shall not occur within the right-of-way.

It shall be unlawful for any construction vehicle associated with such lot, parcel or other real property to be parked within a right-of-way except to the extent that the parking within a right-of-way is in conformance with the approved construction staging plan.

5. The construction staging plan shall make provision for parking at remote locations that are not within a right-of-way within the City in the event that the number of anticipated construction vehicles exceeds the parking capacity of the site.

g. Temporary construction fencing.

1. Any temporary construction fencing shall be shown on the required construction staging plan.
2. Temporary construction fencing shall be provided for any below-grade construction in excess of thirty (30) inches that is unattended or open overnight.

3. Temporary construction fencing shall not exceed six (6) feet in height and may be opaque so as to provide additional screening of the construction site.

4. Temporary construction fencing may not be located in a right-of-way.

h. Construction material storage.

1. Construction material storage areas shall be designated on the required construction staging plan.

2. Construction materials shall not be stored in any right-of-way.

3. In no event shall construction materials be stored within five (5) feet from any property line.

i. Storage of fill or excavated dirt.

1. The location of storage sites for any fill or excavated dirt shall be indicated on the construction staging plan.

2. Any fill or excavated dirt shall be maintained in a manner so as to prevent dust from blowing on adjacent properties, which manner may include, but need not be limited to, the periodic watering of the piles.

3. Silt fencing around piles of fill or excavated dirt may be required under the provisions of Subparagraph e. above.

4. All excess fill or excavated dirt shall be removed promptly upon completion of the project.

(3) Photographs of all improved portions of any public right-of-way that are within five hundred (500) feet of any point of vehicular access to a construction site.

Sec. 18-12-50. Construction site maintenance and operation and duty to repair public rights-of-way.

(a) Contractors, subcontractors and persons holding permits to perform construction activities, and the owners of construction sites, shall cause the construction site to be maintained in a neat and orderly condition that is free from any debris, garbage, junk, used or discarded construction materials, trash or any other foreign substance produced as a result of the construction project other than debris, garbage, junk, trash or other foreign substance deposited into and contained within a trash receptacle or Dumpster.

(b) Notwithstanding any provision of this Article, all construction activities and construction sites shall be subject to the provisions of Chapter 7 of this Code, including but not limited to those provisions concerning noise.

(c) Contractors, subcontractors, persons holding permits to perform construction activities and the owners of construction sites shall, at the direction of the Town Administrator, either repair or reimburse the Town for its costs incurred to repair any damage to any public right-of-way that is caused by a construction vehicle.

(Ord. 06 §1, 2014)

Sec. 18-12-60. Construction times.

The hours of construction are limited to the following operating hours. Operating or permitting the operation of any tools or equipment in connection with construction between the hours of 7:00 p.m. and 7:00 a.m. the following day on weekdays, between the hours of 7:00 p.m. and 8:00 a.m. on Saturdays and between the hours of 7:00 p.m. and 10:00 a.m. on Sundays or holidays, such that the sound therefrom creates a noise disturbance across

a residential property boundary, is prohibited, except for emergency work on public utilities, emergency work by Town personnel or work in compliance with a variance or permit issued by the Town.

Sec. 18-12-70. Enforcement.

(a) Upon a complaint or observation by the Town of a violation of this Article, or upon a determination by the Town that a construction site is not being maintained or operated in strict conformance with the provisions of an approved construction staging plan, the Town shall provide written notice to the contractor or person performing the work on the construction site, as well as mailed notice to the owner of record of the construction site, specifying the specific conditions that are deemed in violation of this Article or the approved construction staging plan and demanding that the construction site be brought into compliance with this Article or such plan within twenty-four (24) hours; provided, however, that no such notice is required if the Town Administrator determines that the immediate cessation of the violation or failure to comply with an approved construction staging plan is necessary to preserve health or safety, or when there is a violation of the regulations concerning construction times as stated in Section 18-12-60 of this Article.

