BUENA VISTA

MUNICIPAL CODE

1992

A Codification of the General Ordinances

of the Town of Buena Vista, Colorado

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of the

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Jerry Steinauer

Town Administrator
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Town Clerk
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Town Attorney
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Supplement No. 20

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 8, adopted April 23, 2013.**

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

August 2013

Supplement No. 19

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 7, 2012, adopted June 26, 2012.**

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NOTE: Chapters included in this Supplement are being reprinted in their entirety. Please retain the divider tabs for each chapter.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

July 2012

Supplement No. 18

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 30, 2010, adopted October 26, 2010.**

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

March 2011

Supplement No. 17

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 13, 2009, adopted November 24, 2009.**

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

March 2010

Supplement No. 16

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 22, 2008, adopted October 23, 2008.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

February 2009

Supplement No. 15

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 10, 2007, adopted November 13, 2007.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
March 2008

Supplement No. 14

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 7, 2006, adopted November 14, 2006.**

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
February 2007

Supplement No. 13

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 16, 2005, adopted September 27, 2005.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
March 2006

Supplement No. 12

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 10, 2004, adopted December 14, 2004.**

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COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
March 2005

Supplement No. 11

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 21, 2003, adopted November 25, 2003.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado
April 2004

Supplement No. 10

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 2, 2003, adopted January 14, 2003.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

March 2003

Supplement No. 9

BUENA VISTA MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 4, 2002, adopted February 26, 2002.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

March 2002

Filed by: _____

Date: _____

Supplement No. 8

BUENA VISTA MUNICIPAL CODE
Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 15, 2000, adopted November 28, 2000.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

January 2001

Supplement No. 7

BUENA VISTA
MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 7, 1999, adopted December 14, 1999.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY
Fort Collins, Colorado

February 2000

Supplement No. 6

BUENA VISTA
MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 14, 1998, adopted November 24, 1998.**

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COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
April 1999

Supplement No. 5

BUENA VISTA
MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 5, 1998, adopted March 10, 1998.**

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COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
May 1998

Supplement No. 4

BUENA VISTA
MUNICIPAL CODE
Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 20, 1996, adopted December 19, 1996.**

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COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
February 1997

Supplement No. 3

BUENA VISTA
MUNICIPAL CODE
Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 23, 1995, adopted November 22, 1995.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
March 1996

Supplement No. 2

BUENA VISTA
MUNICIPAL CODE

Supplementation Instructions

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 29-1994, adopted December 27, 1994.**

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Insert this instruction sheet behind the Supplementation Tab in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
February 1995

Supplement No. 1

BUENA VISTA
MUNICIPAL CODE

Supplementation Instructions for Police Version

This Supplement contains all ordinances deemed advisable to be included at this time through **Ordinance No. 19-1993, adopted November 9, 1993.**

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Insert this instruction sheet behind page iii in the front of the volume. File removed sheets for future reference.

COLORADO CODE PUBLISHING COMPANY

Fort Collins, Colorado
January 1994

SUPPLEMENTATION

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 "Buena Vista Municipal Code" is amended by the addition thereto of a new Section 2-121, 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 "Buena Vista 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 2-121 of the "Buena Vista 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 2-121 of the "Buena Vista 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 2-121 of the "Buena Vista Municipal Code" is repealed in its entirety.

COLORADO CODE PUBLISHING COMPANY

PREFACE

The Town of Buena Vista, 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 *two-place section numbering system* places the chapter number first, followed by a hyphen and section number. This two-place system is simplified by the elimination of article numbering. Each section may be cited by the chapter and section numbers which, together with reserved section numbers, 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 *Disposition of Ordinances Table* identifies the source for the contents of the Code. This 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 an ordinance, or a portion thereof, is contained within the Code, the 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 within 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.

COLORADO CODE PUBLISHING COMPANY
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TOWN OF BUENA VISTA, COLORADO

ORDINANCE NO. 26-1992

Series of 1992

AN ORDINANCE ADOPTING BY REFERENCE A RECODIFICATION OF THE ORDINANCES OF THE TOWN OF BUENA VISTA OF A GENERAL AND PERMANENT NATURE, ENTITLED THE "BUENA VISTA MUNICIPAL CODE, 1992 EDITION"; ADOPTING VARIOUS SECONDARY CODES BY REFERENCE; SETTING FORTH AMENDMENTS TO THE ADOPTED CODES; PROVIDING PENALTIES FOR THE VIOLATIONS OF THE ADOPTED CODES; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED IN SUCH MUNICIPAL CODE; PROVIDING FOR THE MANNER OF AMENDING SUCH MUNICIPAL CODE; DECLARING AN EMERGENCY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE OF THIS ORDINANCE

WHEREAS, the Colorado General Assembly has provided for the codification and publication of the permanent and general ordinances of cities and towns in Sections 31-16-201 through 31-16-208, C.R.S.; and

WHEREAS, the Board of Trustees of the Town of Buena Vista has determined that it is appropriate that the ordinances of the Town of a permanent and general nature be recodified; and

WHEREAS, Colorado Code Publishing Company, 305 West Magnolia, Suite 382, Fort Collins, CO 80521, has compiled, edited and published a recodification of the general and permanent ordinances of the Town, which recodification is designated as the "Buena Vista Municipal Code," 1992 Edition.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BUENA VISTA, COLORADO, as follows:

Section 1. The code entitled "Buena Vista Municipal Code," 1992 Edition, published by Colorado Code Publishing Company, 305 West Magnolia, Suite 382, Fort Collins, CO 80521, consisting of Chapters 1 through 18, inclusive ("Buena Vista Municipal Code") is hereby adopted as a primary code by reference pursuant to Part 2 of Article 16 of Title 31, C.R.S.

Section 2. The purpose of the "Buena Vista Municipal Code" is to codify the ordinances of the Town of Buena Vista which are of a general and permanent nature. The subject matter of the "Buena Vista Municipal Code" includes general provisions concerning the application and interpretation of the code; the administration, personnel and organization of the Town government; revenue and finance; franchises and communications systems; business licenses and regulations; health, sanitation and animals; vehicles and traffic; general offenses; streets, sidewalks and public property; municipal utilities; annexations; zoning; subdivisions; and building regulations.

Section 3. The primary code adopted by reference in this Ordinance shall be known as the "Buena Vista Municipal Code," and it shall be sufficient to refer to said code as the "Buena Vista Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity.

Section 4. The following secondary codes were adopted by reference and incorporated into the Buena Vista Municipal Code:

(1) The *Model Traffic Code for Colorado Municipalities*, 1977 edition, published by the State Department of Highways, as adopted and amended in Section 8-1 *et seq.*;

(2) The *Uniform Building Code*, 1985 edition, published by the International Conference of Building Officials, as adopted and amended in Section 18-21 *et seq.*;

(3) The *National Electrical Code*, 1990 edition, published by the National Fire Protection Association, as adopted and amended in Section 18-41 *et seq.*;

(4) The *Uniform Mechanical Code*, 1985 edition, published by the International Conference of Building Officials, as adopted and amended in Section 18-61 *et seq.*;

(5) The *Uniform Plumbing Code*, 1985 edition, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended in Section 18-81 *et seq.*;

(6) The *Colorado Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings*, 1978 edition, published by the State Office of State Planning and Budgeting, Board for Energy Efficient Nonresidential Building Standards and the *Colorado Recommended Energy Conservation Performance Code for New Construction and Renovation of Residential Buildings*, 1978 edition, published by the Division of Housing, State Housing Board, as adopted and amended in Section 18-101 *et seq.*

(7) The Uniform Fire Code, 1979 edition, published by the International Conference of Building Officials and the Western Fire Chiefs Association, as adopted and amended in Section 18-121 *et seq.*;

Section 5. The penalties provided by the Buena Vista Municipal Code are hereby adopted as follows:

(1) **Sec. 1-72. General penalty for violation.**

(a) No person shall violate any of the provisions of the ordinances of the Town or of this Code. Except in cases where a different punishment is prescribed by any ordinance of this Town or this Code, any person who violates any of the provisions of the ordinances of the Town or of this Code shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment not to exceed one hundred eighty (180) days, or by both such fine and imprisonment, except as hereinafter provided in Section 1-73; and provided further that no indigent person shall be punished by imprisonment unless he or she has been given the opportunity to be represented by counsel. In addition, such person shall pay all court costs and expenses imposed by the court.

(2) **Sec. 1-73. Application of penalties to juveniles.**

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Chapter, shall be punished by a fine of not more than five hundred dollars ($500.00) per violation or count.

(3) **Sec. 1-78. Surcharge on fines.**

Upon sentencing any person for any violation of this Code or other municipal law, the Municipal Judge shall impose upon the offender a surcharge in the amount of twenty-five percent (25%) of the amount of the fine imposed. The Municipal Judge shall include such surcharge on any fine schedules which he or she now has or may hereafter establish. The proceeds of the surcharge imposed by this Section shall be paid over to the Town and kept

in a separate Town fund to be known as the "Police and Court Education Fund," as established at Section 4-34 of this Code.

(4) **Sec. 2-98. Contempt power.**

(a) When the Municipal Court finds any person to be in contempt, the Municipal Court may vindicate its dignity by imposing on the contemnor a fine not to exceed five hundred dollars ($500.00) and imprisonment not to exceed a term of ten (10) days.

(5) **Sec. 5-35. Penalty. (Article I, Cable Television System)**

Any person violating any of the provisions of Section 5-31 or 5-32 of this Article shall, upon conviction, be subject to a fine not to exceed three hundred dollars ($300.00) or imprisonment not exceeding ninety (90) days.

(6) **Sec. 6-4. Suspension or revocation; fine. (Article I, Alcoholic Beverages)**

(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).

(7) **Sec. 7-146. Minimum fines. (Article VI, Dogs)**

(a) A person convicted of violating any provision of this Article shall be punished in accordance with Section 1-72 of this Code; provided, however, that the minimum fine for any such violation shall be as follows:

(1) Upon first conviction within any three (3) year period, a fine of twenty-five dollars ($25.00);

(2) Upon second conviction within any three (3) year period, a fine of fifty dollars ($50.00); and

(3) Upon third or subsequent conviction within any three (3) year period, a fine of one hundred dollars ($100.00).

(8) **Sec. 11-87. Removal of dead or diseased trees on private property.**

The Board of Trustees shall have the power to provide for and compel the removal of any dead or diseased trees located on private property when such trees constitute a hazard to life on the property, or harbor insects or disease which constitute a potential threat to other trees within the Town. The Board of Trustees shall provide the owner of such trees with written notice of any order to remove a tree under this Section, and shall further provide the property owner with at least sixty (60) days within which to complete the removal of the dead or diseased tree. If the tree owner fails or refuses to remove the tree within the time specified in the written notice, the Town may proceed to remove the dead or diseased tree and the whole cost thereof, including collection expenses, may be assessed against the lot or tracts from which the tree was removed. The assessment shall be a lien against such lot or tract until paid, and shall have priority over all other liens except general taxes and prior special assessments. Further, in case such assessment is not paid within ninety (90) days after becoming due, it may be certified by the Town Clerk to the County Treasurer who shall collect the assessment, together with a ten percent (10%) penalty for cost of collection, in the same manner as other taxes are collected.

(9) **Sec. 13-83. Billing and payment. (Article V, Water Rates and Charges)**

(b) Bills shall be mailed monthly and shall be payable by the twenty-first day of the month following statement date. Bills for customers paid after the twenty-first day after the date on the statement will be charged a penalty of one percent (1%) per month on total balance due.

(c) Bills for water service materials (corporation cocks, curb stops, curb boxes, meters, etc.) paid after the twenty-first day after the date on the statement shall be charged a penalty fee of one percent (1%) per month of the balance due.

Section 6. Additions or amendments to the Buena Vista Municipal Code, when passed in the form as to indicate the intention of the Town to make the same a part of the Buena Vista Municipal Code, shall be deemed to be incorporated into the Buena Vista Municipal Code, such that reference to the Buena Vista Municipal Code includes the additions and amendments.

Section 7. Ordinances adopted after January 12, 1993 that amend or refer to ordinances that have been codified in the Buena Vista Municipal Code shall be construed as if they amend or refer to those provisions of the Buena Vista Municipal Code.

Section 8. All ordinances or portions of ordinances of a general and permanent nature of the Town enacted on or before January 12, 1993 which are inconsistent with the provisions of the Buena Vista Municipal Code, to the extent of such inconsistency, are hereby repealed. The repeal of ordinances and parts of ordinances of a general and permanent nature by this Section 8 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 when said ordinances and parts of ordinances are repealed. Further, the repeal of ordinances of a general and permanent nature by this Section 8 shall not repeal any ordinance or part thereof saved from repeal specifically by the Buena Vista Municipal Code; nor shall such repeal affect any ordinance:

1. Promising, guaranteeing or authorizing the payment of money by or for the Town.

2. Authorizing or relating to specific issuances of bonds or other evidences of indebtedness.

3. Granting a franchise.

4. Establishing the compensation of Town officers or employees.

5. Levying taxes, making appropriations or adopting a budget.

6. Creating specific local improvement districts.

7. Making special assessments for local improvements.

8. Vacating, accepting, establishing, locating, relocating or opening any street or public way.

9. Affecting the corporate limits of the Town.

10. Which is of a special or temporary nature.

11. Dedicating or accepting by plat or subdivision.

12. Making a change in the Town's Zoning map and ordinance as it pertains to specific real property.

Section 9. The repeal established in the foregoing section of this Ordinance 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 10. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases had been declared invalid.

Section 11. If any section, subsection or provision of the codes adopted by reference in this Ordinance, or the application thereof to any person or circumstances, is declared unconstitutional or otherwise invalid by any competent court, such invalidity shall not affect the other sections, subsections, provisions or applications of such code(s) if they can be given effect without the invalid sections, subsection, provision or application.

Section 12.

A. At least one (1) copy of the Buena Vista Municipal Code, and of each secondary code adopted therein, all certified by the Mayor and the Town Clerk to be true copies of such codes as they were adopted by this Ordinance, shall be kept on file in the office of the Town Clerk and shall be available for public inspection.

B. The Town Clerk shall prepare and publish revised sheets of every loose leaf page of the Buena Vista Municipal Code in need of revision by reason of amendment, addition or repeal. The Town Clerk shall distribute said revised loose leaf sheets for such fee as the Board of Trustees may direct.

Section 13. The Town Clerk shall maintain a reasonable supply of copies of the codes adopted by reference in this Ordinance to be available for purchase by the public at a moderate price.

Section 14. The Board of Trustees hereby finds, determines and declares that it has the power to adopt this Ordinance under the provisions of Section 31-16-201, *et seq.*, C.R.S., as amended, and the general powers granted to municipalities in Colorado.

Section 15. The Board of Trustees hereby finds, determines and declares that an emergency exists and that this Ordinance is necessary for the immediate preservation of the public health and safety in order to make this ordinance applicable to the Town at the earliest possible date so that administrative efficiency may be obtained therefrom and to assure that the purposes of this Ordinance are met.

Section 16. This Ordinance shall take effect and be in full force and effect upon adoption of this Ordinance by three-fourths (¾) of the members of the Board of Trustees.

INTRODUCED the 8th day of December, 1992, and a public hearing shall be held on this Ordinance on January 12, 1993 at 7:30 p.m. The Clerk shall give notice thereof as required by law.

TOWN OF BUENA VISTA, COLORADO

ATTEST: (signature)_____
Mayor

(signature)_____
Town Clerk

READ, ADOPTED AND ORDERED PUBLISHED BY TITLE ONLY this 12th day of January, 1993.

TOWN OF BUENA VISTA, COLORADO

(signature)_____
ATTEST: Mayor

(signature)_____
Town Clerk

PUBLISHED in full following adoption in _____, a newspaper of general circulation in the Town on _____, 1993.

TOWN OF BUENA VISTA

TABLE OF CONTENTS

CHAPTER 1

General Provisions

ARTICLE I

Code

Sec. 1-1. Adoption of Code.

The published code known as the *Buena Vista Municipal Code*, of which one (1) copy is now on file in the office of the Town Clerk and may be inspected during regular business hours, is enacted and adopted by reference as a primary code and incorporated herein as if set out at length. This primary code has been promulgated by the Town of Buena Vista, Colorado, as a codification of all the ordinances of the Town of Buena Vista of a general and permanent nature through Ordinance No. 26-1992 for the purpose of providing an up-to-date code of ordinances, properly organized and indexed, in published from for the use of the citizens and officers of the Town. (Ord. 26-1992 §1)

Sec. 1-2. Purpose.

The Board of Trustees finds, determines and declares that the ordinance codified in this Chapter is necessary for the general health, safety and welfare of the community. (Ord. 26-1992 §1)

Sec. 1-3. Title and scope.

This Code shall be known as the *Buena Vista Municipal Code*. This Code constitutes the adoption, compilation, revision and codification of all the ordinances of the Town of Buena Vista, of a general and permanent nature. (Ord. 26-1992 §1)

Sec. 1-4. Adoption of codes by reference.

Secondary codes may be adopted by reference, as provided by state law. (Ord. 26-1992 §1)

Sec. 1-5. Repeal of ordinances not contained in Code.

Ordinances and portions of ordinances of a general and permanent nature which are inconsistent with any provision of this Code, to the extent of such inconsistency, are repealed as of the effective date of the ordinance adopting this Code, except as hereinafter provided. (Ord. 26-1992 §1)

Sec. 1-6. Matters not affected by repeal.

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-5 above 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. (Prior code 1.01.080)

Sec. 1-7. Ordinances saved from repeal.

The continuance in effect of temporary and/or special ordinances and parts of ordinances, although omitted from this Code, shall not be affected by such omission therefrom, and the adoption of the 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) Which are of a special or temporary nature.

(2) Accepting, establishing, locating relocating, creating, opening, dedicating, vacating or closing any street or public way specific streets, alleys and other public ways.

(3) Naming or changing the names of specific streets and other public ways.

(4) Establishing the grades of specific streets and other public ways.

(5) Establishing the grades or lines of specific sidewalks.

(6) Authorizing or relating to specific issuances of general obligation or special revenue bonds or other evidences of indebtedness.

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

(8) Authorizing the issuance of specific local improvement district bonds.

(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) Calling or providing for a specific election.

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

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

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

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

(17) 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.

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

(19) Setting rates, tolls and charges for water, sewer, any utility or proprietary fee, unless otherwise specifically set forth in this Code.

(20) Promising, guaranteeing or authorizing the payment of money by or for the Town.

(21) Appropriating money.

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

(23) Relating to salaries.

(24) Amending the Official Zoning Map. (Prior code 1.01.090; Ord. 26-1992 §1)

Sec. 1-8. Changes in previously adopted ordinances.

In compiling and preparing the ordinances of the Town for adoption and revision as part of the 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 the Code as if the ordinances so changed had been previously formally amended to read as such. (Ord. 26-1992 §1)

Secs. 1-9—1-20. Reserved.

ARTICLE II

Definitions and Usage

Sec. 1-21. Definitions.

The following words and phrases, whenever used in the ordinances of the Town of Buena Vista, 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:

(1) *Board of Trustees* means the Board of Trustees of the Town of Buena Vista. *All its members* or *all Trustees* means the total numbers of Trustees holding office.

(2) *County* means the county of Chaffee, Colorado.

(3) *C.R.S.* means Colorado Revised Statutes, including all amendments thereto.

(4) *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.

(5) *May* is permissive.

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

(7) *Month* means a calendar month.

(8) *Must* and *shall*. Each is mandatory.

(9) *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*.

(10) *Ordinance* means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the from of a resolution.

(11) *Owner*, applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

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

(13) *Personal property* includes money, goods, chattels, things in action and evidences of debt.

(14) *Preceding* and *following* mean next before and next after, respectively.

(15) *Property* includes real and personal property.

(16) *Real property* includes lands, tenements and hereditaments.

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

(18) *State* means the State of Colorado.

(19) *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.

(20) *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.

(21) *Town* means the Town of Buena Vista, Colorado, or the area within the territorial limits of the Town of Buena Vista, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.

(22) *Written* includes printed, typewritten, mimeographed or multigraphed or otherwise reproduced in permanent visible from.

(23) *Year* means a calendar year. (Prior code 1.04.010; Ord. 26-1992 §1)

Sec. 1-22. Computation of time.

Except when otherwise provided, the time within which an act is required 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. (Prior code 1.04.070; Ord. 26-1992 §1)

Sec. 1-23. 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. (Prior code 1.04.020)

Sec. 1-24. Interpretation of language.

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 the law shall be construed and understood according to such peculiar and appropriate meaning. (Prior code 1.04.030; Ord. 26-1992 §1)

Sec. 1-25. Grammatical interpretation.

The following grammatical rules shall apply to Town ordinances unless it is apparent from the context that a different construction is intended:

(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. (Prior code 1.04.040; Ord. 26-1992 §1)

Secs. 1-26—1-40. Reserved.

ARTICLE III

General

Sec. 1-41. Titles and headings not part of ordinances.

Chapter and article titles, headings and titles of sections and other divisions in the Code or in supplements made to the Code are inserted in the Code, may be inserted in supplements to the Code for the convenience of persons using the Code, and are not part of the ordinances. (Ord. 26-1992 §1)

Sec. 1-42. Authorized acts by agents, representatives.

When an act is required by this Code or an ordinance, the same being such that it may be done as well by an agent or representative as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent or representative. (Prior code 1.04.050)

Sec. 1-43. Interpretation of unlawful acts.

Whenever in this Code any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Prior code 1.04.060; Ord. 26-1992 §1)

Sec. 1-44. Purpose of ordinances.

The provisions of Town ordinances, and all proceedings under them, are to be construed with a view to effect their objectives and to promote justice. (Prior code 1.04.080)

Sec. 1-45. Repeal of ordinances.

The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby. (Prior code 1.04.090)

Sec. 1-46. Publication of ordinances.

All ordinances, as soon as may be after their passage, shall be recorded in a book kept for that purpose and authenticated by the signature of the Mayor and Town Clerk. All ordinances of a general or permanent nature, and those imposing any fine or forfeiture, shall be published in a newspaper published

within the Town. Such ordinances shall not take effect until thirty (30) days after such publication, except for ordinances calling for special elections or necessary for the immediate preservation of the public peace, health and safety and containing the reasons making the same necessary in a separate section. The excepted ordinances shall take effect upon their final passage, adoption and the approval and signature of the Mayor, if they are adopted by an affirmative vote of three-fourths (¾) of the members of the Board of Trustees. (Ord. 26-1992 §1)

Sec. 1-47. 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. (Ord. 26-1992 §1)

Sec. 1-48. Amendments to Code.

Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the from of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-51 hereof. (Ord. 26-1992 §1)

Sec. 1-49. Copy of Code on file.

At least one (1) copy of the Code shall be kept in the office of the Town Clerk at all times, and such Code may be inspected by any interested person at any time during regular office hours, but may not be removed from the Town Clerk's office except upon proper order of a court of law. (Ord. 26-1992 §1)

Sec. 1-50. Examination of Code.

The Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code adopted by this ordinance to see that it is a true and correct copy of the Code. Similarly, after each supplement has been prepared, printed and inserted in the Code, the Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code as supplemented. The copy of the Code as originally adopted or amended shall constitute the permanent and general ordinances of the Town and shall be so accepted by the courts of law, administrative tribunals and all others concerned. (Ord. 26-1992 §1)

Sec. 1-51. Supplementation of Code.

(a) The Town Clerk shall cause supplementation of the Code to be prepared and printed from time to time as he or she may see fit. All substantive, permanent and general parts of ordinances passed by the Board of Trustees or adopted by initiative and referendum, and all amendments and changes in ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation, shall be included.

(b) It shall be the duty of the Town Clerk, or someone authorized and directed by the Town Clerk, to keep up to date the copy of the book containing the Code required to be filed in the office of the Town Clerk for the use of the public. (Ord. 26-1992 §1)

Sec. 1-52. Sale of Code copies.

The Town Clerk shall maintain a reasonable supply of copies of this Code to be available for purchase by the public at a moderate price. (Prior code 1.01.130)

Sec. 1-53. Altering or tampering with Code; penalties for violation.

Any person who shall alter, change or amend this Code, except in the manner prescribed in this Article, or who shall alter or tamper with the Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby shall, upon conviction thereof, be punishable as provided by Section 1-72. (Ord. 26-1992 §1)

Secs. 1-54—1-70. Reserved.

ARTICLE IV

General Penalty

Sec. 1-71. 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. (Ord. 26-1992 §1)

Sec. 1-72. General penalty for violation.

(a) No person shall violate any of the provisions of the ordinances of the Town or of this Code. Except in cases where a different punishment or penalty is prescribed by specific ordinance, any person who violates any of the provisions of the ordinances of the Town or of this Code shall be punished by payment of a fine of not more than one thousand dollars ($1,000.00), or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment, except as hereinafter provided in Section 1-73; and provided further that no indigent person shall be punished by imprisonment unless he or she has been given the opportunity to be represented by counsel. In addition, such person shall pay all court costs and surcharges imposed by the court or other law.

(b) Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the Town or of this Code is committed, continued or permitted by any such person, and he or she shall be punished accordingly. (Prior code 1.16.010; Ord. 12-1991 §1; Ord. 26-1992 §1; Ord. 12-1998, §1)

Sec. 1-73. Application of penalties to juveniles; subpoena of parents; driver's license.

A juvenile ten (10) years of age or older shall be subject to the penalties set forth in this Article for violations of this Code subject to the following limitations:

(1) A juvenile shall not be confined in a jail, lockup or other place used for the confinement of adults, but may be held in a juvenile detention facility operated by or under contract with the Department of Human Services, or a temporary holding facility operated by or under contract with the Town for the care of juveniles.

(2) In imposing penalties for a violation of probation conditions or for contempt of court in connection with a violation or alleged violation of the Code, including a failure to comply with a

lawful order of the court, the Municipal Court may order confinement of a juvenile for up to forty-eight (48) hours in a juvenile detention facility operated by or under contract with the Department of Human Services pursuant to Section 19-2-508, C.R.S.

(3) A juvenile may not be sentenced to a term of confinement in excess of ten (10) days for a violation of the Code, and the Municipal Court does not have authority to order a sentenced juvenile confined in a juvenile facility operated or contracted by the Department of Human Services.

(4) Upon the request of the Municipal Court Judge, the Town Prosecutor, or a defendant, the Clerk of the Municipal Court shall issue a subpoena for the appearance, at any and all stages of the court's proceedings, of the parent, guardian, or lawful guardian of any juvenile who is charged with a municipal offense. A failure to comply with a subpoena without good cause may subject a person to contempt proceedings.

(5) The Municipal Court shall notify the Colorado Department of Revenue whenever (i) a judgment entered against a person for a violation of any municipal ordinance which occurred when such person was under eighteen (18) years of age, excluding traffic code violations relating to parking, remains outstanding, or (ii) a bench warrant issued against any person for failure to appear to answer a summons and/or complaint for a violation of any municipal ordinance which occurred when such person was under eighteen (18) years of age, excluding traffic code violations relating to parking, remains outstanding, in order that such person shall not be allowed or permitted to obtain or renew a driver's license as provided for in Section 42-4-1709(7)(a)(IV) and (V), C.R.S. (Ord. 26-1992 §1; Ord. 12-1998 §2)

Sec. 1-74. Fines and penalties; plea of guilty or nolo contendere.

Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. (Ord. 26-1992 §1)

Sec. 1-75. 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 the Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-72 or 1-73, unless another penalty is specifically provided for the violation. (Ord. 26-1992 §1)

Sec. 1-76. Public work in lieu of penalty.

In lieu of the penalties provided in this Article, the Municipal Judge may require any person convicted of any offense to engage in public work for the Town or for any charity, the terms and conditions thereof to be set forth by the Municipal Judge. (Prior code 9.52.050)

Sec. 1-77. Probation.

Except where a specific ordinance or penalty provision may specify otherwise, the Municipal Judge may suspend the sentence or fine of a person found to have violated a provision of this Code and place him or her on probation for a period not to exceed one (1) year upon such terms and conditions as the Municipal Judge may determine. (Prior code 1.16.020; Ord. 10-2003 §3)

Sec. 1-78. Surcharge on fines.

There is hereby levied on each fine or penalty imposed upon a conviction or finding of liability in the Municipal Court, whether by a verdict

after trial or the entry of a guilty or no contest plea on a deferred judgment and sentence, the following surcharges which shall be paid by the defendant to the Clerk of the Municipal Court unless the court determines that the defendant is indigent. The Municipal Judge shall include the surcharges on any fine or penalty schedule he or she may establish.

(1) Except where a different surcharge is specifically provided for by ordinance for a given violation, a surcharge shall be levied and collected in the amount of twenty-five percent (25%) of the amount of the fine imposed. Where no fine or other financial penalty is imposed, then the surcharge will be twenty-five dollars ($25.00). The proceeds of the surcharge imposed herein shall be collected by the Clerk of the Municipal Court and deposited into the Police and Court Education Fund established under Section 4-34 of this Code.

(2) A Victims and Witnesses Assistance Fund surcharge of five dollars ($5.00). The proceeds of the surcharge shall be collected by the Clerk of the Municipal Court and deposited into the Victims and Witnesses Assistance Fund established under Section 4-36 of this Code. (Prior code 1.16.030; Ord. 8-1998 §1; Ord.10-2003 §3)

Sec. 1-79. Insufficient fund check tendered as payment of fine.

It is unlawful for any person to tender to the Court an insufficient fund check or draft in payment of a fine or costs, and an attempt to pay any fine or costs imposed by the Municipal Court with an insufficient fund check or draft shall result in the immediate issuance of a bench warrant for the arrest of the person signing such check or draft. (Prior code 1.16.040)

Sec. 1-80. Restitution.

In the event any violation of this Code involves injury to any person or destruction or damage to any property, the Municipal Court shall have the authority to suspend all or part of any penalty for such violation with a corresponding condition that restitution shall be required of any person so convicted to be made to any victim of such destruction, damage or injury. The Municipal Court may also impose a requirement of restitution even if there is no corresponding suspension of a sentence. (Prior code 1.16.050)

Sec. 1-81. Additional civil remedies.

In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any provisions of this Code or any law or ordinance of the Town shall be deemed a public nuisance and may be summarily abated as such, and each day that such condition continues shall be regarded as a new and separate violation. In addition, in any case of a failure to comply with any requirements of this Code or any law or ordinance of the Town, the Town or any person affected by such failure may, in addition to the penalties provided by law, initiate a civil action for injunction, mandamus, abatement or any other appropriate relief to prevent, enjoin, abate, remove or eliminate such violation of this Code or any law or ordinance of the Town. (Prior code 1.16.060)

Secs. 1-82—1-100. Reserved.

ARTICLE V

Inspections

Sec. 1-101. Right of entry generally.

Whenever it is necessary to make an inspection for the purpose of enforcing any ordinance, resolution, code or regulation of the Town, or whenever there is reasonable cause to believe that there exists or there is occurring in any building or upon any premises within the jurisdiction of the Town any violation of a Town ordinance, resolution, code or regulation, any peace officer of the Town may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon such peace officer by law; provided that, except in emergency situations or when the consent of the owner, occupant or other person having charge or control of such building or premises has been otherwise obtained, the provisions set forth in Sections 1-102 through 1-107 of this Code shall be followed. For the purposes of this Article the term *peace officer* shall include the designated enforcement officials for the Town's various building and technical codes, as well as any police officer of the Town. (Prior code 1.20.010)

Sec. 1-102. Presentation of credentials required; refusal of entry.

If a building or premises are occupied, the peace officer shall first present proper credentials and request entry. If a building or premises are unoccupied, the peace officer 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 or persons, shall present proper credentials and request entry. If such entry is refused, the peace officer shall give the owner, occupant or person in charge or control of the building or premises a twenty-four (24) hours' written notice of the peace officer's intention to inspect. (Prior code 1.20.020)

Sec. 1-103. Notice of intention to inspect; required when.

If the owner, occupant or other person or persons in charge or control of the building or premises cannot be located after a reasonable effort, the peace officer shall leave, at the building or premises, a twenty-four (24) hours' written notice of the peace officer's intention to inspect. (Prior code 1.20.030)

Sec. 1-104. Notice of intention to inspect; contents; search warrant required when.

The written notice of intention to inspect given to the owner, occupant or other person in charge or control or left at the building or premises as set forth in Sections 1-102 and 1-103 shall state that the property owner, occupant or person in charge or control of the building or premises has the right to refuse entry. In the event such entry is refused, inspection may be made only upon the issuance of a search warrant pursuant to Section 1-105. (Prior code 1.20.040)

Sec. 1-105. Issuance of search warrant.

After the expiration of the twenty-four (24) hour period from the giving or leaving of such notice, the peace officer may appear before the Municipal Judge of the Town or any other judge having applicable jurisdiction and, upon a showing of probable cause, which shall be made in writing and under oath, shall obtain a search warrant entitling the peace officer to enter into the building or upon the premises. (Prior code 1.20.050)

Sec. 1-106. Entrance permitted on presentation of search warrant.

Upon presentation of the search warrant and proper credentials, or possession of the search warrant and proper credentials in the case of an unoccupied building or premises, the peace officer may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry therein. (Prior code 1.20.060)

Sec. 1-107. Basis of probable cause for search warrant.

For the purposes of Sections 1-101 through 1-107, a determination of "probable cause" shall be based upon a reasonableness as the ultimate standard and, if a valid public interest justifies the entry contemplated, then there is probable cause to issue a search warrant. The standard necessary to determine probable cause will vary with the municipal law being enforced, but may be based upon the passage of time, the condition of the building, premises, structure or entire area, or the need to inspect in order to enforce the provisions of a Town ordinance, resolution, code or regulation. The peace officer shall not be required to demonstrate specific knowledge of the condition of the particular building, premises or structure in order to obtain a search warrant under this Article. (Prior code 1.20.070)

Sec. 1-108. Return of search warrant; inventory of property taken required.

After a search or inspection under authority of any search warrant issued from the Municipal Court or from any other court of competent jurisdiction, the return of such search warrant shall be made promptly and within ten (10) days after the date of the warrant. It shall be accompanied by a verified written inventory of any property taken under the warrant, which may consist of a true copy of the receipt referred to in Section 1-112. If a copy of such receipt is returned to the court as the inventory, it shall be verified by the peace officer who made the search or inspection and seizure. (Prior code 1.20.080)

Sec. 1-109. Issuance authority of search warrant.

The Municipal Judge, or any other judge of any court of applicable jurisdiction, shall have the power to issue a search warrant, upon a showing of probable cause for the implementation of the inspection as provided for in Sections 1-101 through 1-107. (Prior code 1.20.090)

Sec. 1-110. Applicability of notice required.

The provisions of this Article shall supersede all provisions pertaining to the right of entry contained in any Town ordinance, resolution, code or regulation. It is the specific intent of this Article that all entries of peace officers and designated enforcement officials shall be subject to the notice requirements and procedures contained in this Article, except where there is an emergency or consent has otherwise been obtained. (Prior code 1.20.100)

Sec. 1-111. Emergency entry.

Whenever an emergency situation exists in relation to the enforcement of any of the provisions of any Town ordinance, resolution, code or regulation, a peace officer of the Town may enter into any building or upon any premises within the jurisdiction of the Town, upon a presentation of proper credentials in the case of an occupied building or premises, or possession of the proper credentials in the case of an unoccupied building or premises. In an emergency situation, the peace officer may use such reasonable force as may be necessary to gain entry into any building or upon any premises. For the purposes of this Section, an emergency situation includes but is not limited to any situation where there is imminent danger of loss of life, limb and/or property caused by explosive materials, disease, fire, structural

weakness or any other condition which could cause such imminent danger, whether similar or dissimilar. (Prior code 1.20.110)

Sec. 1-112. Requirements for seizure of property.

If any property is seized incident to or as a result of an entry of search under this Article, the peace officer taking the property shall give to the person from whom or from whose premises the property was taken a copy of the search warrant issued and a receipt for the property taken, specifically describing the property. If the premises are unoccupied at the time of search or inspection, the peace officer shall leave such copy and receipt at the place from which the property was taken, posted or left in a conspicuous place within or upon the premises searched or inspected. If the person from whose possession or premises property is taken is present at the time of the seizure, the receipt shall be filled out in the presence of such person; provided, however, that if for any reason the receipt cannot be filled out in the presence of such person, or if the premises are unoccupied, then the receipt shall be filled out in the presence of at least one (1) peace officer other than the peace officer who is the applicant for the warrant. (Prior code 1.20.120)

Secs. 1-113—1-130. Reserved.

ARTICLE VI

Unclaimed Property

Sec. 1-131. Purpose.

The purpose of this Article is to provide for the administration and disposal of unclaimed property which is in the possession of or under the control of the Town. (Ord. 14-1992 §1)

Sec. 1-132. Definitions.

Unless otherwise required by context or use, words and terms used in this Article shall be defined as follows:

(1) *Administrator* shall means the Mayor or his or her designee.

(2) In addition to the property included in the definition of *intangible property* in Section 38-13-102(7), C.R.S., the term *intangible property* shall also include, but shall not be limited to, the following: deposits for water service provided by the Town, street cut permit deposits; overpayment on water service provided by the Town; developer cost recovery agreements; monies unclaimed by beneficiaries in a pension fund; uncashed payroll checks; bonds posted for reasons other than Municipal Court; and uncashed court ordered restitution payments.

(3) *Owner* means a person or entity, including a corporation, partnership, association, governmental entity other than this Town, or a duly authorized legal representative or successor in interest of same, which owns unclaimed property held by the Town.

(4) *Tangible property* shall include, but shall not be limited to, property left in safekeeping at a Town facility; weapons left with or seized by the police; money or property from police forfeiture or seizure; items held for evidence in connection with Town or other court proceedings; lost and found

money or personal property turned into the Town; and lost and found money or personal property found by an Town employee.

(5) *Unclaimed property* means any tangible or intangible property, including any income or increment derived therefrom, less any lawful charges, held by or under the control of the Town and which has not been claimed by its owner for a period of more than one (1) year after it became payable or distributable. Unclaimed, abandoned or seized motor vehicles are excluded from this Article, as such property is governed by existing sections of this Code. Municipal Court bond forfeitures are also excluded, as said bonds are subject to the provisions of the Colorado Municipal Court Rules. (Ord. 14-1992 §1)

Sec. 1-133. Notice of unclaimed property.

(a) Prior to disposition of any unclaimed property having an estimated value of fifty dollars ($50.00) or more, the Administrator shall send a written notice by certified mail, return receipt requested, to the last known address, if any, of any owner of unclaimed property. The last known address of the owner shall be the last address of the owner as shown by the records of the Town or any of its departments, or as determined by the Administrator. The notice shall include a description of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make

inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) Subject to the provisions of Subsection (c) below, prior to disposition of any unclaimed property having an estimated value of less than fifty dollars ($50.00) or having no last known address of the owner, the Administrator shall cause a notice to be published in a newspaper of general circulation in the Town. The notice shall include a description of the property, the owner of the property, the amount or estimated value of the property and, when available, the purpose for which the property was deposited or otherwise held. The notice shall state where the owner may make inquiry of or claim the property. The notice shall also state that if the owner fails to provide the Administrator with a written claim for the return of the property within sixty (60) days of the date of the publication of the notice, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(c) No notice shall be required prior to the disposition of any item which the Administrator has determined, after investigation, to be of insubstantial commercial value, and the Administrator may dispose of any such item as provided in Section 1-134(g). (Ord. 14-1992 §1)

Sec. 1-134. Procedure for disposition of property.

(a) If the Administrator receives no written claim within the above sixty (60) day claim period, the property shall become the sole property of the Town and any claim of the owner to such property shall be deemed forfeited.

(b) If the Administrator receives a written claim within the above sixty (60) day claim period, the Administrator shall evaluate the claim and give written notice to the claimant within ninety (90) days thereof that the claim has been accepted or denied in whole or in part. The Administrator may investigate the validity of a claim and may request further supporting documentation from the claimant prior to disbursing or refusing to disburse the property.

(c) Any legal action filed challenging a decision of the Mayor shall be filed pursuant to Rule 106 of the Colorado Rules of Civil Procedure within thirty (30) days of such decision or shall be forever barred. If any legal action is timely filed, the property shall be disbursed by the Mayor pursuant to the order of the Court having jurisdiction over such claim.

(d) In the event there is more than one (1) claimant for the same property, the Administrator may, in the Administrator's sole discretion, resolve said claims, or may resolve such claims by depositing the disputed property with the registry of the District Court in an interpleader action.

(e) In the event all claims filed are denied, the property shall become the sole property of the Town and any claim of the owner of such property shall be deemed forfeited.

(f) The Administrator may periodically cause any of such unclaimed property, other than money, to be sold at public sale or otherwise, or he or she may otherwise dispose of it, in the discretion of the Administrator, with the money collected to be paid into the General Fund of the Town. Without limiting the generality of the foregoing, the Administrator may return any lost and found money or personal property to the person who turned the money or property into the Town; provided that no such found money or personal property turned into the Town by a Town employee shall be returned to such employee. If the person who turned such money or property into the Town is under the age of eighteen (18) years, such money or property shall be delivered to such person's parent or legal guardian.

(g) If the Administrator determines after investigation that any forfeited unclaimed property has insubstantial commercial value, the Mayor may destroy, exchange, transfer or otherwise dispose of the property.

(h) No action or proceeding may be maintained against the Town or any officer or employee for or on account of any action taken by the Administrator pursuant to Subsections (f) and (g) above. (Ord. 14-1992 §1)

Sec. 1-135. Sale of unclaimed property.

(a) Any public sale of unclaimed property must be preceded by a single publication of notice at least three (3) weeks in advance of the sale, in a newspaper of general circulation within the limits of the Town. Said notice of sale shall describe the property and state where and when the sale shall take place.

(b) Property sold at public sale shall be sold to the highest bidder; however, the Administrator may decline the highest bid and reoffer the property for sale if in the judgment of the Mayor the bid is insufficient.

(c) The purchaser of property at any public sale conducted pursuant to this section takes the property free of all claims of the owner or previous holder thereof and all persons claiming through or under them. The Administrator shall execute all documents necessary to complete the transfer of ownership. (Ord. 14-1992 §1)

Sec. 1-136. Mandatory destruction of certain property.

The Chief of Police or a designee thereof shall destroy each and every article of the following described property which comes into his or her possession: burglary tools; firearms; cartridges; explosives; armor or bulletproof clothing; dangerous weapons; gambling apparatus; articles or medicines for the purpose of inducing abortion or preventing conception; beer, wine, spirituous liquors or fermented malt beverages; soiled, bloody or unsanitary clothing, solids or liquids of unknown or uncertain

composition; drugs or hallucinogenic substances, hypodermic syringes and needles; obscene pictures, prints, effigies or statues; and poisonous or noxious solids or liquids; or any other property which reasonably might result in the injury to the health or safety of the public or be the subject of unlawful use. Notice shall not be required prior to the destruction of any property which is subject to the provisions of this Section. (Ord. 14-1992 §1)

Sec. 1-137. Promulgation of procedural regulations.

The Administrator may promulgate reasonable procedural rules and regulations for the administration and disposition of unclaimed property consistent with this Article, including compliance requirements for other Town officers and employees in the identification and disposition of such property. (Ord. 14-1992 §1)

Secs. 1-138—1-150. Reserved.

ARTICLE VII

Town Seal

Sec. 1-151. Seal adopted.

A seal, the impression of which shall be as follows: In the center "clasped hands" with the words "United We Stand, Divided We Fall," and "Seal" and around the outer edge the words, "Buena Vista, Colorado, Incorporated Oct. 28, 1879," is declared to be the seal of the Town. (Prior code 1.08.010)

Secs. 1-152—1-170. Reserved.

ARTICLE VIII

Reserved

Secs. 1-171—1-190. Reserved.

ARTICLE IX

Official Map

Sec. 1-191. Official map adopted.

The map of the Town, prepared by Martin/Martin Consulting Engineers and dated February 27, 2001, is hereby declared to be the official map of the Town for general informational purposes. (Ord. 4, 1996 §1; Ord. 5-2001 §1)

Sec. 1-192. Filing.

A copy of the official map shall be filed for permanent record in the office of the County Clerk and Recorder. (Ord. 4, 1996 §1)

Sec. 1-193. Nonliability of Town.

The Town shall have no liability for any damages, losses or claims, of whatever kind or nature, arising from the adoption of the official Town map. Such map is declared to have been adopted for general informational purposes only, and is not intended to create or resolve any property or boundary line disputes or discrepancies. (Ord. 4, 1996 §1)

CHAPTER 2

Administration and Personnel

ARTICLE I

Elections

Sec. 2-1. Adoption of Colorado Municipal Election Laws.

Town elections shall be governed by the "Colorado Municipal Election Code of 1965," Part 1 of Article 10 of Title 31, C.R.S., except as otherwise provided in this Code. (Ord. 9-1992 §1)

Sec. 2-2. Write-in candidate's affidavit.

No write-in vote for any Town office shall be counted unless an affidavit of intent has been filed with the Town Clerk by the person whose name is written in prior to twenty (20) days before the day of the election indicating that such person desires the office and is qualified to assume the duties of that office if elected. (Ord. 9-1992 §1)

Sec. 2-3. Election may be cancelled; when.

If the only matter before the voters is the election of persons to office and if, at the close of business on the nineteenth day before the election, there are not more candidates than offices to be filled at such election, including write-in candidates filing affidavits of intent pursuant to Section 2-2 above, the Town Clerk, if instructed by resolution of the Board of Trustees either before or after such date, shall cancel the election and by resolution declare the candidates elected and upon such declaration the candidates shall be deemed elected. Notice of cancellation shall be published by the Town Clerk, if possible, in order to inform the electors, and notice of cancellation shall be posted at each polling place and in not less than one (1) other public place. (Ord. 9-1992 §1)

Sec. 2-4. Absentee ballots; notice.

No later than ninety (90) days before any regular or special municipal election, other than elections conducted by mail ballot or recall elections, the designated election official shall mail a written notice advising all registered electors of the Town that they may vote by absentee ballot in accordance with the procedures for voting by absentee ballot provided by law. The notice shall be mailed by regular U.S. mail to all persons listed as registered electors of the Town as shown in the records of the County Clerk and Recorder on the date such notice is sent, and shall be mailed to the address for each registered elector listed in the then-current registration list. The designated election official shall also provide copies of the notice required by this Section to the County Clerk and Recorder's office with the request that such office provide a copy to any Town resident who registers to vote during the ninety (90) days preceding the election as to which the notice has been mailed. As to mail ballot elections, no notice pursuant to this Section shall be required. As to recall elections, the notice required by this Section shall be mailed no later than sixty (60) days before the election. (Ord. 22-2008; Ord. 1 §1, 2009)

Secs. 2-5—2-20. Reserved.

ARTICLE II

Mayor and Board of Trustees

Sec. 2-21. Board of Trustees; terms, authority, qualifications and vacancies.

(a) Board of Trustees. The Board of Trustees shall consist of six (6) Trustees and the Mayor, who shall be elected to serve four (4) year terms. The Board of Trustees shall constitute the legislative body of the Town and 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.

(b) Terms. At the April 4, 1972, election six (6) Trustees shall be elected. The three (3) candidates for Trustee receiving the highest number of votes shall be elected for four-year terms, and the three (3) candidates for Trustee receiving the next highest numbers of votes shall be elected for two-year terms. At the next subsequent election and at each regular election thereafter, three (3) Trustees shall be elected to serve four-year terms.

(c) Qualifications. Each member of the Board of Trustees shall be a registered elector and shall have resided within the limits of the Town for a period of at least twelve (12) consecutive months immediately preceding the date of the election. If any Trustee shall move from or become, during the term of this office, a nonresident of the Town, he or she shall be deemed thereby to have vacated his or her office.

(d) Vacancies. The Board of Trustees has the power, by appointment, to fill all vacancies in the Board of Trustees, and the person so appointed shall hold his or her office until the next regular election and until his or her successor is elected and has complied with Section 31-4-401, C.R.S. The Board of Trustees also has the power to fill a vacancy in the Board of Trustees by ordering an election to fill the vacancy until the next regular election and until a successor has been elected and has complied with Section 31-4-401, C.R.S. If a vacancy in the Board of Trustees is not filled by appointment or an election is not ordered within sixty (60) days after the vacancy occurs, the Board of Trustees shall order an election, subject to the Municipal Election Code, to be held as soon as practicable to fill the vacancy until the next regular election and until a successor has been elected and has complied with Section 31-4-401, C.R.S. If the term of the person creating the vacancy was to extend beyond the next regular election, at the next regular election the three (3) candidates for Trustee receiving the highest number of votes shall be elected to four (4) year terms and the candidate or candidates receiving the next highest number of votes, in descending order, shall be elected to fill the remainder of the unexpired term of the person or persons who created the vacancy on the Board. (Prior code 2.08.030, 2.12.020; Ord. 1-1972 §1; Ord. 26-1992 §1)

Sec. 2-22. Mayor.

(a) At the regular election on April 6, 1982, and at the regular election every four (4) years thereafter, a Mayor shall be elected to serve a four (4) year term.

(b) The Mayor shall be a qualified elector and shall have resided within the limits of the Town for a period of at least twelve (12) consecutive months immediately preceding the date of the election.

If any Mayor shall move from or become, during the term of this office, a nonresident of the Town, he or she shall be deemed thereby to have vacated his or her office.

(c) The Mayor is a member of the Board of Trustees. He shall preside at all meetings of the Board of Trustees, but the Mayor shall have no vote upon any question except in the case of a tie vote, when he or she shall be allowed to cast a vote. Any ordinance adopted and all resolutions authorizing the expenditure of money or the entering into of a contract shall be subject to disapproval by the Mayor as provided in Section 31-16-104, C.R.S.

(d) The Mayor shall execute and authenticate by his or her 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.

(e) After April 6, 1982, if a vacancy occurs in the office of Mayor, the Board of Trustees shall fill such vacancy by appointment until the next regular election, and such vacancy shall then be filled at the next regular election as provided in Section 31-4-303, C.R.S. If the office of Mayor is not an office for which a successor would otherwise have been elected at such regular election, the term of office of the successor elected pursuant to Section 31-4-303, C.R.S., shall be shortened so that the following regular election for said office is held at the time at which it would have been held if no vacancy had occurred. (Prior code 2.08.010; Ord. 26-1992 §1)

Sec. 2-23. Mayor Pro Tem.

(a) At the first meeting after the regular municipal election, the Board of Trustees shall choose one (1) of the Trustees as Mayor Pro Tem.

(b) In the absence of the Mayor from any meeting of the Board of Trustees, or during the Mayor's absence from Town or his or her inability to act, the Mayor Pro Tem shall perform the Mayor's duties.

(c) When performing the Mayor's duties, the Mayor Pro Tem shall vote as a Trustee.

(d) The Mayor Pro Tem shall serve as the informational liaison between the Board of Trustees and the Town Administrator between regular or special meetings of the Board of Trustees. (Prior code 2.08.020; Ord. 6-2006 §1)

Sec. 2-24. Acting Mayor.

In the event of the absence or disability of both the Mayor and the Mayor Pro Tem, the Trustees may designate another of their number to serve as acting Mayor during such absence or disability. (Ord. 26-1992 §1)

Sec. 2-25. Compensation of Mayor and Trustees.

(a) The Mayor and each member of the Board of Trustees shall receive compensation in an amount fixed by ordinance.

(b) The salaries for the Mayor and Trustees shall constitute full compensation for all service rendered by them on the behalf of the Town, and salary payments shall be made to the Mayor and Trustees by the Town Treasurer on the last day of each month served.

(c) The compensation paid to any member of the Board of Trustees, including the Mayor or Trustee, shall not be increased or diminished for the term of office for which he or she has been elected or appointed. Any Mayor or Trustee who has resigned or vacated an office prior to the end of his or her elective or appointed term shall not be eligible to election or reappointment to the same during such term if the rate of compensation has been increased.

(d) The members of the Board of Trustees and the Mayor shall be compensated at the rate of one hundred fifty dollars ($150.00) per month for members of the Board of Trustees and two hundred dollars ($200.00) per month for the Mayor. These levels of compensation shall not be effective for any member of the Board of Trustees or the Mayor during the term of office for which he or she has been elected or appointed as of the date of the ordinance codified herein. (Prior code 2.08.130; Ord. 26-1992 §1; Ord. 3-2000 §2; Ord. 5-2007 §2)

Sec. 2-26. Regular meetings.

The Board of Trustees shall meet on the second and fourth Tuesdays of each month, or at such times as the Board may determine. (Prior code 2.08.030)

Sec. 2-27. Special meetings.

(a) Special meetings of the Board of Trustees shall be called by the Town Clerk on the written request of the Mayor or any four (4) members of the Board of Trustees. At least twenty-four (24) hour's advance notice, written or oral, of a special meeting shall be given to each member of the Board of Trustees. Notice of a special meeting shall also be posted in a designated public place within the Town at least twenty-four (24) hours in advance of the special meeting. The designated place for posting public notice of a special meeting shall be the same as for the posting of notice of regular meetings of the Board of Trustees. The posting shall include specific agenda information where possible. The advance notice to Board members shall set forth the date, hour, place and purpose of such special meeting. Any Board member may waive the requirement of personal notice of a special meeting, and attendance at a special meeting shall constitute a waiver of the requirement of advance personal notice of such meeting.

(b) The Board of Trustees at any duly convened meeting may, by majority vote, call a special meeting for a future date. Notice of such meeting shall be given to any member of the Board of Trustees not in attendance.

(c) Should the Board of Trustees convene for a special meeting pursuant to a request of an interested party for the purpose of accommodating time constraints of said interested party, the Board of Trustees may, in its discretion, assess fees for the special meeting against the interested party. The Board of Trustees may from time to time by resolution adopt a schedule of fees which may be assessed for special meetings. Said fees shall reasonably compensate the staff of the Town and the Town Attorney for time spent in preparation for attendance at special meetings. (Ord. 26-1992 §1; Ord. 19-1994 §1)

Sec. 2-28. Conduct of meetings; voting.

(a) Meetings of the Board of Trustees shall be conducted by the Mayor.

(b) Four (4) members of the Board of Trustees shall constitute a quorum for the transaction of business. The Mayor shall be counted as a member of the Board of Trustees in determining whether a quorum is present.

(c) At the hour appointed for meeting, the members shall be called to order by the Mayor or, in his or her absence, by the Mayor Pro Tem, and the Town Clerk shall proceed to call the roll, note the absentees and announce whether a quorum is present. If a quorum is present, the Board of Trustees shall proceed with the business before it, in the manner and order as established by the Board of Trustees. (Prior code 2.08.030; Ord. 26-1992 §1)

Sec. 2-29. Boards and commissions.

The Board of Trustees shall create and appoint members to such boards and commissions as may now or hereafter exist, including but not limited to the following:

(1) Planning Commission.

(2) Tree Board.

(3) Airport Board. (Ord. 26-1992 §1; Ord. 1-2008 §3)

Secs. 2-30—2-40. Reserved.

ARTICLE III

Officers and Employees

Sec. 2-41. 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 Administrator.

(2) Town Attorney.

(3) Municipal Judge.

(4) Town Clerk.

(5) Town Treasurer.

(b) The appointment and/or reappointment of officers shall occur at the second regular meeting of the Board of Trustees after each regular municipal election.

(c) Unless removed earlier pursuant to Section 2-44 of this Article, appointed officers shall hold their respective offices until the second regular meeting of the Board of Trustees after each regular municipal election, but in no event longer than thirty (30) days after the swearing-in of newly elected trustees.

(d) Any vacancy in an office of a Town officer shall be filled by appointment made by the Board of Trustees upon an affirmative vote of a majority of its members. Such appointment shall be for the unexpired term of office created by the vacancy.

(e) One (1) person may simultaneously serve as Town Administrator, Town Clerk and Town Treasurer.

(f) The Board of Trustees, by majority vote of a quorum of its members, may make an interim appointment in order to temporarily fill a vacancy in an office of a Town officer pending a regular appointment under paragraph (d) above. (Prior code 2.08.040; Ord. 26-1992 §1; Ord. 2-1998, §1)

Sec. 2-42. Powers and duties of officers generally.

Appointed officers of the Town shall have such power 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. (Ord. 26-1992 §1)

Sec. 2-43. Oath of office; bond.

(a) Each of the officers appointed under Section 2-41 above, before entering upon the duties as such officer, shall take oath before an officer qualified by law to administer such oath, that he or she will support the Constitution and laws of the United States and of the State and the ordinances of the Town, and faithfully perform the duties of his or her 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 Buena Vista, and that I will faithfully perform all the duties of the office of _____, upon which I am about to enter.
>
> Sworn to and subscribed before me this _____ day of _____, A.D. 19__.
>
> _____
> (Official Title)

(b) The following officers shall also execute a bond with sureties approved by the Board of Trustees in the following amounts:

Office	*Amount*
Treasurer	$10,000.00
Administrator	5,000.00
Clerk	5,000.00
Municipal Judge	5,000.00
Deputy Municipal Court Clerk	5,000.00

conditioned upon the faithful discharge of the respective duties of each such officer according to law and the care and disposition of Town funds and property in his or her respective hands to his or her successor. The fees for such bonds shall be reimbursed to each respective officer by the Town after being approved by the Board of Trustees.

(c) The oath and bond provided for in Subsections (a) and (b) above, of each of the officers except the Clerk, shall be filed with and kept by the Clerk. The oath and bond of the Clerk shall be filed with and kept by the Treasurer. (Prior code 2.08.050, 2.08.060, 2.08.070; Ord. 26-1992 §1; Ord. 2-1998, §2)

Sec. 2-44. Removal of Town officers and appointed officers.

(a) The Mayor or any Trustee, as well as any appointed Town officer, may be removed from office by a majority vote of the full membership of the Board of Trustees. No removal from office shall be made without first providing the official or officer a written notice in plain language of the reasons for removal and an opportunity to be heard; except if the reason for the removal is the failure of the official or officer to reside within the Town as required by law or contract. Notice of removal from office shall be provided to the official or officer not less than fifteen (15) days prior to the effective date of such removal. A hearing need not be conducted unless the official or officer sought to be removed delivers a written request to be heard to the Mayor or Town Clerk not later than five (5) days after notice of removal has been provided. If a request to be heard is timely delivered, a hearing shall be promptly scheduled before the Board of Trustees at the earliest available date, and the removal of the official or officer shall be stayed pending the conclusion of the hearing.

(b) Formal rules of evidence and judicial procedure shall not apply to hearings conducted under this Section. An official or officer subject to removal may be represented by legal counsel, and the Board of Trustees shall take such steps as it deems necessary to ensure fairness in the hearing proceedings.

(c) The Municipal Judge may be removed during his or her term of office only for cause as specified in Section 13-10-105(2), C.R.S.

(d) All voting by the Board of Trustees on the removal of an official or officer from office shall be done at an open public meeting. (Ord. 26-1992 §1; Ord. 7-2000 §1)

Sec. 2-45. Compensation of appointed officers.

All appointed officers shall receive compensation for services rendered in an amount to be determined by the Board of Trustees. (Prior code 2.08.120)

Sec. 2-46. Town Administrator established.

There is created and established the position of Town Administrator. The purpose of the office of the Town Administrator is to provide the centralization of the administrative responsibilities of the Town, with such Administrator to be the administrative head of the Town government under the direction and control of the Mayor and Trustees and to be responsible to the Mayor and Trustees for the efficient conduct of said office. (Prior code 2.04.010)

Sec. 2-47. Appointment of Town Administrator.

(a) The Board of Trustees shall appoint a Town Administrator who shall hold office at the pleasure of the majority of the Board. The Town Administrator shall be selected solely on the basis of executive and administrative qualifications, with special reference to training and experience, and shall be compensated at a rate deemed appropriate by the Board of Trustees.

(b) The Mayor Pro Tem shall annually conduct a job performance evaluation of the Town Administrator and submit the same to the Board of Trustees for its review and approval.

(c) The Town Administrator is subject to reappointment after every regular municipal election and shall serve at the pleasure of the Board of Trustees. The Town Administrator may be removed during his or her term of office, with or without cause, upon written notice and an opportunity to be heard before the Board of Trustees.

(d) The Town Administrator shall nominate a department head or other employee of the Town to serve as acting Town Administrator during the temporary disability or absence from the Town of the Town Administrator. Such nominee, once confirmed by the Mayor and Trustees, shall perform all the duties and exercise all the powers of the Town Administrator during the period of disability or absence of the Town Administrator, but shall receive no additional compensation therefor unless specifically authorized by the Board of Trustees. In the event of a vacancy in the position of Town Administrator, an interim town administrator shall be appointed within thirty (30) days, and a new administrator shall be appointed as soon thereafter as possible.

(e) The Town Administrator is hereby declared and determined to be a key Town employee with duties and responsibilities demanding that he or she reside in, or in close proximity to, the Town. As a result, the Town Administrator shall be required to reside within a ten-minute normal drive time radius of the Town Hall, and in no event greater than five (5) miles therefrom, throughout their term of office. (Prior code 2.04.020; Ord. 7-2000 §2; Ord. 10-2000 §1)

Sec. 2-48. Functions and duties of Town Administrator.

The Town Administrator shall be the chief administrative officer of the Town government and may head one (1) or more of the departments of the Town. The Town Administrator's functions and duties shall be:

(1) To be responsible to the Board of Trustees for the organization and efficient administration of all administrative departments of the Town government and to faithfully carry out directives and recommendations of the Mayor and Trustees in coordinating the administrative functions and operations of the various departments;

(2) To supervise the enforcement of all laws and ordinances of the Town, save and except to the extent that the administration of such enforcement is confined to other Town officials by law or ordinance;

(3) To appoint and discharge, subject to the review and consent of the Board of Trustees, the heads of Town departments, excepting any Town officer appointed by the Board, including the Municipal Court Judge, Town Attorney, Town Clerk and Town Treasurer, and also excepting members of any Town board or commission appointed by the Board of Trustees. The Town Administrator shall also have the authority to employ, dismiss, suspend or discipline all nondepartment head employees;

(4) To establish, subject to Trustee approval, appropriate personnel standard salary schedules and rules and regulations governing officers and employees of the Town;

(5) To issue such administrative regulations and outline general administrative procedures applicable to areas and departments confined to the Town Administrator's supervision in the form of rules which are not in conflict with the laws of the State or other Town ordinances;

(6) To recommend an annual budget to the Trustees and administer the budget as finally adopted, and to keep the Board of Trustees fully advised, at all times, as to the financial condition of the Town, including an annual report of the Town's affairs and summary of operations of all Town departments;

(7) To recommend to the Board of Trustees for its consideration proposed ordinances, changes in ordinances and such measures as may be deemed necessary, and to attend Trustee meetings with the right to take part in discussions but not to vote;

(8) To supervise and be responsible for the purchase of all supplies, material and equipment as authorized by the Board of Trustees, in the manner necessitated by and subject to the limitations imposed by law, for the various departments, divisions or services of the Town;

(9) To serve as Public Relations Officer of the Town government, in such capacity to investigate and adjust all complaints filed against any employee, department, division or service of the Town, and to cooperate with all community organizations whose aim and purpose is to advance the best interests of the Town and its citizens;

(10) To be available to assist the Town Attorney, Town Clerk, Town Treasurer and Town Engineer with all the facilities of the office of Town Administrator, and those officers in turn shall be available to assist the Town Administrator in the performance of the Town Administrator's duties; and

(11) To perform such other duties that may be prescribed by ordinance or by direction of the Board of Trustees. (Prior code 2.04.030; Ord. 4-2000 §1)

Sec. 2-49. Administrative organization.

The Town Administrator shall propose an administrative organization plan of the Town which shall be presented to the Board of Trustees for approval. When the plan is approved by the Board of

Trustees, it shall become the administrative organization plan of the Town and all Town administrative procedures and functions shall be carried on in accordance with such plan. (Prior code 2.04.040)

Sec. 2-50. Duties of Treasurer.

It shall be the duty of the Treasurer to receive and safely keep all money belonging to the Town, and to pay out the same on the order of the Board of Trustees. The Treasurer shall keep an accurate account, in a book furnished him or her for that purpose by the Board of Trustees, of all money received and disbursed by him or her and shall render to the Board of Trustees an account thereof whenever required by it. (Prior code 2.08.080)

Sec. 2-51. Duties of Town Clerk.

It shall be the duty of the Town Clerk to make and keep, in a book provided by the Board of Trustees, an accurate record of all the official acts of the Board of Trustees. The Town Clerk shall be the custodian of the Town seal and shall affix the Town seal to such documents as the law or the Board of Trustees requires. The Town Clerk shall keep an accurate record of all his or her official acts in such manner as the Board of Trustees may provide. (Prior code 2.08.090)

Sec. 2-52. Duties of Town Attorney.

The Town Attorney shall have the following duties:

(1) Act as legal advisor to, and be attorney and counsel for, the Board of Trustees and be responsible solely to the Board of Trustees. He or she shall advise any officer or department head of the Town in matters relating to his or her official duties when so requested by the Board of Trustees.

(2) Prosecute ordinance violations and represent the Town in cases in Municipal Court. He or she shall file with the Town Clerk copies of such records and files relating thereto as the Board of Trustees shall request. The Board of Trustees may contract with or employ special prosecuting legal counsel for the performance of the duties specified in this Subsection.

(3) Prepare and review all ordinances, contracts, bonds and other written instruments which are submitted to him or her by the Board of Trustees and promptly give his or her opinion as to the legal consequences thereof.

(4) Call to the attention of the Board of Trustees all matters of law, and changes or developments therein, affecting the Town.

(5) Perform such other duties as may be prescribed for him or her by the Board of Trustees. (Prior code 2.08.110; Ord. 21-2008)

Secs. 2-53—2-70. Reserved.

ARTICLE IV

Social Security

Sec. 2-71. Legislative declaration.

(a) In the opinion of the Board of Trustees, the extension of the social security system to employees and officers of the Town will be of great benefit not only to the employees of the Town by providing that said employees and officers may participate in the provision of the old-age and survivors insurance system, but also by enabling it to attract and retain in employment the best of personnel and thus increase the efficiency of its government.

(b) The Town Clerk is authorized to establish a system of payroll deduction to be matched by payments by the Town to be made into the contribution fund of the Social Security Act through the State Department of Employment Security, and to make charges of this tax to the fund, or funds, from which wage or salary payments are issued to employees of the Town. Such payments are to be made in accordance with the provisions of Section 1400 of the Federal Insurance Contribution Act on all services which constitute employment within the meaning of that Act. Payments made to the Department of Employment Security shall be due and payable on or before the eighteenth day of the month immediately following the completed calendar quarter, and such payments which are delinquent shall bear interest at the rate of one-half of one percent (.5%) per month until such time as payments are made.

(c) Appropriation is hereby made from the proper fund, or funds, of the Town in the necessary amount to pay into the contribution fund as provided in Section 5(c)(1) of the enabling Act and in accordance with the plan, or plans, and agreement. (Prior code 2.24.010; Ord. 26-1992 §1)

Secs. 2-72—2-90. Reserved.

ARTICLE V

Municipal Court

Sec. 2-91. Established.

A Municipal Court in and for the Town is created and established to be governed by the provisions of this Article, Section 13-10-101, *et seq.* C.R.S., and the Colorado Municipal Court Rules of Procedure, as from time to time amended. On and after July 1, 1981, the Municipal Court shall be a qualified municipal court of record and a verbatim record of the proceedings of said Court and evidence at trials shall be kept by either electric devices, including but not limited to tape recorders, or by stenographic means. (Prior code 2.28.010)

Sec. 2-92. Jurisdiction.

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

the Colorado Municipal Court Rules as promulgated by the Colorado Supreme Court. (Prior code 2.28.020)

Sec. 2-93. Sessions.

There shall be regular sessions of Municipal Court for the trial of cases. The Municipal Judge may hold a special session of Court at any time. All sessions of Court shall be open to the public; provided, however, where the nature of the case is such that it would be in the best interest of justice to exclude persons not directly connected with the proceeding, the Municipal Judge may order the courtroom to be cleared. (Prior code 2.28.030)

Sec. 2-94. Appointment of Municipal Judge; powers.

(a) The Court shall be presided over by a Municipal Judge appointed for the term of two (2) years by resolution of the Board of Trustees. Additional judges may be appointed as may be needed to transact the business of the Court. The judges of the Court shall at all times during the term of their office be admitted to, and currently licensed in, the practice of law in Colorado. If the Municipal Judge finds it necessary to disqualify himself or herself in a given case, or should be unable to serve for any reason including vacation or illness, the Board of Trustees may, by resolution, appoint a judge to hear cases for such time as the presiding Judge is absent.

(b) 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 the Colorado Municipal Court Rules adopted by the Colorado Supreme Court. (Prior code 2.28.040)

Sec. 2-95. Duties of Municipal Judge as Clerk.

The presiding Municipal Judge shall act as ex officio Clerk of the Court, without receiving additional compensation as such Clerk. The Municipal Judge, in his or her capacity as ex officio Court Clerk, shall file monthly reports with the Town Clerk of all moneys collected, and on the last day of each month shall account to the Town Treasurer for all moneys received by the Municipal Court during that month. (Prior code 2.28.050)

Sec. 2-96. Deputy Clerk.

With the approval of the Board of Trustees, the Municipal Judge may appoint a Deputy Clerk to assist him or her in the performance of his or her duties. (Prior code 2.28.060)

Sec. 2-97. Court expenses.

The Board of Trustees shall, on an annual basis, budget and appropriate funds to pay the annual salary of the Municipal Judge, together with such other expenses as may be necessary for the proper operation of the Municipal Court. (Prior code 2.28.070)

Sec. 2-98. Contempt power.

(a) When the Municipal Court finds any person to be in contempt, the Municipal Court may vindicate its dignity by imposing on the contemnor a fine not to exceed five hundred dollars ($500.00) and imprisonment not to exceed a term of ten (10) days.

(b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury. (Ord. 26-1992 §1)

Sec. 2-99. Penalty assessment generally.

(a) Except where previously or otherwise designated by specific ordinance adopted by the Board of Trustees, the Municipal Judge may designate violations of this Code that may be processed by use of a penalty assessment notice and shall establish a schedule of fines to be paid for each such violation.

(b) At the time that any person is arrested for the commission of a municipal traffic or penal offense which has been designated by the Municipal Judge as being an offense for which a penalty assessment may be issued, the arresting officer may, except when prohibited by Subsection (h) of this Section, offer to give a penalty assessment notice to the defendant. Such penalty assessment notice shall contain the name and address of the defendant; the license number of the vehicle involved, if any; the number of the defendant's driver's license, if any; a citation of the municipal ordinance or code alleged to have been violated; a brief description of the offense; the date and approximate location thereof; the amount of the fine and surcharge prescribed for such offense; the number of penalty points, if any, prescribed for such offense pursuant to Section 42-2-123, C.R.S.; the date the penalty assessment notice is served upon the defendant; shall direct the defendant to appear in the Municipal Court at a specified date and time in the event the penalty is not paid; shall be signed by the arresting officer; and shall contain a place for the defendant to indicate an understanding that payment of the applicable fine or penalty constitutes an acknowledgement of guilt as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty not be paid within twenty (20) days following service of the penalty assessment notice upon the defendant. One (1) copy of the penalty assessment notice shall be served upon the defendant and one (1) copy filed with the Clerk of the Municipal Court. The court appearance date specified in the penalty assessment notice must be at least thirty (30) days after the date such penalty assessment notice is served, unless the defendant demands an earlier court appearance date.

(c) The applicable fine or penalty and surcharge may be paid at the office of the Clerk of the Municipal Court, either in person or by postmarking such payment within twenty (20) days from the date the penalty assessment notice is served upon the defendant.

(d) In the case of a defendant who would otherwise be eligible to be issued a penalty assessment notice but does not furnish satisfactory evidence of identity or who the arresting officer reasonably believes will disregard the summons portion of such notice, the defendant may nevertheless be issued a penalty assessment notice if the defendant consents to be taken by the officer to the nearest mailbox and mail the amount of the fine or penalty and surcharge to the Clerk of the Municipal Court.

(e) Acceptance of a penalty assessment notice and payment of the prescribed fine or penalty and surcharge to the Clerk of the Municipal Court shall be deemed an acknowledgement of guilt or liability by the defendant and shall constitute a complete satisfaction for the violation.

(f) If the defendant refuses to accept service of the penalty assessment notice when such notice is tendered, the arresting officer shall forthwith issue and serve upon the defendant a summons and complaint, and such summons and complaint shall be processed in the manner provided by law.

(g) If the defendant accepts service of the penalty assessment notice but fails to pay the prescribed penalty within twenty (20) days thereafter, the notice shall be construed to be a summons and complaint and shall be processed in the manner provided by law.

(h) A summons and complaint, and not a penalty assessment notice, shall be issued when it appears:

(1) The offense is not one (1) which the Municipal Judge has designated as being capable of being handled by use of a penalty assessment notice;

(2) The alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to the property of another or an injury or death to any person; or

(3) The defendant has, in the course of the same transaction, violated a municipal law designated by the Municipal Judge as capable of being handled by use of a penalty assessment notice, and has also violated and been charged with one (1) or more municipal violations which are not designated by the Municipal Judge as being capable of being handled by use of a penalty assessment notice. (Prior code 2.28.080; Ord. 10-2003 §4)

Sec. 2-100. Procedures for noncriminal violations.

(a) Applicability. This Section applies to all noncriminal violations of this Code. Criminal violations of the Code, including traffic offenses, shall be subject to the Colorado Municipal Court Rules of Procedure, and when a noncriminal violation is consolidated for trial with a violation which is punishable by imprisonment, then the Colorado Municipal Court Rules of Procedure shall apply to all proceedings thereon.

(b) Purposes and construction. This Section is intended to provide for the just determination of all noncriminal municipal ordinance violations. It shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

(c) Definitions. As used in this Section, the following definitions shall apply:

Charging document shall mean the document commencing or initiating a noncriminal violation matter, whether denoted as a complaint, summons and complaint, citation, penalty assessment notice or other document charging the person with the commission of a noncriminal violation.

Code shall mean the Buena Vista Municipal Code.

Criminal violation shall mean any violation of the Code, including a traffic offense, which is punishable by imprisonment.

Defendant shall mean any person charged with the commission of a traffic infraction or any other violation of this Code which is not punishable by imprisonment.

Judgment shall mean the admission of guilt or liability for any noncriminal violation, the entry of judgment of guilt or liability or the entry of default judgment as set forth in this Section against any person for the commission of a noncriminal violation.

Noncriminal violation shall mean any violation of the Code which is not punishable by imprisonment.

Penalty shall mean a fine imposed pursuant to this Code, or any other penalty for a violation of this Code which does not include the threat or possibility of imprisonment.

Traffic infraction means a violation of an ordinance governing vehicles and/or traffic which is not punishable by imprisonment.

Traffic offense means a violation of an ordinance governing vehicles and/or traffic which is punishable by imprisonment.

(d) Commencement of noncriminal violation action; contents of charging document; service.

(1) Commencement. An action for a noncriminal violation of this Code shall be commenced by the tender or service of a charging document upon the defendant, or by conspicuously attaching a parking traffic infraction charging document to the subject vehicle, and by filing the charging document with the Municipal Court.

(2) Contents of charging document; amendment; service. The information which shall be included in the charging document, when a charging document may be amended, and how service of the charging document shall be effected, shall be as provided in the Colorado Municipal Court Rules of Procedure, as amended, relating to contents, amendment and service of a complaint or a summons and complaint.

(e) Payment of penalty assessment before appearance.

(1) The Municipal Court Clerk shall accept payment of a penalty assessment for a noncriminal violation without an appearance before the Municipal Court if:

a. Payment is made at any time prior to the date set for first appearance; and

b. Payment is allowable by and in accordance with a penalty assessment schedule in this Code and is accompanied by payment for any costs and/or surcharges.

(2) At the time of payment, the defendant shall sign a waiver of rights and acknowledgement of guilt or liability upon a form approved by the Municipal Court.

(3) This procedure shall constitute an entry in satisfaction of judgment.

(f) First appearance.

(1) If the defendant has not previously acknowledged guilt or liability and satisfied the judgment, the defendant shall appear before the Municipal Court at the time scheduled for first appearance.

(2) The defendant may appear in person or by counsel who shall enter an appearance in the case; provided, however, that if an admission of guilt or liability is entered, the Court may require the presence of the defendant for the assessment of the penalty.

(3) If the defendant appears in person, he or she shall be advised of the following:

a. The right to have the first appearance continued upon request for good cause shown;

b. The nature of the violation alleged in the charging document and the right to a copy of the charging document if it was not previously signed;

c. The penalty and fees, costs and surcharges that may be assessed and the penalty points that may be assessed against the defendant's driver's license, if applicable.

d. The consequences of failure to appear at any subsequent hearing including, with respect to violations of the Model Traffic Code, entry of default judgment against the defendant and reporting the judgment to the State Motor Vehicle Division which may assess points against the defendant's driver's license and may deny an application for a driver's license, or renewal of a driver's license, until such judgment is satisfied.

e. The right to be represented by an attorney at the defendant's own expense.

f. The right to deny the allegations and to have a trial before the court.

g. The right to remain silent and that any statement made by the defendant may be used against him or her.

h. That guilt or liability for the offense must be proven beyond a reasonable doubt.

i. The right to testify, subpoena witnesses, present evidence in accordance with the Colorado Rules of Evidence and cross-examine any witness.

j. That any plea or answer must be voluntary and not the result of undue coercion on the part of any person; and

k. That an admission of guilt or liability constitutes a waiver of the foregoing rights and any right to appeal.

(4) The defendant personally or by counsel shall answer the allegations in the charging document, either by admitting guilt or liability, or by denying the allegations.

(5) If the defendant admits guilt or liability, the Court shall enter judgment and assess the appropriate penalty, fees, surcharges and costs.

(g) Jury trial. A defendant charged solely with noncriminal violations shall have no right to trial by jury, and trial shall be to the Municipal Court. In the event that the defendant is charged with and is to be tried on more than one (1) violation arising out of the same incident and at least one (1) of the charged violations is a criminal violation, the defendant shall have the right to demand a trial by jury as set forth in Rule 223 of the Colorado Municipal Court Rules of Procedure on all violations, which

shall be consolidated for purposes of trial. Also, if a defendant is charged with a violation of this Code that would constitute a violation under a counterpart state statute and if a defendant would be entitled to a jury trial for a violation of the counterpart state statute, then the defendant shall be entitled to a jury trial in the Municipal Court on the Code violation.

(h) Right to counsel. A defendant charged solely with noncriminal violations shall have the right to retain counsel, but shall have no right to appointed counsel.

(i) Speedy trial. If the trial of a defendant is delayed more than six (6) months after the date upon which the defendant first entered a plea or answer, the Court shall dismiss with prejudice the charges alleging a noncriminal violation unless the delay is occasioned by the action or request of the defendant; except that, if on the day of a final hearing set within the last ten (10) days of the above time limit, a necessity for a continuance arises which the Court, in the exercise of sound judicial discretion, determines would warrant an additional delay, then one (1) continuance, not exceeding thirty (30) days, may be allowed, after with the dismissal shall be entered as above provided if trial is not held within the additional time allowed.

(j) Final hearing of noncriminal violations. The trial of all noncriminal violations shall be conducted pursuant to the Colorado Rules of Evidence, and the conduct of the hearing shall otherwise be in a form similar to those held for criminal violations.

(k) Judgment on noncriminal violations after trial.

(1) The burden of proof shall be upon the Town and the Municipal Court shall enter judgment in favor of the defendant unless the Town proves the guilt or liability of the defendant beyond a reasonable doubt.

(2) If the defendant admits guilt or liability, or is found guilty of liable, the Municipal Court shall assess an appropriate penalty subject to any other applicable provision of this Code and such additional costs, fees and surcharges as otherwise generally imposed under this Code.

(3) The judgment shall be satisfied upon payment to the Clerk of the Municipal Court of the total amount assessed.

(4) If the defendant fails to satisfy the judgment upon an admission or finding of guilt or liability, or within the time of a reasonable extension granted upon a showing of good cause by and upon the application of the defendant, then such nonpayment in the full amount of the penalty fees, costs and surcharges, if applicable, shall be treated as a default. A default for failure to satisfy a judgment upon an admission or finding of guilt or liability for a violation of a motor vehicle or traffic regulation under Chapter 8 of this Code shall be certified to the State Motor Vehicle Division for enforcement action.

(l) Default on noncriminal violations.

(1) If the defendant fails to appear for a first hearing on a noncriminal violation on the date set forth in the charging document, or at any hearing, including a final hearing, the Court shall enter judgment against the defendant.