(b) In the event of a violation of any provision of this Article, or in the event that the Town determines that a construction site is not being maintained or operated in strict conformance with the provisions of an approved construction staging plan, or in the event that reasonable steps have not been undertaken within the twenty-four-hour period referenced in Subsection (a) above to bring a site into compliance with any provision of this Article or such plan after notice as provided in Subsection (a) above, or without prior notice in the event of a second violation of the same provision of this Article or a second failure to operate in strict conformance with the same provision of an approved construction staging plan, the Town may, at its discretion:

    (1) Issue a stop work order;

    (2) Withhold any certificate of occupancy for any improvement on the construction site;

    (3) Withhold any required construction or building inspection approvals;

    (4) Reject any necessary acceptance by the Town of construction or improvements;

    (5) Prosecute the violation in accordance with the Town's laws governing nuisances or as a violation of this Article that is subject to the penalties set forth in Section 18-12-80 below; and/or

    (6) Remedy the conditions that are deemed in violation of this Article or the approved construction staging plan and assess the costs incurred by the Town to bring the construction site into compliance with this Article as a lien against the subject property, subject to collection in the same manner as unpaid property taxes.

(c) In the event that the Town issues a stop work order pursuant to this Section, it shall be unlawful for any person to engage in any construction activity on the subject construction site until a written plan is submitted to and approved by the Town Administrator. Such plan shall provide a detailed statement setting forth the means and methods by which the existing violation has been or will be remedied and by which the same violation will be avoided in the future. The statement shall provide such additional or clarifying information as may be reasonably requested by the Town Administrator. Upon its approval by the Town Administrator, the written plan shall be a part of the construction staging plan required by this Article and shall be enforceable under this Article as if it had been set forth as part of the original, approved construction staging plan.

(d) In the event that the Town remedies the conditions deemed in violation of this Article or the approved construction staging plan, the cost for the Town to perform such work shall be five hundred dollars ($500.00), exclusive of any costs attributable to vehicle or equipment time, or the actual cost of remediation

of the violation, whichever is greater. The failure to pay an assessment imposed by the Town for Town costs incurred to bring the construction site into conformance with this Article or such plan within seven (7) days shall cause all building permits for the construction site to expire. Provided that full payment of such assessment is made and all other applicable requirements for the issuance of a building permit are satisfied, a new permit may be obtained upon application and payment of the building permit fee calculated on the valuation of the remaining work.

(e) Any and all construction site facilities shall have been removed from the construction site at such time as the subject improvement is issued a certificate of occupancy or completion, or within ten (10) days after the construction activity has ceased, whichever first occurs.

(Ord. 06 §1, 2014)

Sec. 18-12-80. Penalties.

Any violation of the provisions of this Article shall be subject to the penalties provided for in Section 1-4-20 of this Code.

DISPOSITION OF ORDINANCES TABLE

Ord. #	Year	Subject	Section	Disposition
4	1995	Town seal	1	1-6-10
10	1995	Electric franchise		5-1-10—5-1-160
13	1995	Model Traffic Code	1	8-1-70
15	1995	Sales tax	1	4-3-10—4-3-30, 4-3-50—4-3-70
		Business licenses	1	6-1-20, 6-1-40, 6-1-60—6-1-80, 6-1-100, 6-1-120, 6-1-160
16	1995	Gas franchise	1	5-2-10
			2	5-2-20, 5-2-30
			3	5-2-40—5-2-80
			4	5-2-90—5-2-160
			5	5-2-170—5-2-230
			6	5-2-240
			7	5-2-250, 5-2-260
			8	5-2-270, 5-2-280
			9	5-2-290, 5-2-300
			10	5-2-310—5-2-340
			11	5-2-350
			12	5-2-360
			13	5-2-370—5-2-400
			14	5-2-410
			15	5-2-420—5-2-480
3	1996	Use tax	1	4-4-20
			2	4-4-30
			3	4-4-40
			4	4-4-50
			5	4-4-60
			6	4-4-70
			7	4-4-80
			8	4-4-90
			9	4-4-100
			10	4-4-110
			11	4-4-120
			12	4-4-130
			13	4-4-140
			14	4-4-150
			15	4-4-160
5	1996	Municipal Court	1	2-4-10