(2) The amount of the judgment shall be the penalty assessment or other appropriate penalty that would be assessed upon an acknowledgement or finding of guilt or liability and such additional costs, fees and surcharges as otherwise generally imposed under this Code.

(3) The defendant may satisfy any judgment entered under this rule by paying the Clerk of the Municipal Court.

(4) No warrant shall be issued for the arrest of any defendant charged with a noncriminal violation who fails to satisfy a default judgment.

(m) Post-trial motions.

(1) There shall be no post-trial motions available in noncriminal violation matters other than a motion to set aside a default judgment.

(2) For good cause shown, the Municipal Court may set aside a default judgment entered in accordance with this Section. *Good cause* shall mean:

a. Mistake, inadvertence, surprise or excusable neglect;

b. The penalty assessment was paid to entry of default judgment.

c. The judgment has been satisfied, released or discharged; or

d. Any other reason justifying relief from the operation of the default judgment.

(3) A motion to set aside a default judgment shall be made within ten (10) days after the judgment was entered.

(n) Appeal. All appeals from the Municipal Court shall be as provided by the Colorado Municipal Court Rules of Procedure.

(o) Discovery, subpoena, disability of judge, time and service and filing of papers. Discovery, subpoena, joinder of offenses and defendants, disability of the Municipal Judge, proof of official record, time and the service and filing of papers shall be as provided by the Colorado Municipal Court Rules of Procedure. (Ord. 10-2003 §4)

Sec. 2-101. Municipal Court costs.

Except where a defendant is indigent, the Municipal Court Judge shall assess court costs in the sum of thirty dollars ($30.00) against any defendant who pleads guilty or nolo contendere, or who enters into a plea agreement, or who, after trial, is found guilty of an ordinance violation. (Ord. 17-1992 §1; Ord. 6-1998 §10)

Sec. 2-102. Deferred judgment and sentencing.

In any case in which a defendant has entered a plea of guilty, the Municipal Judge may, upon the written consent of the defendant and the Town Prosecutor, enter a deferred judgment and sentence and continue the case for a period not to exceed one (1) year from the date of the entry of the plea,

subject to such terms and conditions as recommended by the Town Prosecutor and approved by the Court. (Ord. 10-2003 §4)

Secs. 2-103—2-120. Reserved.

ARTICLE VI

Police Department

Sec. 2-121. Creation; composition.

There is hereby created a Police Department for the Town which shall consist of one (1) Chief of Police and as many police officers as may from time to time be deemed necessary for the safety and good order of the Town. (Ord. 26-1992 §1)

Sec. 2-122. Departmental rules and regulations.

The Police Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be adopted by the Board of Trustees. (Ord. 26-1992 §1)

Sec. 2-123. Chief of Police; appointment; powers and duties.

The Chief of Police shall be appointed by the Town Administrator, subject to review by the Board of Trustees, and shall be the head of the Police Department. The Police Chief shall take the oath as provided in Section 2-43 of this Chapter prior to assuming office and shall be subject to a bond in the amount of five thousand dollars ($5,000.00), with sureties approved by the Town Administrator, ensuring the faithful discharge by the Police Chief of his or her duties, including the care and disposition of Town funds and property. It shall be the duty of the Chief of Police to:

(1) See that the ordinances of the Town and the laws of the State are duly enforced and the rules and regulations of the Police Department obeyed, and perform such duties as may be required by law or assigned by the Town Administrator.

(2) Direct the operations of the Police Department, subject to the rules and regulations thereof.

(3) Render such accounts of the Police Department, his or her duties and receipts as may be required by the Town Administrator, and keep the records of his or her office open to inspection by the Board of Trustees and Town Administrator at any time.

(4) Execute all writs and processes directed to him or her by the Municipal Judge in any case arising under a Town ordinance, and receive the same fees for his or her services that sheriffs are allowed in similar cases. (Prior code 2.08.100; Ord. 26-1992 §1; Ord. 2-1998, §3)

Sec. 2-124. Emergency response authority.

Pursuant to Section 29-22-102(3)(a) C.R.S., the Chief of Police is designated as the primary emergency response authority for hazardous substance incidents occurring within the corporate limits of the Town. (Prior code 8.04.010)

Sec. 2-125. Duties of police officers.

All members of the Police Department shall have power and duties as follows:

(1) They shall perform all duties required by the Chief of Police.

(2) They shall suppress all riots, disturbances and breaches of the peace and apprehend all disorderly persons in the Town, and shall pursue and arrest any person fleeing from justice in any part of the State.

(3) They shall be the enforcement officers of the Town and shall see that the provisions of the ordinances of the Town and the laws of the State are complied with. They shall arrest without process all persons engaged in the violation in their presence of any provision of the ordinances of the Town or the laws of the State.

(4) They shall execute and return all writs and processes to them directed by the Municipal Judge in any case arising under a Town ordinance, and they may serve the same in any part of the County. (Ord. 26-1992 §1)

Sec. 2-126. Duty of citizens to aid police officers.

It shall be the duty of all persons, when called upon by any police officer, to promptly aid and assist such officer in the discharge of his or her duties. (Ord. 26-1992 §1)

Secs. 2-127—2-140. Reserved.

ARTICLE VII

Volunteer Fire Department

Sec. 2-141. Established.

There is established the Buena Vista Volunteer Fire Department. (Prior code 2.20.010)

Sec. 2-142. Purpose.

The purpose of the Buena Vista Volunteer Fire Department shall be to provide round-the-clock fire protection within the Town, to educate the citizens of the Town in fire protection and in such other areas as the Board of Trustees may direct, and to generally seek to reduce the damage and destruction brought about by fire. (Prior code 2.20.020)

Sec. 2-143. Powers.

The Buena Vista Volunteer Fire Department shall have the power to acquire, own and possess fire fighting and related equipment and to exercise all powers reasonably necessary to the prevention and extinguishing of fires; provided, however, that if Town funds are to be so spent, approval of the Board of Trustees shall be obtained prior to such expenditure. (Prior code 2.20.030)

Sec. 2-144. Bylaws.

The Buena Vista Volunteer Fire Department shall have the authority to adopt bylaws governing the operation of such department; provided, however, that such bylaws shall not be inconsistent with the ordinances of the Town or the laws of the State; and provided further that such bylaws shall be approved by the Board of Trustees prior to the effective date of such bylaws. Any amendment to the bylaws shall also be approved by the Board of Trustees prior to the effective date of such amendment. (Prior code 2.20.040)

Sec. 2-145. Oath.

Prior to assuming office, all officers of the Buena Vista Volunteer Fire Department shall make the same oath as required of officers of the Town. (Prior code 2.20.050)

Sec. 2-146. Reports to Town Clerk.

The head administrative official of the Buena Vista Volunteer Fire Department, or his or her designated representative, shall file a written report with the Town Clerk on or before the last day of each month. Such report shall detail the activities and expenditures of the Buena Vista Volunteer Fire Department during the preceding month. (Prior code 2.20.060)

Secs. 2-147—2-160. Reserved.

ARTICLE VIII

Airport Board

Sec. 2-161. Creation.

There is created and established the Buena Vista Airport Board, hereafter referred to in this Article as the "Board," which shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Ord. 1 §1, 2011)

Sec. 2-162. Appointment and qualifications; alternates.

The Board shall consist of five (5) voting members, including one (1) member of the Board of Trustees who is nonvoting, all of whom shall be appointed by and serve at the pleasure of the Board of Trustees. In addition, two (2) alternate members shall be appointed by the Board of Trustees, bringing the total number of appointees serving a role on the Airport Board to eight (8). Board members, inclusive of alternates, need not be residents or qualified electors of the Town. Alternate members shall perform all of the duties of a regular voting member in the absence of a regular voting member from a meeting of the Board. (Ord. 1 §1, 2011)

Sec. 2-163. Term of office; vacancies.

(a) Voting members of the Board, inclusive of alternates, shall serve staggered terms of three (3) years unless earlier removed from office; except for the initial appointments, only two (2) Board members shall be appointed for a term of three (3) years, two (2) Board members shall be appointed

for a term of two (2) years, one (1) Board member shall be appointed for a term of one (1) year and the alternates shall be appointed for a term of three (3) years.

(b) Vacancies in voting member positions shall be filled by appointment made by the Board of Trustees to serve out an unexpired term.

(c) The Town Administrator shall participate in meetings as an ex officio nonvoting member of the Board. A representative of any fixed base operator (FBO), if separate from the Town, shall also be invited to participate as an ex officio member of the Board. (Ord. 1 §1, 2011)

Sec. 2-164. Compensation.

Members of the Board shall serve without compensation. (Ord. 1 §1, 2011)

Sec. 2-165. Duties and responsibilities.

The Board shall have the following duties and responsibilities:

(1) To review policy matters relevant to airport operations and development of facilities at the Buena Vista Airport and to make recommendations thereon to the Board of Trustees.

(2) To serve as an ambassador for the airport, with particular attention to promoting its role as an integral part of economic development activities in the community.

(3) To perform such other functions and duties as the Board of Trustees may, from time to time, assign to the Board. (Ord. 1 §1, 2011)

Sec. 2-166. Operation; quorum.

At the first meeting of each calendar year, voting members of the Board shall elect from its membership a chairperson and vice chairperson. The Board shall keep contemporaneous minutes of its meetings, votes and actions. Three (3) voting members shall constitute a quorum for the transaction of business. (Ord. 1 §1, 2011)

Sec. 2-167. Meetings.

The Board shall meet at such time and place as the Board may determine. All meetings of the Board shall be subject to the same open meeting laws and requirements as are applicable to the meetings of the Board of Trustees. (Ord. 1 §1, 2011)

Sec. 2-168. Rules and regulations.

The Board may adopt rules and regulations governing its operation; provided, however, that no such rule or regulation, or any amendment thereto, shall become effective until such rule, regulation or amendment thereto has been approved by the Board of Trustees. (Ord. 1 §1, 2011)

Secs. 2-169—2-180. Reserved.

ARTICLE IX

Planning and Zoning Commission

Sec. 2-181. Creation of Commission.

A Town Planning and Zoning Commission is created pursuant to Title 31, Article 23, C.R.S. (Prior code 2.16.010; Ord. 22-1994 §1)

Sec. 2-182. Membership.

(a) The Town Planning and Zoning Commission shall consist of five (5) regular members who shall be appointed by the Board of Trustees. Neither the Mayor nor any member of the Board of Trustees shall serve on the Planning and Zoning Commission. Three (3) members (regular or alternate) of the Planning and Zoning Commission shall constitute a quorum for the transaction of business.

(b) The Board of Trustees may appoint up to two (2) alternate members of the Planning and Zoning Commission. Such alternate members shall have the right to attend all meetings of the Planning and Zoning Commission and to participate in the discussion concerning all matters coming before the Commission. However, no alternate member shall be entitled to vote on any matter coming before the Commission unless a regular member of the Planning and Zoning Commission is absent or is otherwise unable to vote on such matter. The Planning and Zoning Commission may adopt rules concerning the procedures to be followed by the Commission with respect to the voting of alternate members of the Commission.

(c) The terms of the regular and alternate members of the Planning and Zoning Commission appointed after October 23, 2012, shall be three (3) years or until their successors are qualified and take office. The terms of the regular and alternate members currently serving on the Planning and Zoning Commission shall remain unaltered.

(d) Whenever there are three (3) or more vacancies for regular member positions on the Planning and Zoning Commission, the Board of Trustees may declare via resolution that the Planning and Zoning Commission is "nonfunctioning." Upon such a declaration, any Planning and Zoning Commission review required by this Code shall be skipped and all matters shall be referred directly to the Board of Trustees for a decision. The nonfunctioning declaration shall be automatically rescinded when there are less than three (3) regular member vacancies on the Planning and Zoning Commission. (Ord. 23 §1, 2012)

Sec. 2-183. Organization and rules.

The Planning and Zoning Commission shall elect a chairperson from its membership and shall create and fill such other of its offices as it may determine. The Planning and Zoning Commission shall hold at least one (1) regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations, which record shall be a public record. (Prior code 2.16.030; Ord. 8-1993 §4; Ord. 22-1994 §1)

Sec. 2-184. Staff and finances.

The Planning and Zoning Commission may appoint such employees as it deems necessary for its work; except that the appointment, promotion, demotion and removal of such employees shall be subject to the same provisions of law as govern other corresponding civil employees of the Town. The Planning and Zoning Commission may also contract, with the approval of the Board of Trustees, with municipal planners, engineers, architects and other consultants for such services as it requires. The expenditures of the Planning and Zoning Commission, exclusive of gifts, shall be within the amounts appropriated for the purpose by the Board of Trustees, which shall provide the funds, equipment and accommodations necessary for the Planning and Zoning Commission's work. (Prior code 2.16.040; Ord. 22-1994 §1)

Sec. 2-185. Powers and duties.

The Planning and Zoning Commission shall have all of the powers and perform each and all of the duties specified in Parts 2 and 3 of Article 23, of Title 31, C.R.S. or the ordinances of the Town, together with any other duties or authority which may hereafter be conferred upon it by the laws of the State. The performance of such duties and the exercise of such authority are to be subject to each and all limitations expressed in such legislative enactment or enactments. (Prior code 2.16.050; Ord. 22-1994 §1)

Sec. 2-186. Purposes in view.

In the preparation of a Master Plan for the physical development for the Town, the Planning and Zoning Commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the Town, with due regard to its relation to the neighboring territory. The Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the Town and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including, among other things, adequate provisions for traffic, the promotion of safety from fire, floodwaters and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds and the adequate provision of public utilities and other public requirements. (Prior code 2.16.060; Ord. 22-1994 §1)

Sec. 2-187. Reference to Commission.

Any reference in this Code or in any ordinance of the Town to the "Planning Commission" shall be to the Town Planning and Zoning Commission created pursuant to this Article IX. Ord. 22-1994 §1)

Secs. 2-188—2-200. Reserved.

ARTICLE X

Tree Board

Sec. 2-201. Creation.

There is created and established a Town Tree Board, to be known as the "Tree Board of the Town of Buena Vista," which shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Prior code 2.32.010)

Sec. 2-202. Appointment; qualifications.

The Tree Board shall consist of seven (7) members, six (6) of whom shall be appointed by the Board of Trustees. The seventh member shall be the Director of Public Works of the Town, who shall be an ex officio member of the Tree Board. The Director of Public Works shall have the same rights, powers and voting privileges as the appointed members of the Tree Board. (Prior code 2.32.020)

Sec. 2-203. Term of office; vacancies.

The term of the members shall be three (3) years, except that the term of two (2) of the members appointed to the first Tree Board shall be only one (1) year; the term of two (2) members of the first Tree Board shall be for two (2) years; and the term of the remaining two (2) members of the first Tree Board shall be for three (3) years. In the event that a vacancy shall occur during the term of any appointed member, a successor shall be appointed by the Board of Trustees to serve the unexpired portion of the term. (Prior code 2.32.030)

Sec. 2-204. Compensation.

Members of the Tree Board shall serve without compensation. (Prior code 2.32.040)

Sec. 2-205. Duties and responsibilities.

The Tree Board shall have the following duties and responsibilities:

(1) To study, investigate, develop and recommend to the Board of Trustees the adoption of a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas.

(2) Once a written plan is adopted by the Board of Trustees, to recommend annual updating and modification to such plan.

(3) To bring to the attention of the Board of Trustees any action or condition which is in apparent violation of any ordinance of the Town pertaining to trees or matters related to trees, and to recommend to the Board of Trustees any specific remedial or enforcement action desired by the Tree Board.

(4) To perform such other and further duties and responsibilities with respect to the trees located within the Town as may, from time to time, be delegated by the Board of Trustees, or which are provided for by Town ordinance. (Prior code 2.32.050)

Sec. 2-206. Operation.

The Tree Board shall elect officers and shall fix the term of such offices. The Tree Board shall keep contemporaneous written minutes of its meetings, inclusive of discussions, votes and actions taken therein. Four (4) members of the Tree Board shall constitute a quorum for the transaction of business. (Prior code 2.32.060; Ord. 17, 1996 §2)

Sec. 2-207. Meetings.

The Tree Board shall meet at the Town's Community Center on such dates as the Tree Board may determine. All meetings of the Tree Board shall be subject to the same open meeting laws and requirements as are applicable to the meetings of the Board of Trustees. (Prior code 2.32.070)

Sec. 2-208. Rules and regulations.

The Tree Board may adopt rules and regulations governing its operation; provided, however, that no such rule or regulation, or any amendment thereto, shall become effective until such rule, regulation or amendment thereto has been approved by the Board of Trustees. (Prior code 2.32.080)

Secs. 2-209—2-220. Reserved.

ARTICLE XI

Recreation Board

Sec. 2-221. Creation.

There is created and established a Town Recreation Board, to be known as the "Recreation Board of the Town of Buena Vista," which shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Ord. 11-1993 §1)

Sec. 2-222. Appointment; qualification.

The Recreation Board shall consist of nine (9) members appointed by the Board of Trustees. Membership shall be representative of the various recreational activities prevalent in the Town. (Ord. 11-1993 §1; Ord. 2, 1995 §1; Ord. 1-1997 § 2)

Sec. 2-223. Term of office; vacancies.

The term of the members shall be three (3) years, except that the term of two (2) of the members appointed to the first Recreation Board shall be only one (1) year; the term of two (2) members of the first Recreation Board shall be for two (2) years; and the term of the remaining three (3) members of the first Recreation Board shall be for three (3) years. In the event that a vacancy shall occur during the term of any appointed member, a successor shall be appointed by the Board of Trustees to serve the unexpired portion of the term. (Ord. 11-1993 §1)

Sec. 2-224. Compensation.

Members of the Recreation Board shall serve without compensation. (Ord. 11-1993 §1)

Sec. 2-225. Duties and responsibilities.

The Recreation Board shall have the following duties and responsibilities:

(1) To study, investigate and recommend to the Board of Trustees the adoption of a plan for the operation, improvement and maintenance of the Town's recreation programs and facilities.

(2) To bring to the attention of the Board of Trustees any matter pertaining to the Town's recreation programs and facilities.

(3) To perform such other and further duties and responsibilities with respect to the Town's recreation programs and facilities as may, from time to time, be delegated by the Board of Trustees, or which are provided for by Town ordinance. (Ord. 11-1993 §1)

Sec. 2-226. Operation.

The Recreation Board shall elect officers and shall fix the term of such offices. The Recreation Board shall keep contemporaneous minutes of its meetings, inclusive of discussions, votes and actions taken therein. Five (5) members of the Recreation Board shall constitute a quorum for the transaction of business. (Ord. 11-1993 §1; Ord. 17 §3, 1996; Ord. 1-1997 §3; Ord. 4-1998 §2)

Sec. 2-227. Meetings.

The Recreation Board shall meet at the Town's Community Center on such dates as the Recreation Board may determine. The Board of Trustees may vote to remove any member of the Recreation Board who is absent from three (3) successive meetings. All meetings of the Recreation Board shall be subject to the same open meeting laws and requirements as are applicable to the meetings of the Board of Trustees. (Ord. 11-1993 §1; Ord. 1-1997 §4; Ord. 4-1998, §2)

Sec. 2-228. Rules and regulations.

The Recreation Board may adopt rules and regulations governing its operation; provided, however, that no such rule or regulation, or any amendment thereto, shall become effective until such rule, regulation or amendment has been approved by the Board of Trustees. (Ord. 11-1993 §1)

Secs. 2-229—2-240. Reserved.

ARTICLE XII

Trails Advisory Board

Sec. 2-241. Creation.

There is hereby created and established a Town Trails Advisory Board, to be known as the "Trails Advisory Board of the Town of Buena Vista," which shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Ord. 2-2007 §2)

Sec. 2-242. Appointment; qualifications.

The Trails Advisory Board shall consist of seven (7) members and two (2) alternate members. Five (5) of the members and the two (2) alternate members shall be appointed by the Board of Trustees. The sixth and seventh members of the Trails Advisory Board shall be the Public Works Director and the Town Planner, both of whom shall be deemed as ex officio members of the Trails Advisory Board. (Ord. 2-2007 §2)

Sec. 2-243. Term of office; vacancies.

The term of the members shall be three (3) years, except that the term of two (2) of the members appointed to the first Trails Advisory Board shall be only one (1) year; the term of two (2) members of the first Trails Advisory Board shall be for two (2) years; and the term of the remaining one (1) member of the first Trails Advisory Board shall be for three (3) years. Additionally, the first alternate appointed to the first Trails Advisory Board shall have a term of two (2) years, and the second alternate appointed to the first Trails Advisory Board shall have a term of only two (2) years. In the event that a vacancy shall occur during the term of any appointed member, a successor shall be appointed by the Board of Trustees to serve the unexpired portion of the open term. (Ord. 2-2007 §2)

Sec. 2-244. Compensation.

Members of the Trails Advisory Board shall serve without compensation. (Ord. 2-2007 §2)

Sec. 2-245. Duties and responsibilities.

The Trails Advisory Board shall have the following duties and responsibilities:

(1) The Trails Advisory Board shall study, investigate, develop and recommend to the Board of Trustees the adoption of a written plan for the care, preservation, maintenance and improvements of the Buena Vista Trails System.

(2) Once a written plan for the Buena Vista Trails System has been adopted by the Board of Trustees, the Trails Advisory Board shall recommend annual updates and modifications to such plan.

(3) The Trails Advisory Board shall bring to the attention of the Board of Trustees any action or condition which is in apparent violation of any ordinance of the Town pertaining to trails or matters related to trails, or recommend to the Board of Trustees any specific remedial enforcement action desired by the Trails Advisory Board.

(4) The Trails Advisory Board shall perform such other and further duties and responsibilities with respect to trails located within the Buena Vista Trail System as may, from time to time, be delegated by the Board of Trustees or which are provided for by Town ordinance.

(5) Actual members of the Trails Advisory Board have the option to do maintenance work themselves outside of the Public Works Department. This option only applies to actual members appointed to the Trails Advisory Board and does not authorize the Trails Advisory Board to subcontract any such maintenance work to any individuals or agencies outside of the Town unless the Trails Advisory Board elects to coordinate outside volunteers with the Finance Director and submit identification forms to the Finance Director prior to any work being done by said volunteers. (Ord. 2-2007 §2)

Sec. 2-246. Operation.

The Trails Advisory Board itself shall elect its officers and shall fix the term of any such offices. The Trails Advisory Board shall keep contemporaneous written minutes of its meetings, inclusive of discussions, votes and actions taken therein. Three (3) members of the Trails Advisory Board shall constitute a quorum for the transaction of business. (Ord. 2-2007 §2)

Sec. 2-247. Meetings.

The Trails Advisory Board shall determine the times and locations of its meetings. All meetings of the Trails Advisory Board shall be subject to the same open meeting laws and requirements that are applicable to the meetings of the Board of Trustees. (Ord. 2-2007 §2)

Sec. 2-248. Rules and regulations.

The Trails Advisory Board may adopt rules and regulations governing its operations; provided, however, that no such rule or regulation or any amendment thereto shall become effective until such rule, regulation or amendment thereto has been approved by the Board of Trustees. (Ord. 2-2007 §2)

Secs. 2-249—2-260. Reserved.

ARTICLE XIII

Town Beautification Advisory Board

Sec. 2-261. Creation.

There is hereby created and established a Town Beautification Advisory Board, to be known as the "Town Beautification Advisory Board of the Town of Buena Vista," which shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Ord. 3-2007 §2)

Sec. 2-262. Appointment; qualifications.

The Town Beautification Advisory Board shall consist of five (5) voting members, two (2) alternate members and up to thirty-five (35) ex officio members. The five (5) voting members shall

be appointed by the Board of Trustees. The ex officio members shall be appointed internally by the voting members. (Ord. 3-2007 §2)

Sec. 2-263. Term of office; vacancies.

The term of the voting members shall be three (3) years, except that the term of two (2) of the members appointed to the first Town Beautification Advisory Board shall be only one (1) year; the term of two (2) members of the first Town Beautification Advisory Board shall be for two (2) years; and the term of the remaining one (1) member of the first Town Beautification Advisory Board shall be for three (3) years. The first alternate appointed to the first Town Beautification Advisory Board shall have a term of two (2) years, and the second alternate appointed to the first Town Beautification Advisory Board shall have a term of two (2) years. Additionally, all ex officio members of the Town Beautification Advisory Board shall have terms of two (2) years. In the event that a vacancy shall occur during the term of any appointed member, a successor shall be appointed by the Board of Trustees to serve the unexpired portion of the open term. (Ord. 3-2007 §2)

Sec. 2-264. Compensation.

Members of the Town Beautification Advisory Board shall serve without compensation. (Ord. 3-2007 §2)

Sec. 2-265. Duties and responsibilities.

The Town Beautification Advisory Board shall have the following duties and responsibilities:

(1) The Town Beautification Advisory Board shall make recommendations to the Board of Trustees regarding beautification matters, projects or endeavors and, upon receiving direction from the Board of Trustees, to implement, organize and coordinate any beautification project for the Town.

(2) Members of the Town Beautification Advisory Board have the option to work on beautification projects themselves outside of the Public Works Department. This option only applies to actual members of the Town Beautification Advisory Board and does not authorize the Town Beautification Advisory Board to subcontract any such maintenance work to any individuals or agencies outside of the Town unless the Town Beautification Advisory Board elects to coordinate outside volunteers with the Finance Director and submit identification forms to the Finance Director prior to any work being done by said volunteers. (Ord. 3-2007 §2)

Sec. 2-266. Operation.

The Town Beautification Advisory Board itself shall elect its officers and shall fix the term of any such offices. The Town Beautification Advisory Board shall keep contemporaneous written minutes of its meetings, inclusive of discussions, votes and actions taken therein. Three (3) members of the Town Beautification Advisory Board shall constitute a quorum for the transaction of business. (Ord. 3-2007 §2)

Sec. 2-267. Meetings.

The Town Beautification Advisory Board shall determine the times and locations of its meetings. All meetings of the Town Beautification Advisory Board shall be subject to the same open meeting laws and requirements that are applicable to the meetings of the Board of Trustees. (Ord. 3-2007 §2)

Sec. 2-268. Rules and regulations.

The Town Beautification Advisory Board may adopt rules and regulations governing its operations; provided, however, that no such rule or regulation or any amendment thereto, shall become effective until such rule, regulation or amendment thereto has been approved by the Board of Trustees. (Ord. 3-2007 §2)

Secs. 2-269—2-280. Reserved.

ARTICLE XIV

Water Board

Sec. 2-281. Creation.

There is created and established the Buena Vista Water Board, hereafter referred to in this Article as the "Water Board," which shall provide advice to the Board of Trustees and shall operate in accordance with and subject to the provisions, duties and limitations of this Article. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-282. Composition and appointment.

(a) Regular members. The Water Board shall consist of five (5) voting members, plus one (1) member of the Board of Trustees who is nonvoting, all of whom shall be appointed by and serve at the pleasure of the Board of Trustees. In addition, the Town Administrator and the Director of Public Works shall serve as nonvoting ex officio members. Water Board members need not be residents or qualified electors of the Town.

(b) Alternate members. The Board of Trustees may appoint up to three (3) alternate members to the Water Board. Alternate members shall only vote if needed for a quorum. If alternate members are needed for a quorum, the alternate members serving in the place of a regular member shall be designated by the Chairperson or, if there is no Chairperson in attendance, by the Vice Chair or, if there is no Chairperson or Vice Chair in attendance, by the single voting member. In no event shall a vote be taken with only alternate members voting. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-283. Term of office; vacancies.

(a) Voting members of the Water Board shall serve staggered terms of three (3) years unless earlier removed from office; except for the initial appointments where two (2) members shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of two (2) years and one (1) member shall be appointed for a term of one (1) year. Alternate members shall serve

three-year terms from their date of appointment. The nonvoting Board of Trustees member of the Water Board shall be appointed annually to a term of one (1) year by the Board of Trustees.

(b) Vacancies in voting member positions shall be filled by appointment made by the Board of Trustees to serve out an unexpired term. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-284. Compensation.

Members of the Water Board shall serve without compensation. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-285. Duties and responsibilities.

The Water Board shall have the following duties and responsibilities:

(1) To review policy matters relevant to stewardship and development of the Town's water rights portfolio, storage, treatment and distribution systems and to make recommendations thereon to the Board of Trustees.

(2) To plan for long-term water needs of the Town and to make recommendations thereon to the Board or Trustees regarding water rights acquisitions, intergovernmental agreements with other governmental entities regarding development and use of water rights and supplies, water service rates, system development fees, capital development projects and allocation of resources in the Water Fund.

(3) To perform such other functions and duties as the Board of Trustees may, from time to time, assign to the Water Board; provided, however, that the Water Board shall at all times be and remain an advisory board only, and final decisions regarding the matters set forth in this Section shall be made by the Board of Trustees. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-286. Operation; quorum.

At the first meeting of each calendar year, voting members of the Water Board shall elect from their membership a chairperson and vice chair. The Water Board shall keep contemporaneous minutes of its meetings, votes and actions. Three (3) voting members shall constitute a quorum for the transaction of business. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-287. Meetings.

The Water Board shall meet at least once quarterly and may meet more frequently as the Water Board deems necessary. The Water Board shall meet at such time and place within the Town as the Water Board may determine. All meetings of the Water Board shall be subject to the same open meeting laws and requirements as are applicable to the meetings of the Board of Trustees. (Ord. 2, 2013; Ord. 7, 2013)

Sec. 2-288. Rules and regulations.

The Water Board may adopt rules and regulations governing its operations; provided, however, that no such rule or regulation or any amendment thereto shall become effective until such rule,

regulation or amendment thereto has been approved by the Board of Trustees. (Ord. 2, 2013; Ord. 7, 2013)

Secs. 2-289—2-300. Reserved.

CHAPTER 4

Revenue and Finance

ARTICLE I

Fiscal Year

Sec. 4-1. 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. (Ord. 26-1992 §1)

Secs. 4-2—4-10. Reserved.

ARTICLE II

General Fund

Sec. 4-11. 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. (Ord. 26-1992 §1)

Secs. 4-12—4-30. Reserved.

ARTICLE III

Special Funds

Sec. 4-31. Custody and management of funds.

Moneys in the funds created in this Chapter shall be in the custody of and managed by the Treasurer. The 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 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 Article or by other ordinances or laws or by this Code, the Board of Trustees may transfer out of any fund any amount at any time to be used for such purpose as the Board of Trustees may direct. (Ord. 26-1992 §1)

Sec. 4-32. Capital Improvement Fund.

(a) There is established a special fund known as the Capital Improvement Fund which shall be kept separate from the general and other funds of the Town, and into such fund shall be deposited

such revenues as the Board of Trustees may determine necessary from year to year to provide for capital improvements for the Town, including, without limitation, street paving, the acquisition of facilities and real property for public purposes, and the payment of debt service on bonds and other obligations of the Town issued to provide for capital improvements.

(b) Notwithstanding any provision within this Section, sales tax revenues previously pledged for capital improvement purposes prior to the enactment or amendment of this Section, and particularly revenues pledged for the payment of bonds and/or debt service on bonds, shall be deposited immediately upon receipt or collection in the Capital Improvement Fund (inclusive of bond accounts, interest subaccounts, principal subaccounts and/or reserve accounts) in amounts sufficient to timely and fully pay such obligations, and said deposits shall continue until such time as such obligations are fully satisfied and discharged. (Prior code 3.12.010, 3.12.020; Ord. 1-1998, §1)

Sec. 4-33. 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. (Ord. 26-1992 §1)

Sec. 4-34. Police and Court Education Fund.

There is hereby created a special fund to be known as the Police and Court Education Fund, which shall be used only for the purpose of providing job-related education and training for the Town's police and court personnel. (Prior code 1.16.030; Ord. 26-1992 §1)

Sec. 4-35. Airport Fund.

There is hereby established a special fund of the Town to be known as the Airport Fund. Into such special fund shall be deposited all revenues received by the Town generated from or directly related to the operation of the Buena Vista Municipal Airport, also known as the Central Colorado Regional Airport. All monies deposited into such special fund shall be reserved and expended solely to satisfy the expenses and charges incurred by the Town in the operation and maintenance of the airport. Monies credited to the fund shall not be pledged or expended, by interfund transfer or otherwise, for any general purposes of the Town. In the event the airport and Airport Fund should qualify at any time as an enterprise and/or enterprise fund, respectively, as defined under Article X, Section 20 of the Colorado Constitution, then the Board of Trustees, as it deems necessary or appropriate, may declare and designate the airport as an enterprise, and the Airport Fund as an enterprise fund, by written resolution duly passed at a public meeting. (Ord. 18-1993 §1; Ord. 9-2002 §1)

Sec. 4-36. Victims and Witnesses Assistance Fund.

There is hereby created and established a special fund to be known as the Victims and Witnesses Assistance Fund, which fund shall be used to provide assistance and services to natural persons against whom any crime has been perpetrated or attempted, and to any natural person who witnessed or has knowledge of a criminal act, or attempted criminal act, and who has reported such act to a proper law enforcement authority; and into such fund shall be deposited all revenues generated from the surcharge imposed by Section 1-78(2) of this Code. Monies deposited into the Victims and Witnesses Assistance Fund may be allocated by the Board of Trustees to fund victims and witnesses assistance programs operated by public or nonprofit agencies serving the victims of crime in and around the Town and County. (Ord. 8-1998, §2)

Sec. 4-37. Fixed assets threshold and inventory.

The Town Treasurer shall annually prepare and present to the Board of Trustees a written inventory and accounting of the Town's fixed capital assets with a value of five thousand dollars ($5,000.00) or more. Such inventory and accounting shall be prepared and submitted as part of the Town's annual fiscal year audit and in no event later than six (6) months after the close of each fiscal year. (Ord. 13-2001 §1)

Secs. 4-38—4-50. Reserved.

ARTICLE IV

Reserved

Secs. 4-51—4-70. Reserved.

ARTICLE V

Sales Tax

Sec. 4-71. Purpose.

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail within the Town as authorized and provided in Section 29-2-105(l)(d), C.R.S., and any successor statute thereto. (Prior code 3.08.010; Ord. 14-2002 §1)

Sec. 4-72. Definitions.

For purposes of this Article, the definitions of words herein contained shall be as said words are defined in Section 39-26-102, C.R.S., or any successor statute, and said definitions are incorporated herein by reference. (Prior code 3.08.020; Ord. 14-2002 §1)

Sec. 4-73. Levy and schedule of sales tax; collection and administration.

(a) There is hereby imposed on all sales of tangible personal property at retail and the furnishing of taxable services as provided in Section 39-26-104, C.R.S., a tax equal to two and one-half percent (2.5%) of the gross receipts. The tangible personal property and services taxable by this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and any successor statute thereto, subject to the exemptions specified in Section 39-26-114, C.R.S., except as provided in Section 29-2-105(l)(d), C.R.S. The imposition of the tax on individual sales shall be in accordance with the schedules set forth in the rules and regulations promulgated by the Department of Revenue or by separate ordinance of the Town. If any vendor, during any reporting period, shall collect as a tax an amount in excess of two and one-half percent (2.5%) of the vendor's total taxable sales, the vendor shall remit to the Director of Revenue the full amount of the tax herein imposed and also such excess.

(b) The amounts subject to tax under this Article shall not include the state sales and use tax imposed by Article 26, Title 39, C.R.S.

(c) The collection, administration and enforcement of this sales tax shall be performed by the Director of Revenue in the same manner as the collection, administration and enforcement of the state sales tax. The provisions of Article 26, Title 39, C.R.S., and all rules and regulations promulgated by the Director of Revenue shall govern the collections, administration and enforcement of the sales tax imposed by this Article.

(d) 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. (Prior code 3.08.160; Ord. 14-2002 §1; Ord. 6 §1, 2012)

Sec. 4-74. Consummation of sales.

(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 or her 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 rules and regulations promulgated by the State Department of Revenue. (Prior code 3.08.150; Ord. 14-2002 §1)

Sec. 4-75. Exemptions; credits.

There shall be exempt from taxation under the provisions of this Article all of the following retail sales of tangible personal property and services:

(1) All sales exempted under Section 39-26-114, C.R.S., except as provided in Section 29-2-105(l)(d), C.R.S., and any successor statute.

(2) Food purchased with food stamps or funds provided by the special supplemental food program for women, infants and children. For purposes of this Subsection, *food* shall have the same meaning as provided in Section 39-26-102(4.5), C.R.S.

(3) All sales of tangible personal property on which a specific ownership tax has been paid or is payable shall be exempt from sales tax when such sales meet both of the following conditions:

a. The purchaser is a nonresident of or has its principal place of business outside of the Town; and

b. Such tangible personal property is registered or required to be registered outside the limits of the Town under the laws of the State.

(4) The sale of construction and building materials 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

acceptable documentation evidencing that a local use tax has been paid or is required to be paid. For purposes of this Subsection, the term *construction and building materials* shall have the same meaning as provided in Section 29-2-105(2), C.R.S.

(5) 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 municipality equal to or in excess of the rate provided in this Article. A credit shall be granted against the Town's sales tax 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 municipality. The amount of the credit shall not exceed the rate provided in this Article. (Ord. 14-2002 §1)

Sec. 4-76. Violations and penalty.

(a) It shall be unlawful for any person, business, organization or other entity subject to the terms of this Article V to fail to collect or submit to the State Department of Revenue the sales tax levied in Section 4-73, or to violate any of the provisions of this Article.

(b) Violations of this Article shall be punished by a fine up to one thousand dollars ($1,000.00) or by a term of imprisonment up to one (1) year, or by both such fine and imprisonment. (Prior code 3.08.110; Ord. 14-2002 §1)

Secs. 4-77—4-100. Reserved.

ARTICLE VI

Industrial Development Revenue Bonds

Sec. 4-101. Purpose.

It is the purpose of this Article to establish and set forth the Town's policy with respect to the issuance of its industrial development revenue bonds under the "County and Municipality Development Revenue Bond Act," Section 29-3-101 et seq., C.R.S. (Prior code 3.16.010)

Sec. 4-102. Demonstration of benefit.

In general, the Town will consider issuing industrial development revenue bonds only upon a clear and factual demonstration of direct economic benefit to the Town's economic development goals, such as the creation of additional employment opportunities; expansion of the tax base; increasing sales, property or other tax revenues to the Town; maintenance and promotion of a stable, balanced and diversified economy among natural resource development, business, tourism, commerce and trade; and promotion or development of the use of manufactured, commercial or natural resource products within or without the State. Consideration will also be given to any adverse effect upon the Town's development or other goals of the Town. The following guidelines apply:

(1) No particular type of business or enterprise will be excluded from consideration for the issuance of industrial development revenue bonds by the Town so long as such business or enterprise qualifies under the "County and Municipality Development Revenue Bond Act," but

every applicant should be prepared to demonstrate that the proposed facility will promote the general economic development of the Town within the context of the existing rules, regulations and requirements of the Town, State and U.S. government.

(2) Proposals for issuance of all industrial development revenue bonds will be carefully considered in order to determine whether there would result from such proposed issuance substantial benefit to the Town and its inhabitants.

(3) It must be demonstrated that each project for which industrial development revenue bonds are to be issued will result in:

a. The creation of new or additional employment opportunities in the Town;

b. Expansion of the tax base and increase of sales, property or other tax revenues to the Town;

c. Maintenance and promotion of a stable, balanced and diversified economy among natural resource development, business, tourism, commerce and trade; and

d. Promotion or development of the use of manufactured, commercial or natural resource products within or without the State. (Prior code 3.16.020)

Sec. 4-103. Applicant financial information.

The Town, in evaluating proposals for the issuance of industrial development revenue bonds, will seek to protect the good fiscal reputation of the Town and will require information and proof of such matters as may be necessary in the Town's opinion to establish the feasibility of the project and the financial responsibility and capacity of the applicant. At least ten (10) days prior to any meeting with Town officials, the following information, together with the application fee provided for in Section 4-104, shall be submitted to the Town and used in its determination of whether or not to proceed with the proposed industrial development revenue bond financing:

(1) A description of the project, including a complete list of assets to be purchased or constructed, the estimated life of such assets and the estimated cost of constructing and acquiring the project;

(2) A descriptive statement of how the proposed project would benefit the Town and fulfill the requirements of Section 4-102;

(3) A description of alternative forms of financing investigated, together with the reasons for seeking industrial development revenue bond financing;

(4) History of applicant, including a description of its operations;

(5) A resume of the principals and key personnel of the applicant, including directors and officers;

(6) Historical, financial information for the applicant for the past three (3) years, including the applicant's audited financial statements (including at least a balance sheet, income and expense statement and cash flow analysis) for the most recent fiscal year for which they are available;

(7) A proposed bond redemption schedule including the estimated debt service on the proposed industrial development revenue bonds;

(8) A proposed timetable for the issuance of the bonds;

(9) A report of any litigation pending against the applicant, including nature of case, court where litigation is pending and amount of claim;

(10) A proposed timetable for completion of the project;

(11) Description of previous participation in industrial revenue bond financing, including location of issue, amount, description of project and parties involved;

(12) The name and address of the bond underwriter that the applicant intends to employ in connection with the bond issue;

(13) The name and address of the bond attorneys that the applicant intends to employ in connection with the bond issue; and

(14) Any other matters specifically desired by the Town not set forth above. (Prior code 3.16.030)

Sec. 4-104. Application fee; financing fee and applicant's obligation to reimburse Town for all expenses.

(a) At the time of submission of the information required by Section 4-103, the applicant shall deposit with the Town an application fee of five hundred dollars ($500.00). Said application fee shall not be refundable in any event.

(b) Whether or not the proposed bonds are issued, the applicant will be required to provide for the reimbursement of all expenses incurred by the Town in evaluating the project proposal, in processing the application (including publication expenses of ordinances, notices and resolutions) and in connection with the issuance of bonds, if bonds are issued. The application fee will be credited against the cost of the time of all personnel of the Town involved in the evaluation, publication and similar expenses and the other expenses incurred by the Town related to the project evaluation, processing and issuance of bonds; provided, however, that said application fee will not be applied to the cost of counsel and such consultants as the Town may employ to assist in the evaluation and issuance of such bonds, and the applicant will be required to pay said costs in addition to the application fee.

(c) In addition to the application fee, to cover any nonitemized expenses of the Town in connection with the transactions contemplated by the bond issuance, the applicant will be required to execute an agreement prior to issuance of the bonds obligating the applicant to pay to the Town, at the time of delivery of the bonds, an amount which, together with the application fee, shall be referred to

as the "financing fees," in an amount equal to one hundred twenty-five thousandths of a percent (0.125%) of the principal amount of bonds outstanding each year for the life of the bond issue discounted back to present value at a rate not to exceed the coupon rate plus one hundred twenty-five thousandths of a percent (0.125%); provided, however, that the total amount of the financing fees shall not be equal to or exceed an amount which would cause the bonds to become arbitrage bonds under the Internal Revenue Service Code and regulations. The applicant, prior to the issuance of the bonds, shall calculate and verify the exact amount of such fees and a certificate shall be filed with the Town setting forth the basis and result of such calculation.

(d) The applicant's obligations as set forth in this Section shall be reduced to a contract to be approved and executed by the applicant and the Town prior to the adoption by the Town of the inducement resolution. (Prior code 3.16.040)

Sec. 4-105. Bond underwriter/counsel.

It shall be the responsibility of the applicant to select and pay bond underwriters and bond counsel in connection with the application and bond issue. Further, applicant must demonstrate by acceptable evidence that the proposed industrial development revenue bond issue can be sold without violating federal or state securities laws through a qualified underwriter or to an experienced investor or group of investors. (Prior code 3.16.050)

Sec. 4-106. Bond expenses.

It shall be the sole responsibility of the applicant to pay for any and all costs associated with the bond application, the processing of said application and the issuance of the bonds. Such obligation shall include, but shall not be limited to the cost of, preparing and publishing the official statement and all other matters connected with the proposed bond issuance, such that the Town will not be obligated under any circumstances for any costs associated with the bond issue. (Prior code 3.16.060)

Sec. 4-107. Board of Trustees' determination conclusive.

At such time as the applicant has satisfied all of the above-stated requirements, the Board of Trustees will review the material and information submitted, taking into consideration the findings and recommendations of such officers or employees of the Town who have been requested by the Board of Trustees to examine such information and make such findings and recommendations, and taking into consideration any other matters which the Board of Trustees in its sole discretion determines to be significant in deciding whether or not to proceed with the proposed industrial development revenue bond issue. The decision of the Board of Trustees shall be at the full and complete discretion of the Board of Trustees, and the Board of Trustees reserves the right to modify, delete or add to any of the requirements stated herein for good and sufficient reason. (Prior code 3.16.070)

Sec. 4-108. Liability of Town and bond purchaser.

(a) The acceptance of the financial information and agreement by the Town to issue industrial development revenue bonds does not constitute approval by the Town of the applicant's financial condition or soundness. In case of a private placement of the bonds, the ultimate purchaser will be

required to certify to the Town that it has independently satisfied itself of the credit-worthiness of the applicant.

(b) Regardless of whether the bonds are to be sold publicly or privately, neither the Town, any official thereof, nor any purchaser, underwriter or attorney shall in any way represent in an official statement, offering circular or other offering material or otherwise, that the Town has in any way reviewed or passed upon the financial condition or soundness of the applicant or the proposed project to be financed by the industrial development revenue bonds or has, in any way, evaluated whether or not the bonds are marketable. (Prior code 3.16.080)

Sec. 4-109. Bonds to be special obligations.

(a) All bonds issued by the Town under the authority of this Article and the "County and Municipality Development Revenue Bond Act" shall be special, limited obligations of the Town, and except as provided in Section 29-3-116, C.R.S., the principal of and interest on such bonds shall be payable, subject to the mortgage provisions in the "County and Municipality Development Revenue Bond Act," solely out of the revenues derived from the financing, refinancing, sale or leasing of the project with respect to which the bonds are issued, or from other collateral pledged by the applicant in connection with the bond issue.

(b) The bonds and interest coupons, if any, appurtenant thereto shall never constitute the debt or indebtedness of the Town within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the Town or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of each bond. (Prior code 3.16.090)

Sec. 4-110. Limitation of inducement resolution.

Upon the Board of Trustees' determination to proceed with the industrial development revenue bond issue, it will entertain a resolution of inducement which, once passed, will be effective for the period stated in the resolution. (Prior code 3.16.100)

Sec. 4-111. Sales and business license.

Any applicant will be required, prior to the passage of a bond ordinance, to obtain a Town sales tax license and business license. (Prior code 3.16.110)

Secs. 4-112—4-130. Reserved.

CHAPTER 5

Franchises and Communication Systems

ARTICLE I

Cable Television System

Sec. 5-1. Grant of franchise; term.

Pursuant to that cable franchise agreement between the Town and AT&T Broadband HC of Colorado, LLC, duly authorized and approved by the Board of Trustees on April 9, 2002, a nonexclusive franchise is hereby granted to AT&T Broadband HC of Colorado, LLC, to occupy and use public rights-of-way within the Town for the construction, installation, maintenance, operation, expansion, repair, upgrading and rebuilding of a cable television system for a term of five (5) years commencing April 13, 2002, and terminating on April 12, 2007. If the cable television system operated under the franchise granted under this Section is upgraded to a minimum bandwidth of not less than 550 MHz and can deliver both upstream and downstream transmissions prior to the expiration of the initial five-year term of the franchise as provided for in Section 11-1 of the franchise agreement, then the term of the franchise shall be extended by an additional term of ten (10) years, or to and until April 12, 2017. (Ord. 6-2002 §2)

See. 5-2. Use of public rights-of-way and easements.

(a) Subject to the Town's regulations governing access and excavations or construction on or within public rights-of-way and/or other property, the franchise awarded the franchise specified in this Article may erect, install, construct, repair, replace, reconstruct and retain such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as necessary and appurtenant to the operation of the cable television system within the Town in, on, over, under, upon, across and along rights-of-way, easements and other real property dedicated to or owned by the Town for public use.

(b) The franchisee must follow established requirements for the placement of cable system facilities in public rights-of-way and easements, including the specific location of facilities in such rights-of-way or easements, and must in any event install cable system facilities in a manner that minimizes interference with the use of the rights-of-way and/or easements by others, including others who may install communications facilities. Within limits reasonably related to protecting public health, safety and welfare, the Town may require that cable system facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way or casement, and access may be denied if the franchisee is not willing to comply with Town's lawful requirements. Franchisee may also be required, at its cost, to remove any facility that is not installed in compliance with the requirements lawfully established by the Town, and may be required to cooperate with others to minimize adverse impacts on rights-of way and easements through joint trenching and other arrangements. (Ord. 6-2002 §2)

Sec. 5-3. Franchise nonexclusive.

The franchise awarded under this Article shall be nonexclusive and subject to all prior rights, interests, easements or licenses granted by the Town to any person to use or occupy any property, right-of-way, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed the franchisee under this Article. The Town may also at any time in the future grant authorization to use the rights-

of-way and easements for any purpose not incompatible with franchisee's authority under the franchise, inclusive of franchises for additional cable television systems as the Town deems appropriate.

Sec. 5-4. Reservation of police powers.

The rights and interests vested in the franchisee under the franchise awarded under this Article shall remain subject to the Town's police powers, and the Town shall maintain authority and power to adopt from time to time ordinances of general application that are necessary to protect the public health, safety and welfare, provided that such ordinances shall not be destructive of the rights granted to the franchisee under the franchise. Any conflict that may arise between the provisions of the franchise agreement and the present or future lawful exercise by the Town of its police power shall be resolved in favor of the latter. (Ord. 6-2002 §2)

Sec. 5-5. Tree Trimming.

Franchisee may prune or cause to be pruned, using proper pruning practices, any tree in or encroaching upon a public right-of-way or easement that interferes with the proper operation or maintenance of franchisee's cable system. Franchisee shall comply with all general ordinances or regulations of the Town regarding tree trimming. Except in emergencies, franchisee may not prune trees at a point below thirty (30) feet above sidewalk grade unless one (1) week's prior written notice of such pruning has been given to the owner or occupant of the premises abutting the right-of-way or easement in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during the one-week notice period. If the owner or occupant fails to do so, franchisee may prune such tree as necessary at its own expense. For purposes of this Section, emergencies exist when it is necessary to prune to protect public safety or the franchisee's facilities from imminent injury or destruction. (Ord. 6-2002 §2)

Sec. 5-6. Stop work orders.

(a) Upon notice to the Town that any work is being performed contrary to the provisions of this Article or the franchise agreement awarded thereunder, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any generally applicable permit, law, regulation, ordinance or standard, such work may immediately be stopped by the Town by written order.

(b) A stop work order shall:

(1) Be in writing;

(2) Be given to the person doing the work if present to receive same at the work site and/or posted on the work site;

(3) Be sent to the franchisee by overnight delivery or by facsimile at the address and/or number given in the franchise agreement;

(4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

(c) The provisions contained in this Section shall be in addition to any and all other police powers and law enforcement authority possessed by the Town. (Ord. 6-2002 §2)

Secs. 5-7—5-50. Reserved.

ARTICLE II

Electric Franchise

Sec. 5-51. Definitions.

The word Town, as hereinafter employed, shall designate the Town of Buena Vista, Chaffee County, Colorado, the grantor, and the word Association shall designate the Sangre de Cristo Electric Association, Inc., a corporation, its successors and assigns, the grantee. (Ord. 3-1972 Art. I; Ord. 4-1997 Art. I)

Sec. 5-52. Grant of franchise.

The franchise and right are hereby granted by the Town to the Association, its successors and assigns, to locate, build, construct, acquire, extend, maintain and operate into, within and through said Town, a plant or plants and works, for the purchase, manufacture, generation, transmission and distribution of electricity for illuminating, heating and power, or other purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified, to furnish, sell and distribute electricity to the Town and the inhabitants thereof by means of generating plants, substations, transmission lines, conduits, cables and lines or poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, public ways and places in the Town; and to build, construct, extend, maintain and operate into and through the corporate limits, or any additions thereof, for distribution of electric energy within, without and beyond the corporate limits of the Town or any additions thereto; and on, over, under, along, across and through any extension, connection with or continuation of the same, and/or on, over, under, along, across and through any and all new streets, alleys, viaducts, bridges, roads, public ways and places, as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. (Ord. 3-1972 Art. II §1; Ord. 4-1997 Art. II §1)

Sec. 5-53. Nonexclusive right.

The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use of said streets, alleys and other public ways and places, to any other person or corporation at any time during the period of this franchise. (Ord. 3-1972 Art. II §2; Ord. 4-1997 Art. II §2)

Sec. 5-54. Location of equipment.

All transmission and distribution structures, lines and equipment erected by the Association within the Town shall be so located 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 who adjoin any of said streets, alleys or other public ways and places. Should it become necessary for the Association in exercising its rights and performing its duties hereunder to interfere with any sidewalk or pavement, or any other public or private improvement, the Association shall repair such sidewalk, pavement or other improvement and leave it in as good order and condition as it formerly was. (Ord. 3-1972 Art. II §3; Ord. 4-1997 Art. II §3)

Sec. 5-55. Generation of electricity.

The Association shall have the right, power and authority to employ any means, in its discretion, to secure, acquire or generate electric energy to operate any of its structures or plants, in order to supply and furnish electricity for light, heat, power and other purposes, to the Town and inhabitants thereof under this franchise. (Ord. 3-1972 Art. II §4; Ord. 4-1997 Art. II §4)

Sec. 5-56. Maintenance of equipment.

The Association shall so maintain its structures, apparatus and equipment as to afford all reasonable protection against injury or damage to persons or property therefrom; and the Town shall be saved harmless from any liability or damage accruing against the Town arising out of the negligent exercise by the Association of the rights and privileges hereby granted. The Town shall have the right, without cost, to use all poles of the Association within the Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however, that the Association assumes, and shall be subjected to, no liability, and shall be subjected to no additional expense in connection therewith. It is further provided that the use of said poles by the Town shall not interfere in any unreasonable manner with the Association's use of the same. (Ord. 3-1972 Art. II §5; Ord. 4-1997 Art. II §5)

Sec. 5-57. Maintenance of electric service.