			2	2-4-20
			3	2-4-60
6	1996	Mayor and Board of Trustees	1—3	2-3-30
7	1996	Sales tax	1	4-3-40
8	1997	General penalty	1	1-4-20
6	1998	Cable television franchise agreement	1	Chap. 5, Art. 3, Appx 5-A
4	1999	Mayor and Board of Trustees	1, 2	2-2-50
1	2000	Mayor and Board of Trustees	1	2-2-10
14	2000	Model Traffic Code	1	8-1-80
6	2001	Work permits in public right-of-way	2	11-5-10—11-5-260
2	2002	Mayor and Board of Trustees	1	2-2-60
4	2003	Model Traffic Code	1	8-1-80
7	2003	Mayor and Board of Trustees	1—3	2-2-10
9	2003	Sales tax		4-3-50
1	2004	Use tax	1	4-4-10
2	2004	Newly paved and constructed streets	1	11-2-10—11-2-40
6	2006	Enhanced Sales Tax Incentive Program	1	4-5-10
			2	4-5-20
			3	4-5-30
			4	4-5-40
			5	4-5-50
			6	4-5-60
			7	4-5-70
			8	4-5-80
			9	4-5-90
			10	4-5-100
			11	4-5-110
			12	4-5-120
9	2006	Municipal Court	1	2-4-70
			2	2-4-80, 2-4-90
			3	2-4-110—2-4-180
2	2007	Fire Code	1	18-6-10, 18-6-20
			2	18-6-30
3	2008	Liquor licensing regulations	1	6-2-10, 6-2-100—6-2-280
			2	6-2-410—6-2-520
4	2008	Building regulations	1	18-1-10, 18-2-10, 18-4-10, 18-5-10, 18-7-10, 18-8-10, 18-9-10
			2	18-10-10
			3	18-3-10
			4	18-11-10
			5	18-1-20, 18-2-20, 18-3-20, 18-4-20, 18-5-20, 18-7-20, 18-8-20, 18-9-20, 18-10-20, 18-11-20, 18-11-40
			6	18-1-40, 18-2-40, 18-3-40, 18-4-40, 18-5-40, 18-7-40,

				18-8-40, 18-9-40
5	2009	Zoning regulations	1	16-1-10—16-1-180, 16-2-10—16-2-110, 16-3-10—16-3-130, 16-4-10—16-4-40, 16-5-10—16-5-100, 16-6-10
6	2009	Rural residential property standards	1	7-1-20, 7-1-70, 7-1-90, 7-1-110
7	2009	Mayor and Board of Trustees	4	2-2-70
			6	2-2-80
			7	1-3-60
2	2010	Model Traffic Code	1	8-1-10
			2, 3	8-1-30
			4	8-1-40
			5	8-1-50
			6	8-1-20
			7	8-1-60
3	2010	Animals	3	7-2-10—7-2-160
4	2010	Nuisances	1	7-1-10, 7-1-20
6	2010	Officers and employees	1	2-3-40
			2	2-3-50
			3	2-3-60
			4	2-3-70
			5	2-3-80
7	2010	Officers and employees	1	2-3-90
			2	2-3-100
			3	2-3-110
			4	2-3-120
			5	2-3-130
8	2010	Officers and Employees	1	2-3-140
			2	2-3-150
			3	2-3-160
			4	2-3-170
			5	2-3-180
10	2010	Animals	1	7-2-80
1	2011	Animal noise	1	7-1-20
2	2011		1	2-4-70
4	2011			6-3-10
6	2011		1	6-2-610
01	2012	Adopts Municipal Code	1	Chapters 1—18, Tables, Index
02	2012	Impoundment of animals	1	7-2-110
01	2013	Nuisances	1	7-1-20
02	2013	Discharge of firearms	1 Added	Chap. 7, Art. 3
03	2013	Medical marijuana	1 Added	Chap. 6, Art. 4
		Marijuana	Added	Chap. 6, Art. 5
04	2013	Prohibition of marijuana businesses	1 Added	16-2-45
05	2013	Growing marijuana	1 Added	16-4-70

06	2013	Private garages	1	16-2-50
07	2013	Discharge of firearms	1 Rpld/Rnctd	Chap. 7, Art. 3
09	2013	Marijuana facilities and stores	1 Added	6-5-60
01	2014	Maximum fine and penalty	1	1-4-20
			2	6-1-160
			3	6-4-60
			4	6-5-50
			5	7-1-180
			6 Added	7-3-40
			7	8-1-60
			8 Added	11-1-30
			9	11-2-40
			10	11-3-20
			11	11-5-260
			12	18-1-40
			13	18-2-40
			14	18-3-40
			15	18-4-40
			16	18-5-40
			17	18-6-30
			18	18-6-40
			19	18-7-40
			20	18-8-40
			21	18-9-40
			22	18-10-40
			23	18-11-40
02	2014	Board of Trustees	1	2-2-10
03	2014	Subdivisions	1 Rpld/Rnctd	Chap. 17
04	2014	Zoning	1	16-1-100
			2, 3	16-2-50
			4	16-2-60
			5	16-3-80
			6	16-3-100
			7 Rpld	16-3-110
			8	16-3-120
			9	16-4-20
			10	16-4-30
			11	16-4-50
			12	16-5-70
			13	16-5-100
			14	16-6-10
			15 Deleted	Appx 16-C
			16 Added	Appx 16-C
06	2014	Construction practices	1 Added	Chap. 18, Art. 12
08	2014	Board of Trustees	1	2-2-10
05	2014	Rural residential property standards	1 Added	Chap. 7, Art. 4
09	2014	Residential property access	1	11-4-70
			2	11-4-80
10	2014	Nuisances	1, 2	7-1-20