In consideration of and as compensation for the granting of this franchise, the Association will maintain twenty-four-hour electric service except when prevented from so doing by acts of God, unavoidable accidents, strikes or other causes beyond its control, in which event the Association shall restore its service as promptly as possible and will supply and distribute electricity for lighting, heating, power and other lawful purposes to the Town and its inhabitants. (Ord. 3-1972 Art. II §6; Ord. 4-1997 Art. II §6)

Sec. 5-58. Service to new areas.

The Association shall furnish electricity and electric power for light, heat, power or for any other lawful purpose under the terms and provisions of this franchise within the corporate limits of the Town, or any additions thereto, at rates and upon such conditions and regulations as may be hereafter filed with or promulgated by the Public Utilities Commission of the State, or by any other regulatory commission, board or authority which may hereafter acquire and have jurisdiction thereof. (Ord. 3-1972 Art. III §1; Ord. 4-1997 Art. III §1)

Sec. 5-59. Review of rate.

Nothing in Section 5-58 shall be construed to limit the right of the Association or the Town to a review of any rates so filed with or promulgated by said Public Utilities Commission of the State, or

other authority having jurisdiction thereof, at any time as may be by law provided. (Ord. 3-1972 Art. III §2; Ord. 4-1997 Art. III §2)

Sec. 5-60. Rules and regulations on file with Town.

The Association, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization, extension and protection of service and property, as shall be reasonably necessary to enable the Association to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its consumers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or laws of the State, and shall be subject to approval by the Public Utilities Commission of the State or other competent authority having jurisdiction in the premises. The Association shall keep on file in its office, available to the public, copies of such rules, regulations, terms and conditions from time to time adopted by it for the conduct of its business, and copies thereof shall also be filed with the Town Clerk. (Ord. 3-1972 Art. III §3; Ord. 4, 1997 Art. III §3)

Sec. 5-61. Franchise fee.

As further consideration for this franchise, the privileges granted and the obligations imposed hereunder, the Association shall pay to the Town a sum equal to a percentage of its gross revenues arising from the sale of electric energy, including consumer charges and fixed charges, within the corporate limits of the Town to the inhabitants thereof, under the terms and provisions of this franchise, as follows: 1997 - three and one-half percent (3½%), 1998 – three percent (3%), 1999 – two and one-half percent (2½%), 2000 – two percent (2%), 2001 – one and one-half percent (1½%), 2002 and thereafter for the balance of the term of the agreement - one percent (1%); provided, however, that the income derived from the sale of electricity to the Town shall not be subject to the franchise fee, and no franchise fee shall be charged or paid for said income. It is hereby agreed that the amount above specified shall be and hereby is accepted by the Town in lieu of any and all license or occupation taxes and all other special taxes, assessments or excises upon the poles, wires or other property of the Association, either as a franchise tax, occupation tax, license tax or for the inspection of poles, wires or other property of the Association or otherwise. Payment of the franchise fee accruing after the effective date of the ordinance codified herein shall be made in quarterly installments not more than thirty (30) days following the close of the calendar quarter for which payment is to be made. The initial and final payments shall be prorated for the portions of the quarters at the beginning and the end of the term of the ordinance codified in this Article. (Ord. 3-1972 Art. IV §1; Ord. 4-1997, Art. IV §1)

Sec. 5-62. Effective date.

The ordinance codified in this Article shall be in full force and effect from and after its passage, approval and publication, as by law required, and acceptance and approval thereof in writing by the Association within thirty (30) days from and after said publication. (Ord. 3-1972 Art. V §1; Ord 4-1997 Art. V §1)

Sec. 5-63. Town's right to purchase or condemn.

The Town may, as provided by law, by purchase or condemnation, and upon payment of just compensation therefor, acquire and take over the property of the Association actually used and useful for the convenience of the Town and its inhabitants. (Ord. 3-1972 Art. V §2; Ord. 4-1997 Art. V §2)

Sec. 5-64. Term of franchise.

The franchise and rights herein granted shall take effect and be in force from and after the final passage and publication hereof, as required by law, and upon filing of acceptance by the Association as provided elsewhere herein; and shall continue in force and effect for a term of twenty-five (25) years from and after the effective date of the ordinance codified in this Article and franchise. (Ord. 3-1972 Art. V §3; Ord. 4-1997 Art. V §3)

Secs. 5-65—5-80. Reserved.

ARTICLE III

Gas Franchise

Sec. 5-81. Definitions.

For the purpose of this franchise, the following words and phrases shall have the meanings given in this Article. 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. The word *shall* is mandatory and *may* is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

Board or *Board of Trustees* refers to and is the legislative body of the Town.

Company refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

Distribution facilities refer to and are only those facilities reasonably necessary to provide gas within the Town.

Facilities refer to and are all facilities reasonably necessary to provide gas into, within and through the Town and include plants, works, systems, lines, equipment, pipes, mains, underground links, gas compressors and meters.

Gas or *natural gas* refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured or any mixture thereof.

PUC refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding the Public Utilities Commission of the State of Colorado.

Revenues refer to and are those amounts of money which the Company receives from its customers within the Town for the sale of gas under rates, temporary or permanent, authorized by

the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

Streets refer to and are streets, alleys, viaducts, bridges, roads, lanes, easements (excluding any easements the terms of which do not permit the use thereof by the Company) and public rights-of-way within the Town. Streets shall also include other public places within the Town that are suitable locations for the placement of facilities as specifically approved in writing by the Town.

Town refers to and is the Town of Buena Vista, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Buena Vista. (Ord. 1 §1, 2013)

Sec. 5-82. Grant of franchise.

(a) The Town hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this agreement, the nonexclusive right to make reasonable use of the streets:

(1) To furnish, transport, sell and distribute gas to the Town and to all persons, businesses and industries within the Town; and

(2) To acquire, construct, install, locate, maintain, operate and extend into, within and through the Town all facilities reasonably necessary to provide gas to the Town and to all persons, businesses and industries within the Town and in the territory adjacent thereto.

(b) The term of this franchise shall be for twenty (20) years, beginning March 31, 2013, and expiring March 31, 2033.

(c) Conditions and limitations.

(1) Scope of franchise. Nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of gas.

(2) Subject to Town usage. The right to make reasonable use of the streets under this agreement is subject to and subordinate to any Town usage of said streets. Except as otherwise specifically set forth herein, the Town retains the right through the exercise of its police power to use, control and regulate the use of the streets. The Town retains the right to impose such other regulations as may be determined by the Town to be necessary in the reasonable exercise of its police power to protect the health, safety and welfare of the public. 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.

(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.

(e) Regulation of streets or 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, including requirements for permits. The Company shall not be required to pay for such permits, however.

(f) Compliance with laws. The Company and its contractors shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town that are applicable to the Company's activities within the Town, provided that such regulations are not destructive of the rights granted herein. (Ord. 1 §1, 2013)

Sec. 5-83. Franchise fee.

(a) Franchise fee. In consideration for the grant of this franchise, the Company shall collect and remit to the Town a sum equal to one percent (1%) of the revenues derived annually from the sale of gas within the Town, excluding the amount received from the Town itself for gas service furnished it. Franchise fee payments shall be made in quarterly installments not more than thirty (30) days following the close of the month for which payment is to be made. Quarters shall end on March 31, June 30, September 30 and December 31. Payments at the beginning and end of the franchise shall be prorated.

(b) Franchise fee payment in lieu of other fees. Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

(c) Change of franchise fee. Once during each calendar year of the franchise, the Board of Trustees, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as part of the franchise; provided, however, that the Board of Trustees may only change the franchise fee amount such as to cause the Town to receive a franchise fee, under this franchise, equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in the State.

(d) Obligation in lieu of 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 the 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 streets so long as the Company maintains the right provided in this agreement. The Company shall collect the amounts agreed upon through a surcharge from the sale of gas within the Town. (Ord. 1 §1, 2013)

Sec. 5-84. Conduct of business.

(a) Conduct of business. The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided,

however, that such rules, regulations, terms and conditions are approved by the PUC and shall not be in conflict with the laws of the State or applicable Town ordinances and regulations.

(b) Tariffs on file. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

(c) Compliance with PUC regulations. The Company shall comply with all rules and regulations adopted by the PUC.

(d) Compliance with Company tariffs. The Company shall furnish gas within the Town to the Town and all persons, businesses and industries within the Town at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

(e) Applicability of Company tariffs. The Town and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. (Ord. 1 §1, 2013)

Sec. 5-85. Construction, installation and operation of Company facilities.

(a) Location of facilities. Company facilities shall not unreasonably interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition

(b) Excavation and construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable Town, state and federal codes. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the Town's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The Town reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time (not to exceed ninety [90] days) after notice from the Town.

(c) Relocation of Company facilities. If at any time the Town requests the Company to relocate any distribution gas main or service connection installed or maintained in streets in order to permit the Town to change street grades, pavements, sewers, water mains or other Town works, such relocation shall be made by the Company at its expense. The Company is not obligated hereunder to relocate any facilities at its expense, which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the Town, unless the terms of the applicable easement expressly so provide. Following relocation, the Company, at its expense, shall restore all property to substantially its former condition.

(d) Service to new areas. If, during the term of this franchise, the boundaries of the Town are expanded, the Town will promptly notify the Company in writing of any geographic areas annexed by the Town during the term hereof ("annexation notice"). Any such annexation notice shall be sent to the Company by certified mail, return receipt requested, and shall contain the effective date of the annexation and maps showing the annexed area. If in possession of the Town, the Town shall provide such other information as the Company may reasonably require in order to ascertain whether there exist any customers of the Company receiving natural gas service in said annexed area. To the extent there are such customers therein, then the gross revenues of the Company derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of the Company's billing cycle immediately following the Company's receipt of the annexation notice. The failure by the Town to advise the Company in writing through proper annexation notice of any geographic areas which are annexed by the Town shall relieve the Company from any obligation to remit any franchise fees to the Town based upon gross revenues derived by the Company from the sale and distribution of natural gas to customers within the annexed area until the Town delivers an annexation notice to the Company in accordance with the terms thereof.

(e) Restoration of service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

(f) Supply and quality of service. The Company shall make available an adequate supply of gas to provide service in the Town. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the Town.

(g) Inspection, audit and quality control. The Town shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the Town and its residents. The Town also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this agreement at all reasonable times. The Company agrees to cooperate with the Town in conducting the inspection and/or audit and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

(h) Condition of work. The Company agrees to coordinate its activities in Town streets with the Town. The Town and the Company will meet annually upon the written request of the Town 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. The Town and the Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial, and so that the Town will be assured that all provisions of this franchise, building and zoning codes and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(i) Permit and inspection. The installation, renovation and replacement of any Company facilities in the Town streets by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but not be limited to, the following matters: location of Company facilities, cutting and trimming of trees and shrubs and disturbance of pavement, sidewalks and surfaces of Town streets. 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.

(j) Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and 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. The Company shall assure that its contractors working in Town streets hold the necessary licenses and permits required by law, but in no case shall the Company or its contractors be required to pay for such licenses or permits when necessary for the provision of gas service pursuant to this agreement.

(k) As-built drawings. Upon reasonable written request of the Town in furtherance of Subsection (h) above, the Company shall provide as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets. As used in this Section, as-built drawings refer to the facility drawings as maintained in the Company's geographical information system or any equivalent system. The Company shall not be required to create drawings that do not exist at the time of the request. All maps or drawings temporarily provided by the Company to the Town shall be deemed confidential, shall be clearly identified as such by the Company when provided to the Town and will be provided solely for the Town's use. The Town agrees to maintain the confidentiality of any nonpublic information obtained from the Company to the extent allowed by law. The Town agrees that any such drawings or maps provided by the Company shall not be used in lieu of physically locating Company facilities in compliance with the laws of the State. (Ord. 1 §1, 2013)

Sec. 5-86. Force majeure.

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event the Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which the Company is so prevented shall not be counted against the Company for any reason. The term *force majeure*, as used herein, shall mean any extraordinary cause, including but not limited to acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body; contagions or contaminations hazardous to human life or health; fires, storms, floods, washouts, explosions, breakages or accidents to machinery or lines of pipe; inability to obtain or the delay in obtaining rights-of-way, materials, supplies or labor permits; temporary failures of gas supply; or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this agreement. (Ord. 1 §1, 2013)

Sec. 5-87. 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 arising from the grant of this agreement, the exercise by the Company of the related rights or from the operations of the Company within the Town, 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 satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any 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, employees, contractors, agents or vendors, including but not limited to any defect in the design, manufacture or maintenance of any Town-owned traffic signal device.

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

(c) Payment of ordinance expenses. The Company shall reimburse the Town for actual out-of-pocket expenses incurred in publishing notices and ordinances related to this agreement. (Ord. 1 §1, 2013)

Sec. 5-88. Breach.

(a) Notice/cure/remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this agreement fails or refuses to perform any of the terms and conditions of this agreement (a "breach"), the other party (the "nonbreaching 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. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

(1) Specific performance of the applicable term or condition; and

(2) Recovery of actual damages from the date of such breach incurred by the nonbreaching party in connection with the breach, but excluding any consequential damages.

(b) 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 agreement (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 ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, 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. Upon such termination, the Company shall continue to provide utility service to the Town and its residents until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the 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 streets.

(c) No limitation. Except as provided herein, nothing in this agreement shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise. (Ord. 1 §1, 2013)

Sec. 5-89. Miscellaneous.

(a) Assignment. Nothing in this agreement shall prevent the Company from assigning its rights under this franchise upon written approval of the Town, which shall not be unreasonably delayed or withheld.

(b) Saving clause. If a court of competent jurisdiction declares any portion of this agreement to be illegal or void, the remainder of the agreement shall survive and not be affected thereby.

(c) Earlier franchise superseded. This agreement shall constitute the only franchise between the Town and the Company for the furnishing of utility service within the Town, and it supersedes and cancels all former franchises or agreements between the parties hereto.

(d) Titles not controlling. Titles of the paragraphs herein are for reference only and shall not be used to construe the language of this agreement.

(e) Applicable law. Colorado law shall apply to the construction and enforcement of this agreement. (Ord. 1 §1, 2013)

Secs. 5-90—5-140. Reserved.

ARTICLE IV

Emergency Telephone Service

Sec. 5-141. Definitions.

As used in this Article:

Emergency telephone charge means the charge to pay the equipment costs, the installation costs and the directly related costs of the continued operation of an emergency telephone service according to the rates and schedules filed with the Public Utilities Commission, if applicable.

Emergency telephone service means a telephone system utilizing the single three-digit number 911 for reporting police, fire, medical or other emergency situations.

Exchange access facilities means the access, as defined in the tariffs approved by the Public Utilities Commission, from a specific customer's premises to the telecommunications network to effect the transfer of information.

Service supplier means any person providing exchange telephone services to any service user in the State.

Tariff rates means the rates billed by a service supplier, as stated in the service supplier's tariffs, which rates have been approved by the Public Utilities Commission and which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges. (Prior code 5.40.010)

Sec. 5-142. Initial emergency telephone charge.

Pursuant to Section 29-11-101, et seq., C.R.S., there is hereby imposed upon all telephone exchange access facilities within the Town a monthly emergency telephone charge in an amount not to exceed fifty cents ($.50). (Prior code 5.40.020; Ord. 11-1990 §1)

Sec. 5-143. Annual fixing of emergency telephone charge.

Commencing in 1991, the Board of Trustees shall, at least once each year, establish a rate of charge, not to exceed the fifty cent ($.50) limitation set forth in Section 5-142 above, which, together with any surplus revenues carried forward, will produce sufficient revenues to fund the expenditures required to operate the emergency telephone service within the Town for the next year. The Board of Trustees shall make its determination of such rate not later than September 1 of each year, commencing in 1991, and shall fix the new rate to take effect commencing with the first billing period of each customer on or following the next January 1. Immediately upon making such determination and fixing such rate, the Board of Trustees shall publish in its minutes the new rate, and shall notify by registered mail every service supplier at least ninety (90) days before such new rate will become effective. (Prior code 5.40.030; Ord. 11-1990 §2)

Sec. 5-144. Collection of emergency telephone charge.

Telephone service suppliers providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, et seq., C.R.S., commencing with the effective date of the ordinance codified in this Article. Remittance of charges so collected shall be made to the Town on a monthly basis in accordance with the provisions of Section 29-11-103, C.R.S. (Prior code 5.40.040; Ord. 11-1990 §3)

Sec. 5-145. Use of funds collected.

Funds collected from the charge imposed pursuant to this Article shall be spent solely to pay for the equipment costs, installation costs and monthly recurring charges billed by the service supplier for the Town's emergency telephone service. Funds collected from the charge imposed pursuant to this Article shall be credited to a special cash fund, apart from the Town's general fund, for payments to be made as set forth above. Any moneys remaining in such cash fund at the end of any fiscal year shall remain therein for payments required to be made during the succeeding year. (Prior code 5.40.050)

Sec. 5-146. Limitation on emergency telephone charge.

The emergency telephone charge imposed by this Article shall not impose upon more than one hundred (100) exchange access facilities or their equivalent per customer billing. Such charge shall be imposed only upon service users in those portions of the Town for which emergency telephone

service shall be provided. No emergency telephone charge shall be imposed upon any state or local governmental entity. (Ord. 11-1990 §4)

Secs. 5-147—5-160. Reserved.

ARTICLE V

Telephone Utility Tax

Sec. 5-161. Levy of tax.

There is levied against every telephone utility which is engaged in the business of furnishing local exchange telephone service within the Town a tax on the privilege of engaging in such business. The amount of the tax shall be three thousand dollars ($3,000.00). (Prior code 5.08.010)

Sec. 5-162. Payment of tax.

The tax levied by this Article shall be due on the fifteenth day of January, April, July and October of each year and shall be paid in quarterly installments of seven hundred fifty dollars ($750.00) each. (Prior code 5.08.020)

Sec. 5-163. Inspection of records.

The Town, its officers, agents or representatives shall have the right at any reasonable time to examine the books and records of any telephone utility which is subject to the tax imposed by this Article, and to make copies of the entries or contents thereof. (Prior code 5.08.030)

Sec. 5-164. Local purpose.

The tax provided herein is upon the affected occupations and businesses in their performance of local functions and is not a tax upon those functions relating to interstate commerce. (Prior code 5.08.040)

Sec. 5-165. Failure to pay.

If any telephone utility subject to this Article fails to pay the taxes as provided herein, the full amount thereof shall be due and collected from such company, and the same, together with an additional ten percent (10%) of the amount of taxes due, shall be and is declared to be a debt due and owing from such utility to the Town. (Prior code 5.08.050)

Sec. 5-166. Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance codified in this Article shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms and provisions of Ordinance No. 1974-4 on or before the effective date of the ordinance codified in this Article, shall be and remain unconditionally due and payable, and shall

constitute a debt to the Town, payable in conformity with the terms and provisions of said Ordinance 1974-4 prior to the adoption of the ordinance codified in this Article, shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this Article. (Prior code 5.08.060)

Sec. 5-167. Tax in lieu of other occupation taxes.

The tax herein provided shall be in lieu of all other occupation taxes, or taxes on the privilege of doing business within the Town, on any telephone utility subject to the provisions of this Article. (Prior code 5.08.070)

Secs. 5-168—5-180. Reserved.

ARTICLE VI

Cable Television Rate Regulations

Sec. 5-181. Definitions.

As used in this Article, unless the context clearly requires otherwise:

Basic cable rates means the monthly charges for a subscription to the basic service tier and the associated equipment.

Basic service tier means a separately available service tier to which subscription is required for access to any other tier of service, including as a minimum, but not limited to, all must-carry signals, all PEG channels and all domestic television signals other than superstations.

Benchmark means a per channel rate of charge for cable service and associated equipment which the FCC has determined is reasonable.

Cable Act of 1992 means the Cable Television Consumer Protection and Competition Act of 1992.

Cable operator means any person or group of persons:

a. Who provide cable service over a cable system and directly or through one (1) or more affiliates owns a significant interest in such a cable system; or

b. Who otherwise control or are responsible for, through any arrangement, the management and operation of such a cable system.

Channel means a unit of cable service identified and selected by a channel number or similar designation.

Cost of service showing means a filing in which the cable operator attempts to show that the benchmark rate or the price cap is not sufficient to allow the cable operator to fully recover the costs of providing the basic service tier and to continue to attract capital.

FCC means the Federal Communications Commission.

Initial basic cable rates means the rates that the cable operator is charging for the basic service tier, including charges for associated equipment, at the time the Town notifies the cable operator of the Town's qualification and intent to regulate basic cable rates.

Must-carry signal means the signal of any local broadcast station (except superstations) which is required to be carried on the basic service tier.

PEG channel means the channel capacity designated for public, educational or governmental use and facilities and equipment for the use of that channel capacity.

Price cap means the ceiling set by the FCC on future increases in basic cable rates regulated by the Town, based on a formula using the GNP fixed weight price index, reflecting general increases in the cost of doing business and changes in overall inflation.

Reasonable rate standard means a per channel rate that is at, or below, the benchmark or price cap level.

Superstation means any nonlocal broadcast signal secondarily transmitted by satellite. (Ord. 3-1994 §1)

Sec. 5-182. Initial review of basic cable rates.

(a) Notice. Upon the adoption of this Article and the certification of the Town by the FCC, the Town shall immediately notify all cable operators in the Town by certified mail, return receipt requested, that the Town intends to regulate subscriber rates charged for the basic service tier and associated equipment as authority by the Cable Act of 1992.

(b) Cable operator response. Within thirty (30) days of receiving notice from the Town, a cable operator shall file with the Town its current rates for the basic service tier and associated equipment and any supporting material concerning the reasonableness of its rates.

(c) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rates for the basic service tier and associated equipment are within the FCC's reasonable rate standard, as determined by the applicable benchmark, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their views; and

b. Act to approve the rates within thirty (30) days from the date the cable operator filed its basic cable rates with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its basic cable rates with the Town, the proposed rates will continue in effect.

(d) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rates in issue are within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, within thirty (30) days from the date the cable operator filed its basic cable rates with the Town, and by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that a rate is within the FCC's reasonable rate standard; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate above the applicable benchmark.

(2) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf the amounts are paid.

(e) Public hearing. During the extended review period and before taking action on the proposed rate, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(f) Objections. Any interested person who wishes to make an objection to the proposed initial basic rate may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(g) Benchmark analysis. If a cable operator submits its current basic cable rate schedule as being in compliance with the FCC's reasonable rate standard, the Board of Trustees shall review the rates using the benchmark analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the initial basic cable rates shall be established as follows:

(1) If the current basic cable rates are below the benchmark, those rates shall become the initial basic cable rates and the cable operator's rates will be capped at that level.

(2) If the current basic cable rates exceed the benchmark, the rates shall be the greater of the cable operator's per channel rate on September 30, 1992, reduced by ten percent (10%), or the applicable benchmark, adjusted for inflation and any change in the number of channels occurring between September 30, 1992, and the initial date of regulation.

(3) If the current basic cable rates exceed the benchmark, but the cable operator's per channel rate was below the benchmark on September 30, 1992, the initial basic cable rate shall be the benchmark, adjusted for inflation.

(h) Cost-of-service showings. If a cable operator does not wish to reduce the rates to the permitted level, the cable operator shall have the opportunity to submit a cost-of-service showing in an attempt to justify initial basic cable rates above the FCC's reasonable rate standard. The Board of Trustees will review a cost-of-service submission pursuant to FCC standards for cost-of-service

review. The Board of Trustees may approve initial basic cable rates above the benchmark if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in rates below the benchmark or below the cable operator's September 30, 1992 rates minus ten percent (10%), will prescribe the cable operator's new rates.

(i) Decision.

(1) By formal resolution. After completion of its service of the cable operator's proposed rates, the Board of Trustees shall adopt its decision by formal resolution. The decision shall include one (1) of the following:

a. If the proposal is within the FCC's reasonable rate standard or is justified by a cost-of-service analysis, the Board of Trustees shall approve the initial basic cable rates proposed by the cable operator; or

b. If the proposal is not within the FCC's reasonable rate standard and the cost-of-service analysis, if any, does not justify the proposed rates, the Board of Trustees shall establish initial basic cable rates that are within the FCC's reasonable rate standard or that are justified by a cost-of-service analysis.

(2) Rollbacks and refunds. If the Board of Trustees determines that the initial basic cable rates as submitted exceed the reasonable rate standard or that the cable operator's cost-of-service showing justifies lower rates, the Board of Trustees may order the rates reduced in accordance with subparagraph (g) or (h) above, as applicable. In addition, the Board of Trustees may order the cable operator to pay to subscribers refunds of the excessive portion of the rates with interest (computed at applicable rates published by the Internal Revenue Service for tax refunds and additional tax payments), retroactive to September 1, 1993. The method for paying any refund and the interest rate will be in accordance with FCC regulations as directed in the Board of Trustees' decision resolution.

(3) Statement of reasons for decision and public notice. If rates proposed by a cable operator are disapproved in whole or in part, or if there were objections made by other parties to the proposed rates, the resolution must state the reasons for the decision and the Board of Trustees must give public notice of its decision. Public notice will be given by advertisement once in the official newspaper of the Town.

(j) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-183. Review of request for increase in basic cable rates.

(a) Notice. A cable operator in the Town who wishes to increase the rates for the basic service tier or associated equipment shall file a request with the Town and notify all subscribers at least thirty (30) days before the cable operator desires the increase to take effect. This notice may not be given more often than annually and not until at least one (1) year after the determination of the initial basic cable rates.

(b) Expedited determination and public hearing.

(1) If the Board of Trustees is able to expeditiously determine that the cable operator's rate increase request for basic cable service is within the FCC's reasonable rate standard, as determined by the applicable price cap, the Board of Trustees shall:

a. Hold a public hearing at which interested persons may express their view; and

b. Act to approve the rate increase within thirty (30) days from the date the cable operator filed its request with the Town.

(2) If the Board of Trustees takes no action within thirty (30) days from the date the cable operator filed its request with the Town, the proposed rates will go into effect.

(c) Extended review period.

(1) If the Board of Trustees is unable to determine whether the rate increase is within the FCC's reasonable rate standard based on the material before it, or if the cable operator submits a cost-of-service showing, the Board of Trustees shall, by adoption of a formal resolution, invoke the following additional periods of time, as applicable, to make a final determination:

a. Ninety (90) days if the Board of Trustees needs more time to ensure that the requested increase is within the FCC's reasonable rate standard as determined by the applicable price cap; and

b. One hundred fifty (150) days if the cable operator has submitted a cost-of-service showing seeking to justify a rate increase above the applicable price cap.

-(2) The proposed rate increase is tolled during the extended review period.

(3) If the Board of Trustees has not made a decision within the ninety (90) or one hundred fifty (150) day period, the Board of Trustees shall issue a brief written order at the end of the period requesting the cable operator to keep accurate account of all amounts received by reason of the proposed rate increase and on whose behalf the amounts are paid.

(d) Public hearing. During the extended review period and before taking action on the requested rate increase, the Board of Trustees shall hold at least one (1) public hearing at which interested persons may express their views and record objections.

(e) Objections. Any interested person who wishes to make an objection to the proposed rate increase may request the Town Clerk to record the objection during the public hearing or may submit the objection in writing any time before the decision resolution is adopted. In order for an objection to be made part of the record, the objector must provide the Town Clerk with the objector's name and address.

(f) Delayed determination. If the Town Council is unable to make a final determination concerning a requested rate increase within the extended time period, the cable operator may put the increase into effect, subject to subsequent refund if the Board of Trustees later issues a decision disapproving any portion of the increase.

(g) Price cap analysis. If a cable operator presents its request for a rate increase as being in compliance with the FCC's price cap, the Board of Trustees shall review the rate using the price cap analysis in accordance with the standard form authorized by the FCC. Based on the Board of Trustees' findings, the basic cable rates shall be established as follows:

(1) If the proposed basic cable rate increase is within the price cap established by the FCC, the proposed rates shall become the new basic cable rates.

(2) If the proposed basic cable rate increase exceeds the price cap established by the FCC, the Board of Trustees shall disapprove the proposed rate increase and order an increase that is in compliance with the price cap.

(h) Cost-of-service showings. If a cable operator submits a cost-of-service showing in an attempt to justify a rate increase above the price cap, the Board of Trustees will review the submission pursuant the FCC standards for cost-of-service review. The Board of Trustees may approve a rate increase above the price cap if the cable operator makes the necessary showing; however, a cost-of-service determination resulting in a rate below the price cap or below the cable operator's then current rate will prescribe the cable operator's new rate.

(i) Decision. The Board of Trustees' decision concerning the requested rate increase shall be adopted by formal resolution. If a rate increase proposed by a cable operator is disapproved in whole or in part, or if objections were made by other parties to the proposed rate increase, the resolution must state the reasons for the decision. Objections may be made at the public hearing by a person requesting the Town Clerk to record the objection or may be submitted in writing at any time before the decision resolution is adopted.

(j) Refunds. The Board of Trustees may order refunds of subscribers' rate payments with interest if:

(1) The Board of Trustees was unable to make a decision within the extended time period as described in Paragraph (c) above;

(2) The cable operator implemented the rate increase at the end of the extended review period; and

(3) The Board of Trustees determines that the rate increase as submitted exceeds the applicable price cap or that the cable operator failed to justify the rate increase by a cost-of-service showing, and the Board of Trustees disapproves any portion of the rate increase.

(k) Appeal. The Board of Trustees' decision concerning rates for the basic service tier or associated equipment may be appealed to the FCC in accordance with applicable federal regulations. (Ord. 3-1994 §1)

Sec. 5-184. Cable operator information.

(a) Town may require.

(1) In those cases when the cable operator has submitted initial rates or proposed an increase that exceeds the reasonable rate standard, the Board of Trustees may require the cable operator to produce information in addition to that submitted, including proprietary information, if needed to make a rate determination. In these cases, a cable operator may request the information be kept confidential in accordance with this Section.

(2) In cases where initial or proposed rates comply with the reasonable rate standard, the Board of Trustees may request additional information only in order to document that the cable operator's rates are in accord with this Section.

(b) Request for confidentiality.

(1) A cable operator submitting information to the Board of Trustees may request in writing that the information not be made routinely available for public inspection. A copy of the request shall be attached to and cover all of the information and all copies of the information to which it applies.

(2) If feasible, the information to which the request applies shall be physically separated from any information to which the request does not apply. If this is not feasible, the portion of the information to which the request applies shall be identified.

(3) Each request shall contain a statement of the reasons for withholding inspection and a statement of the facts upon which those reasons are based.

(4) Casual requests which do not comply with the requirements of this Subsection shall not be considered.

(c) Board of Trustees action. Requests which comply with the requirements of Subsection (b) will be acted upon by the Board of Trustees. The Board of Trustees will grant the request if the cable operator presents by a preponderance of the evidence a case for nondisclosure consistent with applicable federal regulations. If the request is granted, the ruling will be placed in a public file in lieu of the information withheld from public inspection. If the request does not present a case for nondisclosure and the Board of Trustees denies the request, the Board of Trustees shall take one (1) of the following actions:

(1) If the information has been submitted voluntarily without any direction from the Town, the cable operator may request that the Town return the information without considering it. Ordinarily, the Town will comply with this request. Only in the unusual instance that the public interest so requires will the information be made available for public inspection.

(2) If the information was required to be submitted by the Board of Trustees, the information will be made available for public inspection.

(d) Appeal. If the Board of Trustees denies the request for confidentiality, the cable operator may seek review of that decision from the FCC within five (5) working days of the Board of Trustees' decision and the release of the information will be stayed pending view. (Ord. 3-1994 §1)

Sec. 5-185. Automatic rate adjustments.

(a) Annual inflation adjustment. In accordance with FCC regulations, the cable operator may adjust its capped base per channel rate for the basic service tier annually by the final GNP-PI index.

(b) Other external costs.

(1) The FCC regulations also allow the cable operator to increase its rate for the basic service tier automatically to reflect certain external cost factors to the extent that the increases in cost of those factors exceed the GNP-PI. These factors include retransmission consent fees, programming costs, state and local taxes applicable to the provision of cable television service, and costs of franchise requirements. The total cost of an increase in a franchise fee may be automatically added to the base per channel rate, without regarding to its relation to the GNP-PI.

(2) For all categories of external costs other than retransmission consent and franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation, or February 28, 1994, whichever occurs first. The permitted per channel charge may not be adjusted for costs of retransmission consent fees or changes in those fees incurred before October 6, 1994.

(c) Notification and review. The cable operator shall notify the Town at least thirty (30) days in advance of a rate increase based on automatic adjustment items. The Town shall review the increase to determine whether the item or items qualify as automatic adjustments. If the Town makes no objection within thirty (30) days of receiving notice of the increase, the increase may go into effect. (Ord. 3-1994 §1)

Sec. 5-186. Enforcement.

(a) Refunds. The Town may order the cable operator to refund to subscribers a portion of previously paid rates under the following circumstances:

(1) A portion of the previously paid rates have been determined to be in excess of the permitted tier charge or above the actual cost of equipment; or

(2) The cable operator fails to comply with a valid rate order issued by the Town.

(b) Fines. If the cable operator fails to comply with a rate decision or refund order, the cable operator shall be subject to a fine of five hundred dollars ($500.00) for each day the cable operator fails to comply. (Ord. 3-1994 §1)

Secs. 5-187—5-200. Reserved.

CHAPTER 6

Business Licenses and Regulations

ARTICLE I

Alcoholic Beverages

Sec. 6-1. Definitions.

As used in this Article, unless the context otherwise requires:

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 (Article 46 of Title 12, C.R.S.) or the holder of a license to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 47 of Title 12, C.R.S.). (Prior code 5.20.010)

Sec. 6-2. Power and purpose.

The Board of Trustees finds and determines that it is empowered by Articles 46 and 47 of Title 12, 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. (Prior code 5.12.010; Ord. 15-1997 §1)

Sec. 6-3. Licensing application fees.

In addition to the license fee as established by state statute, each application for a license as provided for in Article 46 or 47 of Title 12, C.R.S., shall be accompanied by a local license application fee in an amount as set forth in this Section.

(1) For a new license, the sum of five hundred dollars ($500.00).

(2) For a change of location or transfer of ownership of a license, the sum of five hundred dollars ($500.00).

(3) For renewal of a license, the sum of fifty dollars ($50.00); except where a license has expired prior to the licensee making application for renewal, in which case the fee shall be five hundred dollars ($500.00).

(4) For a temporary permit, the sum of one hundred dollars ($100.00).

(5) For each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders or members for corporate applicants or limited liability companies, the sum of one hundred dollars ($100.00) per person; however, such fee shall not be collected if the applicant has already undergone a background investigation by and paid a fee to the state licensing authority. (Prior code 5.12.020; Ord. 15-1997 §1)

Sec. 6-4. Suspension or revocation; fine.

(a) Whenever a decision of the Board of Trustees, acting as the local licensing 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 Board of Trustees, acting as the local licensing authority, for permission to pay a fine in lieu of having his or her retail license suspended for all or part of the suspension period. Upon the receipt of the petition, the Board of Trustees, acting as the local licensing 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 or her 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 Board of Trustees, acting as the local licensing 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 Board of Trustees, acting as the local licensing 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 Board of Trustees, acting as the local licensing 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 Board of Trustees, acting as the local licensing authority. (Prior code 5.20.020)

Sec. 6-5. Delegation of authority to Town Clerk to issue licenses.

The Town Clerk is vested with authority to review and approve applications for liquor license renewals and transfers, special event licenses and temporary permits pursuant to the following criteria:

(1) Renewals and transfers.

a. The timely submission of a complete application and the payment of all fees by the applicant.

b. The referral of the application by the Town Clerk to the Police Department and other appropriate Town departments for review and comment.

c. For license transfers, whether the applicant satisfies the eligibility criteria set forth in Section 12-47-307, C.R.S.

d. Whether there exists facts or information on the application, or as provided in referral comments, illustrating reasonable grounds or good cause to deny the application.

(2) Special event licenses.

a. The timely submission of a complete application and the payment of all fees by the applicant.

b. The referral of the application by the Town Clerk to the Police Department and other appropriate Town departments for review and comment.

c. The timely and proper posting of a conspicuous public notice of the proposed license and protest procedures at the location sought to be licensed.

d. Whether the application and applicant satisfy the eligibility criteria set forth in Sections 12-48-102 and 12-48-103, C.R.S.

e. Whether there exists facts or information on the application, or as provided in referral comments or a protest against the license filed by affected persons, illustrating grounds or good cause to deny the application.

(3) Temporary permits.

a. The timely submission of a complete application and the payment of all fees by the applicant.

b. The timely filing of an application for the transfer of the liquor license corresponding to the application for a temporary permit.

c. Whether the premises subject to the proposed temporary permit is currently subject to a valid liquor license.

(4) In the event the Town Clerk cannot or will not approve a transfer or renewal of a license, or the issuance of a special event license or temporary permit, then the Clerk shall automatically and promptly agendize the application for public hearing before the Board of Trustees acting as the local liquor licensing authority. Written notice of the time and place of the hearing shall be mailed to the applicant by regular mail at least ten (10) days in advance thereof and shall contain such facts or reasons relied upon by the Clerk to initially deny the license or permit. Notice of the hearing shall also be timely published and posted on the subject premises in accordance with the requirements set forth in Section 12-47-311, C.R.S, and timely provided to any person who may have filed a protest against the issuance of the license with the Town Clerk. Additionally, any license or permit applicant dissatisfied with a decision of the Town Clerk under this Section may appeal the same to the Board of Trustees by filing a written protest with the Town Clerk not less than ten (10) days after the date of the decision appealed from. The Town Clerk shall promptly set the appeal for hearing before the Board of Trustees in accordance with the notice and hearing procedures described above.

(5) The Town Clerk shall not approve an application for the renewal or transfer of a license, nor issue a special event permit, where the Police Department has timely submitted written objections to the Clerk concerning such action. Whenever such an objection is received, the Clerk shall set the application for hearing before the Board of Trustees in accordance with the procedures set forth in Paragraph (4) above.

(6) The Town Clerk, for good cause, may waive the forty-five-day time requirement for filing a license renewal application. (Ord. 12-2000 §1)

Sec. 6-6. Alcoholic beverage tastings authorized.

Pursuant to Section 12-47-301(10)(a), C.R.S., the Town authorizes alcoholic beverage tastings for licensed retail liquor stores and liquor-licensed drugstores 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 Title 12, Chapter 47, C.R.S. (Ord. 7-2004)

Sec. 6-7. Elimination of distance restriction from schools.

Pursuant to Section 12-47-313(1)(d)(III) C.R.S., as amended, the distance restriction imposed by Section 12-47-313(1)(d)(I) C.R.S., as amended, is hereby reduced to one hundred fifty (150) feet from the Avery Parsons Elementary School and Chaffee County High School for hotel and restaurant classes of liquor licenses. (Ord. 5-2006 §1)

Sec. 6-8. Special event permits.

(a) Pursuant to Section 12-48-107(5)(a), C.R.S., the Board of Trustees or its authorized agent, acting as 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 alcohol 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 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 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. (Ord. 9 §1, 2011)

Secs. 6-9—6-20. Reserved.

ARTICLE II

Business Licenses

Sec. 6-21. Business license requirement.

It shall be unlawful for any person or entity to conduct, engage in or establish a business or place of business in the Town, including a home occupation, without having first obtained a business license. Additionally, certain businesses or business activities defined in this Article shall be subject to special supplemental licensing requirements. A separate business license shall be required for each place of business and, unless otherwise specifically provided on the license, a business license shall expire on December 31 of the year in which it was issued, unless sooner revoked. (Ord. 14-2002 §2)

Sec. 6-22. Definitions.

(a) *Business* means any activity engaged in with the object of financial or other gain, benefit, advantage or profit, either direct or indirect, including, by way of example, the sale, supply or

delivery of goods or services, and including such activities conducted by home occupations and professions and nonprofit organizations.

(b) *Business license* means a license issued pursuant to the terms of this Article and includes peddler, solicitor and transient merchant licenses, general business licenses, special event business licenses, and tree service and massage parlor licenses.

(c) *General business license* means a license issued to engage in a business not subject to the special licensing requirements applicable to specific businesses or business activities identified in this Article.

(d) *Home occupation* means an occupation, vocation or business engaged in business from a residence in accordance with the regulations governing home occupations in Chapter 16 of this Code.

(e) *Massage parlor* shall have that meaning as provided under the Colorado Massage Parlor Code, Section 12-48.5-103, C.R.S.

(f) *Nonprofit business* or *organization* means a business or organization that has been lawfully established in accordance with the Colorado Revised Nonprofit Corporation Act and/or which has received nonprofit tax exempt status under the Internal Revenue Code by the Internal Revenue Service, U.S. Department of the Treasury.

(g) *Peddler* means any person, whether a resident of the Town or not, who goes from house to house, from place to place, or from street to street by foot or by vehicle, conveying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and delivering articles or services to purchasers.

(h) *Retailer* or *retail business* means a person or business engaged in the sale of tangible personal property, goods or services to a consumer or user, and not for resale.

(i) *Sales tax license* means the license required by the Colorado Department of Revenue for persons or businesses conducting retail sales or a retail sales business.

(j) *Solicitor* means any person, whether a resident of the Town or not, traveling either by foot or vehicle from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery, or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether he or she is collecting advance payments on such sales or not.

(k) *Special business event* or *fund-raising event* means a special event occurring at one (1) or more locations and at which more than one (1) business, transient merchant or individual engages in the sale of tangible personal property, goods or services, whether conducted for profit or to raise funds for a nonprofit organization, e.g., craft shows and swap meets.

(l) *Transient merchant* means any person, whether as owner, agent, consignee or employee, and whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares, services or merchandise within the Town and who, in furtherance of such purpose,

hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, hotel room, lodging house, apartment, shop or storefront, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares, services and merchandise.

(m) *Tree service* means a business engaged in the trimming, cutting or spraying of trees. (Ord. 14-2002 §2)

Sec. 6-23. License application; denials.

(a) An application for a general or other business license shall be made to the Town Clerk on forms provided therefor. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license, and it shall be unlawful for any person to make any false statement or misrepresentation in connection with any license application.

(b) Except as otherwise provided for in this Article, the Town Clerk shall have the power to grant or deny a license and to impose reasonable limitations and restrictions on any license so granted consistent with the provisions in this Article. Denials shall be for cause. Written notice of the denial shall be provided the applicant, which notice shall include the grounds for denial. Fifty percent (50%) of the license fee paid for any license so denied shall be returned to the applicant.

(c) The following nonexclusive reasons may constitute cause for denial of a business license:

(1) Previous revocation or suspension of a business license held by the applicant;

(2) Nonconformance of the premises or building to be used for the business with the requirements of pertinent Town health or safety codes;

(3) Nonconformance of the business with zoning regulations; however, issuance of a business license shall not mean, nor shall issuance of a business license be construed, as a determination that a proposed business, business activity, or business premises satisfies all applicable zoning or other land use regulations; and

(4) The failure of a person or business engaged in, or intending to engage in, retail sales to possess a valid Colorado sales tax license.

(d) A denial of a business license application may be appealed by the applicant to the Board of Trustees by filing a written notice of appeal with the Town Clerk within ten (10) days from the date of the notice of denial. (Ord. 14-2002 §2)

Sec. 6-24. License fee.

(a) The fee for a business license shall be established and amended from time to time by written resolution adopted by the Board of Trustees, and must be deposited with the Town Clerk prior to consideration of a license application. A separate license fee may be assessed for each business license required under this Article. Notwithstanding the foregoing, nonprofit organizations shall be exempt from having to pay a business license fee, except for the fee for a special events license.

(b) Any licensee who fails to renew his or her business license for an existing business on or before January 31 of each year shall pay a late charge equal to fifty percent (50%) of the amount of

the license fee in addition to the license fee. The late charge shall be paid to the Town Clerk prior to consideration of the application to renew the business license. (Ord. 14-2002 §2)

Sec. 6-25. License contents; record keeping; application forms.

All licenses shall specify the name of the licensee, a business address, the nature of the business, the term of the license, the place, if any, to which the license attaches, the amount payable thereon, and the date upon which it expires. The Town Clerk shall attest to all licenses granted and keep an adequate record thereof. (Ord. 14-2002 §2)

Sec. 6-26. Display of license.

Every license granted under the provisions of this Article shall be posted in a conspicuous place at the place of business for the full term of the license. Licenses shall be removed upon expiration. It shall also be the duty of every person to whom a license has been issued to show the same at any time during which business is being conducted when requested to do so by any Town official or business customer. (Ord. 14-2002 §2)

Sec. 6-27. License suspension or revocation; grounds.

The Board of Trustees shall have the power to revoke or suspend any license issued under this Article upon notice to the licensee and a hearing as hereinafter provided for any of the following reasons:

(1) Providing false or fraudulent information on a license application or to the Town Clerk or other Town official;

(2) Conviction on any violation of federal, state or municipal law committed in the course of operating a licensed business;

(3) Repeated violations of one (1) or more Town ordinances at the licensee's place of business by the licensee;

(4) The conduct of the licensee's business creates a breach of the peace or a public nuisance;

(5) The business is of such a nature, or is operated in such a manner, that it is frequented by individuals who consistently disrupt the normal and reasonable peace and tranquility of the neighborhood, or who intimidate, threaten or harass any other business or person in the immediate neighborhood;

(6) The licensee fails to keep and maintain permanent records which, in accordance with accepted accounting practices, are necessary for establishing the licensee's sales tax liability;

(7) The licensee remains in arrears in payment of sales tax or other monies, including fines and fees, due the Town or Colorado Department of Revenue for more than thirty (30) days after payment is due, or fails to obtain and maintain a valid state sales tax license if engaged in retail sales. (Ord. 14-2002 §2)

Sec. 6-28. License suspension or revocation; hearing.

(a) The Board of Trustees may, on its own motion or otherwise, proceed to suspend or revoke for just cause any business license after notice to the licensee and a hearing as provided in this Article.

(b) Notice of a suspension or revocation hearing by Board of Trustees shall be posted at the licensee's place of business, if any, and mailed to the licensee by certified U.S. Mail, return receipt requested, or hand-delivered at least ten (10) days prior to the hearing.

(c) Every notice of suspension, revocation and/or hearing shall set forth in plain language the grounds for suspension or revocation and direct the licensee to appear before the Board of Trustees at a specified time and date to show cause why the license should not be suspended or revoked.

(d) The public hearing by the Board of Trustees shall include:

(1) A reading of the grounds set forth in the show cause/hearing notice allegedly warranting the suspension or revocation of the licensee's business license.

(2) The presentation by the Town Administrator or other Town official of any and all testimony, evidence, documents or other information supporting the suspension or revocation of the licensee's business, license.

(3) The presentation by the licensee of any testimony, evidence, documents or any other information in defense or rebuttal of the allegations or grounds asserted for the suspension or revocation of the licensee's business license. The licensee may present his or her defense by or with the assistance of legal counsel.

(4) The Mayor may place under oath persons testifying or otherwise providing information at the hearing, and all such persons shall be subject to examination by the Board of Trustees and the licensee.

(e) Based on the record of the public hearing, the Board of Trustees may cause the licensee's business license to be suspended or revoked. All decisions by the Board of Trustees shall be reduced to writing and a copy shall be provided to the licensee. (Ord. 14-2002 §2)

Sec. 6-29. Licensing of business in annexed property.

In the event that any business, trade or occupation is being conducted on property at the time of the annexation of such property to the Town, and the person carrying on or engaging in the business, trade or occupation is doing so lawfully and in conformance with all existing laws and statutes governing such property, the conduct of such business, trade or occupation may be continued upon and subsequent to the annexation of the property to the Town; provided that the applicable license fee is paid within ten (10) days of annexation. In subsequent calendar years, the business must conform to all licensing requirements contained in this Article. (Ord. 14-2002 §2)

Sec. 6-30. Special events business license.

(a) Any person or organization conducting or sponsoring a special business or fund-raising event must apply for and obtain a special events business license from the Town and pay the fee therefor.

Applications for a license shall be made on forms provided by the Town Clerk. No special events business license for an event occurring on Town-owned property or right-of-way shall be issued without the applicant or person or organization sponsoring the event having first obtained a permit from the Town to use or occupy the Town-owned property as required by Article VI of Chapter 11 of this Code.

(b) Applications for a special events business license must be submitted not less than thirty (30) days prior to the date of the special event and must identify the name and address of each person or organization sponsoring the event. Applications must be accompanied by a written plan describing, at a minimum, the manner in which the special event shall be conducted, including, without limitation, (i) a description of all proposed activities and any booths or other structures to be constructed or utilized, (ii) a list of all transient merchants and other businesses participating in the special event, and (iii) whether a street closure will be necessary.

(c) Applications for a special event business license shall be approved or denied by the Town Administrator. No license shall be issued for an event on Town-owned property or right-of-way without written verification that the licensee has and shall continue to maintain general liability insurance sufficient to insure and indemnify the Town against any injury to person or property that might arise from or during the event. Insurance coverage shall be in amounts not less than those recovery limits set forth in the Colorado Government Immunity Act, Section 24-10-114, C.R.S., or any successor statute thereto.

(d) All licensees shall inform each person or organization intending to make, or making, any retail sale at the special event of their duty to secure a Colorado sales tax license and to collect and remit the appropriate sales taxes, unless the event sponsor or organizer elects to collect and remit such taxes under its own sales tax license, if any.

(e) Where the event sponsor or organizer elects to collect sales taxes under its own sales tax license, said sponsor or organizer shall submit to the Town Clerk within thirty (30) days after the conclusion of the special event a written financial report reflecting, at a minimum, total sales of goods and/or services generated at the special event and the total sales tax revenues collected. Compliance with the reporting requirements in this Subsection shall be in addition to any required sales tax reporting due to the Colorado Department of Revenue.

(f) Any transient merchant or business authorized by the event sponsor to participate in a licensed special event shall be exempt from having to obtain an individual business license to conduct business at such event. (Ord. 14-2002 §2)

Sec. 6-31. Massage parlor license.

(a) Notwithstanding any other provision in this Article, no person, corporation, business or other entity shall operate a massage parlor within the Town without first having obtained a license as required under the Colorado Massage Parlor Code. Applications for a massage parlor license shall be made on forms furnished by the Town Clerk and shall be accompanied by a nonrefundable application fee as may be established by the Board of Trustees.

(b) An application for a new massage parlor license, or the renewal of an existing license, shall be processed and reviewed in accordance with the procedures and standards set forth in the Colorado Massage Parlor Code, Sections 12-48.5-101, *et seq.*, C.R.S., or any successor statute.

(c) The fee for a new or renewed massage parlor license shall be equal to the maximum amount authorized under the Colorado Massage Parlor Code, or such lesser amount as may be established by the Board of Trustees from time to time.

(d) This Section has been adopted to implement the provisions of the Colorado Massage Parlor Code. In the event of the repeal of the Colorado Massage Parlor Code by the Colorado General Assembly, this Section shall correspondingly be deemed to be repealed and of no further effect. (Ord. 14-2002 §2)

Sec. 6-32. Peddler, solicitor and transient merchant license; prohibitions.

(a) No peddler, solicitor or transient merchant shall engage in business or operate within the corporate limits of the Town without first having obtained a license from the Town Clerk, except as otherwise provided in this Section.

(b) Applications for a license under this Section shall be filed with the Town Clerk on forms provided therefor. Such applications shall, at a minimum, contain the following information:

(1) Full name and, if a natural person, physical description and date of birth;

(2) Permanent and local addresses;

(3) Brief description of the nature of the business and the goods or services to be sold, solicited or delivered;

(4) Length of time during which business is to be conducted within the Town;

(5) Proof of a valid state sales tax license, inclusive of the license number;

(6) If a vehicle is to be used, a description of the vehicle, including the license plate number and vehicle identification number, and the name and driver's license information for the vehicle operator;

(7) A statement whether the applicant has been convicted of any crime, including misdemeanors and violations of municipal ordinances, other than traffic violations, including the jurisdiction and nature of the offense and the penalty imposed;

(8) No license shall be issued under this Section absent the payment of a fee as established by the Board of Trustees.

(c) Transient merchants participating in a licensed special event need not obtain a separate license as otherwise required under this Section if they have previously registered with the event sponsor.

(d) Except as may be otherwise allowed for sponsored special events, every individual who is a peddler, solicitor or transient merchant shall be required to make an individual application and obtain a license, which shall be issued in the individual's name. Any license issued to a firm, association or corporation shall include the name of the authorized representative of the firm, association or corporation, and the name of the individual authorized representative shall appear on the application.

No license shall be transferable or be used by any other person than the individual whose name appears thereon and if a firm, association, corporation or other entity is to have more than one (1) representative engaged in business within the Town, then a separate license shall be required for each representative.

(e) It is unlawful for any peddler, solicitor or transient merchant to go uninvited upon any property, or approach any person upon property, that is posted by a sign that states "No Solicitors or Peddlers," or contains some similar warning or prohibition, or to engage in door-to-door sales or solicitations at private residences between the hours of 8:00 p.m. and 9:00 a.m. on the following day.

(f) The following persons, organizations or activities shall be exempt from the licensing requirements contained in this Section:

(1) Self-employed farmers or gardeners that go door-to-door or from place to place to sell and deliver, or offer for sale and delivery, fruits, vegetables or other agricultural produce grown by them; but excluding roadside or other temporary produce stands.

(2) Merchants who have acquired a business license and operate within their established business premises or at a licensed special event.

(3) Organizations or persons engaged in door-to-door political or religious advocacy or religious proselytizing.

(4) Salespersons or merchants engaged in selling products wholesale or delivering services directly to licensed retail businesses.

(5) Door-to-door newspaper delivery and persons delivering goods or services to preestablished residential customers pursuant to a regular schedule over a defined and established route. (Ord. 14-2002 §2)

Sec. 6-33. Tree service license.