01	2015	Zoning regulations	1	16-2-60
			2	16-3-90(c)(5)
			3	16-6-10
02	2015	Rights-of-way permit requirements	1	11-5-80
			2	11-5-90
			3	11-5-110
			4 Added	11-5-240(d)
			5 Added	11-6-10—11-6-50
03	2015	Trash collection	1 Added	7-5-10—7-5-30
04	2015	Bidding requirements for public improvement projects	1 Added	1-7-10
06	2015	Modifications to existing wireless telecommunications facilities	1, 2	16-6-10
			3	16-4-30(k)
07	2015	Residential waste services	1 Added	11-7-10—11-7-30
08	2015	Electric franchise	1 Rpld	5-1-10—5-1-160
			Added	5-1-10—5-1-250
02	2016	National Electrical Code	1 Rpld	18-3-10—18-3-40
			Added	18-3-10—18-3-40
03	2016	Fences and berms	1 Rpld	16-3-60
			Added	16-3-60
			2	16-6-10
			3, 4	16-5-60(d)(2)
04	2016	Height limits for commercial mobile radio service facilities	1	16-4-30(e)(4)
07	2016	Building codes	1 Rpld/Rnctd	18-1-10—18-1-40
			2 Rpld/Rnctd	18-2-10—18-2-40
			3 Rpld/Rnctd	18-4-10—18-4-40
			4 Rpld/Rnctd	18-5-10—18-5-40
			5 Rpld/Rnctd	18-6-10—18-6-40
			6 Rpld/Rnctd	18-7-10—18-7-40
			7 Rpld/Rnctd	18-8-10—18-8-40
			8 Rpld	18-9-10—18-9-40
			9 Rpld	18-10-10—18-10-40
			10 Rpld/Rnctd	18-11-10—18-11-40
01	2017	Zoning regulations	1 Rpld/Rnctd	16-2-50
			2	16-4-10
			3, 4	16-6-10
02	2017	Zoning regulations	1	16-2-10(c)(3)
			2 Rpld/Rnctd	16-2-40
			3	16-5-40(b)(1)
			4	16-5-80(b)(4)
			5 Rpld/Rnctd	16-5-50
01	2018	Elections	1 Rpld/Rnctd	2-1-20
			2 Rpld/Rnctd	2-1-30
03	2017	Special events permits	1 Added	6-3-10(f)
04	2017	Cable franchise agreement	1 Added	5-4-10—5-4-130
05	2017	Residential driveway and culvert permits	1 Rpld/Rnctd	11-4-80
			2	11-5-20

07	2017	Traffic violations	1	8-1-30(10)
			2	8-1-60
			3 Added	8-1-90
08	2017	Wireless service facilities	1 Rpld/Rnctd	16-4-30
09	2017	Marijuana regulations	1	16-4-60(b)(2)
			2	16-4-70(b)(2)
02	2018	Fences, berms and sound walls in the large lot rural residential zone district	1, 2	16-3-60
01	2019	Days of imprisonment by the municipal court	1	1-4-20(a) 7-1-100(d)(1) 8-1-60(4)(b)
02	2019	Bidding process for public improvement projects	1 Added	1-7-10(d)
01	2020	Prohibiting camping on public property	1 Added	11-8-10
03	2020	Nuisances	1 Rpld	7-1-20(7)e
04	2020	Gas franchise	1 Rpld	5-2-10—5-2-480
			Added	5-2-10—5-2-290
01	2021	Zoning regulations	1	16-6-10
02	2021	Regarding destruction of public property	1 Added	11-8-20
03	2021	Outdoor storage in the rural residential zone district	1—3	7-1-10
			4	7-1-20(7)a
			5	7-1-20(7)f
04	2021	Off street parking standards and home occupations	1 Dltd	16-3-30(j)(4)
			2	16-4-10
			3	16-6-10
05	2021	Mayor and Board of Trustees	1	2-2-60(a)
06	2021	Animal control	1 Rpld/Rnctd	7-2-10—7-2-160