(a) No person shall engage in the business of tree trimming, tree cutting or tree spraying within the corporate limits of the Town without first having obtained a license from the Town Clerk's office and paid a nonrefundable license fee in an amount established by the Board of Trustees.

(b) Application for a tree service license shall be made on forms provided therefor by the Town Clerk. Before such license shall be issued, the applicant must file with the Town Clerk proof of insurance issued by an insurance company authorized to do business in the State, which insurance shall provide general liability insurance coverage for property damage, personal injury or death arising from the applicant's operation of vehicles and equipment used in the trimming, cutting or spraying of trees, and which shall be in an amount not less than those judgment limitations set forth in the Colorado Government Immunity Act, Section 24-10-114, C.R.S., or any successor statute thereto. The insurance policy shall include liability coverage for any employee or agent of the licensee engaged in tree trimming, cutting or spraying. Such policy shall also carry an endorsement providing for written ten-day advance notice to the Town of any cancellation or discontinuance of coverage. A license issued under this Section shall be automatically revoked upon receipt by the Town of cancellation of the required insurance policy and notice to the licensee. (Ord. 14-2002 §2)

Sec. 6-34. Cease and desist orders.

If any business within the Town is operating without a license required under this Article, the Town Clerk may issue an order to the business to cease and desist all further operations until a license is issued for the business. The order shall give the business three (3) days to comply with all applicable licensing requirements, secure the necessary license, and pay all amounts due the Town, or to post a bond in the amount owing the Town and to request in writing a hearing before the Board of Trustees. If the business does nothing, it shall cease operations on the third day. If a hearing is requested, the Town Clerk shall promptly schedule same before the Board of Trustees and notify the subject business in writing of the time and date thereof. The proceedings shall not relieve or discharge anyone from the liability for the payment of the taxes, penalties and interest due and owing to the Town, or from the prosecution of any offense committed under the Town's ordinances. (Ord. 14-2002 §2)

Sec. 6-35. Sales tax license.

All persons or businesses engaged in retail sales or a retail business within the Town must obtain and retain a valid Colorado sales tax license as required under the Emergency Retail Sales Act of 1935 during all times in which such business is being conducted. (Ord. 14-2002 §2)

Sec. 6-36. Exemptions.

Notwithstanding the licensing provisions set forth in this Article, the following activities shall be exempt from the business license requirements:

(1) That activity commonly known and referred to as a residential garage sale or rummage sale, or similar irregular private noncommercial activity; but only if the person or organization engaged in such activity conducts not more than four (4) such sales in any calendar year.

(2) The door-to-door delivery of newspapers.

(3) The performance of odd jobs or services by self-employed minors.

(4) The door-to-door sale of food or other items by members of a nonprofit organization as part of a fund-raising campaign. (Ord. 14-2002 §2)

Sec. 6-37. Penalty.

Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person found guilty of or who pleads guilty or *nolo contenders* to a violation of any section of this Article shall be subject to a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed one (1) year, or both such fine and imprisonment. (Ord. 14-2002 §2)

Secs. 6-37—6-40. Reserved.

ARTICLE III

Commercial River Rafting and Kayaking Fees and Requirements

Sec. 6-41. Definitions.

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

Commercial operator means a person engaged in the business of providing rafting tours and excursions for profit; and a person engaged in the business of providing kayaking tours, excursions or instruction for profit.

Kayak means a portable boat styled like an Eskimo kayak.

Launch means the act of boarding passengers in a raft for the purpose of commencing a river rafting trip or excursion; and the act of inserting a kayak into a river for the purpose of commencing a kayaking trip, excursion or period of instruction.

Raft means an inflatable watercraft designed primarily to transport persons on sightseeing, fishing and similar tours.

Town's launching facility means that facility located on the Town's leasehold in the west one-half of Section 9, Township 14 South, Range 78 West of the 6th P.M., Chaffee County, Colorado, which is adjacent to the Arkansas River and which is specifically designed and constructed for the purpose of permitting river rafts, boats, kayaks and other watercraft to be placed in the Arkansas River. (Prior code 5.16.010)

Sec. 6-42. Annual permit and fee.

No commercial operator may launch a raft, kayak or other watercraft from the Town's launching facility without having first obtained an annual permit. Permits shall be obtained from the Town Clerk upon application and the payment of a nonrefundable fee, which fee shall be established by the Board of Trustees. Permits shall only be issued upon proof of insurance as required in Section 6-43 of this Article and shall expire at the end of the calendar year in which they were issued. (Prior code 5.16.020; Ord. 6-1991 §1; Ord. 10-1992 §1; Ord. 6-1998, §3)

Sec. 6-43. Proof of insurance required.

Before a commercial operator shall be permitted to launch a raft or kayak from the Town's launching facility, he or she shall first provide to the Town Clerk a copy of the current public liability insurance policy with one (1) or more insurance carriers licensed to do business in the State who are acceptable to the Town insuring claims and demands made by any person or persons for injuries received in connection with, or arising out of, the commercial operator's use of the Town's launching facility. Such policy or policies shall contain limits of liability of not less than the monetary limitations for judgments against municipalities provided from time to time by the Colorado Governmental Immunity Act, Section 24-10-101, *et seq*., C.R.S., or any successor statute. Such policy shall name the Town and the raft operator as named insureds under such policy and shall be approved by the Town before the commercial operator shall be entitled to use the Town's launching

facility. The commercial operator shall maintain such insurance in full force and effect at all times while using the Town's launching facility. The subject policy shall require at least ten (10) days' advance notice to the Town prior to cancellation of such policy. (Prior code 5.16.030; Ord. 9-1991 §1; Ord. 7-1992 §1; Ord. 4-1993 §1)

Secs. 6-44—6-49. Reserved.

ARTICLE IV

Medical Marijuana

Sec. 6-50. Purpose and incorporation of state law.

(a) The purpose of this Article is to implement the provisions of the Colorado Medical Marijuana Code, Section 12-43.3-101, C.R.S., which authorizes the licensing and regulation of medical marijuana businesses and affords local government the option to determine whether to allow medical marijuana businesses within their respective jurisdictions and to adopt licensing requirements that are supplemental to or more restrictive than the requirements set forth in state law. By adoption of this Article, the Board of Trustees does not intend to authorize or make legal any act that is not permitted under federal or state law.

(b) The provisions of the Colorado Medical Marijuana Code, and any rules and regulations promulgated thereunder, are incorporated herein by reference, except to the extent that more restrictive or additional regulations are set forth in this Article. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-51. Definitions.

(a) For the purposes of this Article, the following terms shall have the following meanings:

Alcohol beverage shall have the meaning ascribed to such term in the Colorado Liquor Code.

Applicant means any person or entity that has submitted an application for a license or renewal of a license issued pursuant to this Article. If the applicant is an entity and not a natural person, *applicant* shall include all persons who are the members, managers, officers and directors of such entity.

Cultivation or *cultivate* means the process by which a person grows a marijuana plant.

Financial interest means any ownership interest, including, without limitation, a membership, directorship or officership or any creditor interest, whether or not such interest is evidenced by any written document.

Good cause (for the purpose of refusing or denying a license renewal under this Article) means:

a. The licensee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article;

b. The licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or

c. The licensee's medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation is located. Evidence to support such a finding can include:

1. A continuing pattern of offenses against the public peace, as defined in Article 8 of Chapter 10 of this Code;

2. A continuing pattern of drug-related criminal conduct within the premises of the medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation or in the immediate area surrounding the medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation; or

3. A continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation.

License means a document issued by the Town officially authorizing an applicant to operate a medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation pursuant to this Article.

Licensee means the person to whom a license has been issued pursuant to this Article.

Licensed premises means the premises specified in an application for a license under this Article, which is owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute or sell medical marijuana or medical marijuana-infused products in accordance with state and local law.

Limited access area means a building, room or other contiguous area upon the licensed premises where medical marijuana is grown, cultivated, stored, weighed, displayed, packaged, sold or possessed for sale, under control of the licensee, with limited access to only those persons licensed by the state licensing authority.

Local licensing authority means the Board of Trustees of the Town.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, Section 14 of the Colorado Constitution.

Medical marijuana business means a medical marijuana center, optional premises cultivation operation or medical marijuana-infused product manufacturing operation as defined in the Colorado Medical Marijuana Code.

Minor patient means a patient less than eighteen (18) years of age.

Patient means a person who has a debilitating medical condition as defined in Article XVIII, Section 14 of the Colorado Constitution.

Person means a natural person or business entity, such as, without limitation, a corporation, limited liability company, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

(b) In addition to the definitions provided in Subsection (a) above, other terms used in this Article shall have the meanings ascribed to them in Article XVIII, Section 14 of the Colorado Constitution, or the Colorado Medical Marijuana Code, and such definitions are hereby incorporated into this Article by reference. (Ord. 20 §1, 2012; Ord. 5 §1, 2013; Ord. 9 §2, 2013)

Sec. 6-52. License required.

It shall be unlawful for any person to establish or operate a medical marijuana business in the Town without first having obtained a license for such business from the local licensing authority. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this Section. Medical marijuana businesses shall only be located in the Town's B-1, B-2, B-1 OT, I-1 and PUD zone districts. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-53. Requirements of application for license; payment of application fee; denial of license.

(a) A person seeking a license or renewal of a license issued pursuant to this Article shall submit an application to the local licensing authority on forms provided by the Town Clerk. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the Town for background investigations and inspection of the proposed premises, as well as any other costs associated with the processing of the application. The application fee, as well as all license renewal fees, shall be fixed by the Board of Trustees by resolution. In addition, the applicant shall present for recording one (1) of the following forms of identification:

(1) An identification card issued in accordance with Section 42-2-302, C.R.S.;

(2) A valid state driver's license;

(3) A military identification card;

(4) An alien registration card; or

(5) A valid passport.

(b) The applicant shall also provide the following information on a form approved by or acceptable to the Town, which information shall be required for the applicant, all employees, including the proposed manager of the medical marijuana business, and all persons having a ten-percent or more financial interest in the medical marijuana business that is the subject of the application or, if the applicant is an entity, having a ten-percent or more financial interest in the entity:

(1) Name, address, date of birth.

(2) A complete set of fingerprints.

(3) An acknowledgement and consent that the Town will conduct a background investigation, including criminal history check, and that the Town will be entitled to full and complete disclosure of all financial records of the medial marijuana business, including records of deposits, withdrawals, balances and loans.

(4) If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status and proof of registration with, or a certificate of good standing from, the Colorado Secretary of State, as applicable.

(5) The name and complete address of the proposed medical marijuana business, including the facilities to be used in furtherance of such business, whether or not such facilities are or are planned to be within the territorial limits of the Town.

(6) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a medical marijuana center or cultivation facility.

(7) A deed, lease or other contractual document showing that the applicant has a right of possession of the proposed location for the medical marijuana business for the duration of the permit period.

(8) Evidence of a valid sales tax license for the business.

(9) If the medical marijuana center will be providing medical marijuana in edible form, evidence of, at a minimum, a pending application for any food establishment license or permit that may be required by the State.

(10) A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the center and cultivation facility, loading zones and all areas in which medical marijuana will be stored, grown or dispensed.

(11) A comprehensive business operation plan for the medical marijuana business which shall contain, without limitation, the following:

a. A security plan meeting the requirements of Section 6-66 of this Article;

b. A description by category of all products to be sold;

c. A signage plan that is in compliance with all applicable requirements and provisions of this Code; and

d. A plan for the disposal of medical marijuana and related byproducts to ensure that such disposal is in compliance with all applicable federal, state and local laws and regulations.

(12) For medical marijuana-infused products manufacturing operation license applications, a copy of any and all contracts between the applicant and any medical marijuana cultivation operation from which it will be purchasing medical marijuana for use in the production of medical marijuana-infused products.

(13) Any additional information that the local licensing authority reasonably determines to be necessary in connection with the investigation and review of the application.

(c) The applicant shall verify the truthfulness of the information required by this Section by the applicant's signature on the application.

(d) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical marijuana center, cultivation facility and medical marijuana-infused products manufacturing operation, including, without limitation, any development approvals or building permits required by this Article and any other applicable provisions of this Code.

(e) Upon receipt of a completed application, the local licensing authority shall circulate the application to all affected service areas and departments of the Town to determine whether the application is in full compliance with all applicable laws, rules and regulations.

(f) Upon receipt of an application for a new license, the local licensing authority shall schedule a public hearing on the application, to be held not less than thirty (30) days after the date of the completed application. The local licensing authority shall cause a notice of such hearing to be posted in a conspicuous place upon the proposed licensed premises, published in a newspaper of general circulation within the Town not less than ten (10) days prior to the hearing. Such posted notice given by posting shall include a sign of suitable material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters of not less than one (1) inch in height. Both the posted and the published notice shall state the type of license applied for, the date of the 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. The notice shall also contain the names and addresses of the officers, directors and/or managers of the facility to be licensed.

(g) Not less than five (5) days prior to the date of the public hearing for a new license, the local licensing authority shall cause its preliminary findings based on its investigation to be known in writing to the applicant and other parties in interest. The local licensing authority shall deny any application that does not meet the requirements of this Article. The local licensing authority shall also deny any application that contains any false, misleading or incomplete information. The local licensing authority shall also deny or refuse to issue a license for good cause. Denial of an application for a license shall not be subject to further administrative review but only to review by a court of competent jurisdiction.

(h) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this Article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type and availability of medical marijuana centers, optional premises cultivation operations or medical marijuana-infused products manufacturers located in or near the premises under consideration, and any other pertinent matters

affecting the qualifications of the applicant for the conduct of the type of business proposed. The local licensing authority shall issue its decision within thirty (30) days of the completion of the public hearing thereon. Such decision shall be by resolution and shall state the reasons for the decision. The resolution shall be sent via certified mail to the applicant to the address shown in the application. In the event an application is conditionally approved, the Town shall clearly set forth the conditions of approval.

(i) The Town shall, prior to issuance of the license, perform an inspection of the proposed licensed premises, including, without limitation, the proposed cultivation facility, if applicable, to determine compliance with any applicable requirements of this Article or other applicable requirements of this Code. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-54. Medical marijuana centers.

(a) With the exception of sales pursuant to those contracts described in Subsection (c) below, a licensed medical marijuana center may sell marijuana and marijuana-infused products only to registered patients or primary caregivers.

(b) The medical marijuana offered for sale and distribution must be labeled with a list of all chemical additives, including nonorganic pesticides, herbicides and fertilizers, used in cultivation and production.

(c) With the exception of medical marijuana-infused products, at least seventy percent (70%) of the medical marijuana offered for sale and/or distribution must be comprised of medical marijuana grown at the medical marijuana center's own optional premises cultivation licensed facility.

(d) Medical marijuana centers may not be co-located with facilities used to prepare, produce or assemble food, whether for medical or nonmedical purposes. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-55. Medical marijuana-infused products manufacturer.

(a) All medical marijuana-infused products shall be prepared at a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused products. The equipment used in manufacturing of medical marijuana-infused products shall be used exclusively for such manufacture and preparation of infused products.

(b) All medical marijuana-infused products shall be sealed and conspicuously labeled in compliance with state law. A medical marijuana-infused products manufacturer may not include medical marijuana from more than five (5) different medical marijuana centers in one (1) product.

(c) A medical marijuana-infused products manufacturer shall enter into a contract with any medical marijuana center for the purchase of medical marijuana to be used in the manufacturing of infused products. The contract must contain, at a minimum, the total amount of marijuana obtained by the medical marijuana center to be used in manufacturing infused products and the total amount of infused products to be manufactured. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-56. Optional premises cultivation.

An optional premises cultivation license may be issued only to a person licensed as a medical marijuana center or medical marijuana-infused products manufacturer within the corporate limits of the Town. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-57. Location criteria.

(a) Prior to the issuance of a license for a medical marijuana business, the local licensing authority shall determine whether the proposed location of the medical marijuana business complies with the requirements of this Section. Failure to comply with the requirements of this Section shall preclude issuance of a license.

(b) No medical marijuana business shall be located within one thousand (1,000) feet of any of the following locations:

(1) A licensed child care facility.

(2) Any educational institution or school, college or university, either public or private.

(3) Any other medical marijuana business, whether such business is located within or outside of the Town.

(c) The distances described in Subsection (b) above shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the unit within a building or structure housing the medical marijuana business, using a route of direct pedestrian access.

(d) Each medical marijuana business shall be operated from a permanent location. No medical marijuana business shall be permitted to operate from a movable, mobile or transitory location.

(e) The suitability of a location for a medical marijuana business shall be determined at the time of the issuance of the first license for such business. The fact that changes in the neighborhood that occur after the issuance of the first license might render the site unsuitable for a medical marijuana business under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such business so long as the license for the business remains in effect. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-58. Persons prohibited as licensees.

(a) No license shall be issued to, held by or renewed by any of the following:

(1) Any person until all applicable fees have been paid;

(2) Any person who is not of good moral character satisfactory to the local licensing authority;

(3) Any corporation, any of whose officers, directors or stockholders are not of good moral character satisfactory to the local licensing authority;

(4) Any partnership, association or company, any of whose officers are not of good moral character satisfactory to the local licensing authority;

(5) Any person employing, assisted by or financed in whole or in part by any other person who is not of good moral character and reputation satisfactory to the local licensing authority;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer and state or local licensing authority or any of its members, inspectors or employees;

(7) Any natural person under twenty-one (21) years of age;

(8) Any person who fails to file any tax return with a taxing agency, stay out of default on a government-issued student loan, pay child support or remedy outstanding delinquent taxes;

(9) Any person for a licensed location that is also a retail food establishment or wholesale food registrant;

(10) Any person who has not been a resident of Colorado for at least two (2) years prior to the date of the application;

(11) Any person who has discharged a sentence for a felony conviction within the past five (5) years;

(12) Any person who, at any time, has been convicted of a felony for drug possession, distribution or use;

(13) Any person whose license for a medical marijuana business in another town, county or state has been revoked;

(14) Any licensed physician making patient recommendations;

(15) Any entity whose directors, shareholders, partners or other persons having a financial interest in said entity do not meet the criteria set forth above; or

(16) Any person who has made a false, misleading or fraudulent statement on his or her application.

(b) Jurisdiction.

(1) In investigating the qualifications of the applicant or licensee, the local licensing 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 local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing 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) above, *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. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-59. Issuance of license; duration; renewal.

(a) Upon issuance of a license, the Town shall provide the licensee with one (1) original of such license for each center or cultivation site to be operated by the licensee in the Town. Each such copy shall show the name and address of the licensee, the type of facility or business for which it is issued and the address of the facility at which it is to be displayed.

(b) Each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this Article. All renewals of a license shall be for no more than one (1) year. An application for the renewal of an existing license shall be made to the local licensing authority not more than sixty (60) days and not less than thirty (30) days prior to the date of expiration of the license. A licensee may submit to the local licensing authority a late renewal application on the prescribed forms and pay a nonrefundable late application fee in an amount of five hundred dollars ($500.00) for a renewal application made less than thirty (30) days prior to the date of the expiration of the license. All other provisions concerning renewal applications apply to a late renewal application. The timely filing of a completed renewal application or a late renewal application shall extend the current license until a decision is made on the renewal.

(c) Notwithstanding state law to the contrary, a licensee whose license expires and for which a renewal application has not been received by the expiration date shall be deemed to have forfeited its license under this Article. The Town shall not accept renewal applications after the expiration date of such license.

(d) A licensee whose license expires shall not cultivate, process, manufacture, distribute or sell medical marijuana or medical marijuana-infused products until all necessary licenses have been obtained. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-60. Authority to impose conditions on license.

The local licensing authority shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this Article and applicable law. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-61. Annual license fee.

Upon issuance of a license or any renewal of a license, the licensee shall pay to the Town a fee in an amount determined by the local licensing authority to be sufficient to cover the annual cost of inspections conducted by the Police Department, and such other departments of the Town as may be designated by the local licensing authority, for the purpose of determining compliance with the provisions of this Article and any other applicable state or local laws or regulations. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-62. Display of license.

(a) Each license shall be limited to use at the premises specified in the application for such license.

(b) Each license shall be continuously posted in a conspicuous location at the medical marijuana facility. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-63. Management of licensed premises; changes in manager or financial interest.

(a) Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of such manager to the local licensing authority. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the local licensing authority. All managers must be natural persons who are at lease twenty-one (21) years of age. No manager shall be a person having a criminal history as described in Paragraphs 6-58(a)(11) and (12) of this Article.

(b) Each licensees shall report any change in managers to the local licensing authority within thirty (30) days after the change. Such report shall include all information required for managers under this Section.

(c) Each licensee shall report in writing to the local licensing authority any transfer or change in financial interest in the license holder or in the medical marijuana business that is the subject of the license. Such report must be filed with the local licensing authority within thirty (30) days after any such transfer or change. A report shall be required for any transfer of the capital stock of a public corporation totaling more than ten percent (10%) of the stock in any one (1) year, as well as any transfer of a controlling interest in the corporation whenever a sufficient number of shares have been transferred to effectuate the transfer of a controlling interest. No person having or acquiring a financial interest in the medical marijuana business that is the subject of a license shall be a person having a criminal history as described in Paragraphs 6-58(a)(11) and (12) of this Article.

(d) Whenever any licensee causes a change in its officers or directors and a license addendum is required to be filed with the State, an application fee in the amount of one hundred dollars ($100.00) shall be paid to the Town at the time of filing the addendum with the Town. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-64. Transfer of ownership; change of location.

(a) Transfer of ownership. For a transfer of ownership, a license holder shall apply to the state and local licensing authority on forms provided by the state licensing authority. In considering whether to permit a transfer of ownership, the local licensing authority shall consider only the requirements of this Article, the Colorado Medical Marijuana Code and the regulations promulgated in conformance therewith. The local licensing authority may hold a hearing on the application for a transfer of ownership, but such hearing shall not be held until a notice of such hearing has been posted on the licensed medical marijuana business premises for a period of at least ten (10) days prior to such hearing and the applicant has been provided at least ten (10) days' prior notice of such hearing.

(b) Change of location. A licensee from another jurisdiction that has previously obtained a license from the State and any other local licensing authority may move his or her permanent location to the Town so long as the applicant and the new location conform to the requirements of this Article. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-65. Hours of operation; signage and advertising.

(a) A medical marijuana business may open no earlier than 9:00 a.m. and shall close no later than 7:00 p.m. the same day. A medical marijuana business may be open seven (7) days a week.

(b) All signage and advertising for a medical marijuana center or a medical marijuana-infused products manufacturing operation shall comply with all applicable provisions of this Article and other applicable provisions of this Code, including Section 16-242 of this Code. In addition, no signage or advertising shall use the word "marijuana" or "cannabis" or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and primary caregivers. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-66. Security requirements.

(a) Security measures at medical marijuana business facilities shall include, at a minimum, the following:

(1) Security surveillance cameras installed to monitor all entrances and the exterior of the premises to discourage and to facilitate the reporting of criminal acts as well as nuisance activities. Security video shall be preserved for at least seventy-two (72) hours.

(2) Robbery and burglary alarm systems which are professionally monitored and maintained in good working condition.

(3) A locking safe permanently affixed to the premises that is suitable for storage of all medical marijuana and cash stored overnight on the licensed premises. Medical marijuana that is being processed or dried need not be stored in the locking safe, provided that it is kept is a secure area.

(4) Exterior lighting that illuminates the exterior walls of the licensed premises, which is linked to motion sensor devices during nonbusiness hours.

(5) A battery back-up system that allows for the operation of the lighting and alarm systems during power outages.

(b) All security recordings shall be preserved for at least seventy-two (72) hours by the licensee and be made available to the Police Department upon request for inspection. (Ord. 20 §1, 2012; Ord. 5 §4, 2013; Ord. 9 §2, 2013)

Sec. 6-67. Cultivation, growing and processing by licensees.

(a) Subject to the limitations set forth in this Section and Section 12-43.3-403, C.R.S., and other applicable laws, the growing, cultivation or processing of marijuana shall be allowed contiguous or not contiguous to the licensed premises of a licensed medical marijuana business.

(b) The cultivation, growing, processing, display or storage of marijuana plants by a licensee shall be conducted only at the cultivation facility shown on the licensee's application.

(c) Access to any cultivation facility that is located in the same building as a medical marijuana center or medical marijuana-infused products manufacturing operation shall be secured so as to render the cultivation facility inaccessible to any unauthorized persons during all hours of operation of the business facility. All such cultivation facilities shall be independently ventilated so as to prevent odors, debris and dust from entering the center.

(d) To the extent permitted by law, the Town shall keep confidential the location of all cultivation facilities. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-68. On-site consumption of medical marijuana.

The use, consumption, ingestion or inhalation of medical marijuana or medical marijuana-infused products on or within the premises of a medical marijuana center, cultivation facility or medical marijuana-infused products manufacturing facility is prohibited. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.1. Prohibited acts.

It shall be unlawful for any licensee to:

(1) Employ any person at a medical marijuana center, cultivation facility or medical marijuana-infused products manufacturing facility who is not at least twenty-one (21) years of age or who has a criminal history as described in Paragraphs 6-58(a)(11) and (12) of this Article.

(2) Sell, give, dispense or otherwise distribute medical marijuana to anyone other than a patient, primary caregiver, licensee or medical marijuana business that is licensed in another jurisdiction of the State.

(3) Possess more than six (6) medical marijuana plants and two (2) ounces of any usable form of medical marijuana per patient, except a licensee may, in the case of a patient authorized to possess more than the six-plant or two-ounce limit, possess such additional marijuana as provided by Section 43.3-901(4)(e), C.R.S.

(4) Purchase or otherwise obtain medical marijuana from any source that is not properly authorized under state and local law to sell or dispense medical marijuana.

(5) Permit in the limited access area any person other than:

a. The licensee, the licensee's manager, employees and financial interest holders;

b. A patient in possession of a registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20;

c. A minor patient accompanied by a parent or lawful guardian in possession of the minor patient's registry identification card;

d. A minor accompanied by a parent or legal guardian who is a patient;

e. A primary caregiver in possession of his or her patient's registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20 and the patient's written designation of said person as the patient's primary caregiver, as submitted to the Colorado Department of Public Health and Environment;

f. A person whose physical presence and assistance are necessary to assist a patient;

g. A person who is actively engaged in the maintenance, repair or improvement of the licensed premises or in the provision of accounting or other professional services directly related to the conduct of the licensee's medical marijuana business; or

h. Law enforcement officers, inspectors and other officials or employees of any federal, state or local government or agency engaged in the lawful performance of their official duties.

(6) Dispense medical marijuana in or upon its cultivation facility.

(7) Permit the sale or consumption of alcohol beverages on the licensed premises.

(8) Post or allow to be posted signs or other advertising materials identifying cultivation facilities as being associated with the use or cultivation of marijuana.

(9) Dispense medical marijuana to a person who is or appears to be under the influence of alcohol or under the influence of any controlled substance, including marijuana. (Ord. 20 §1, 2012; Ord. 5 §§2, 3, 2013; Ord. 9 §2, 2013)

Sec. 6-69.2. Visibility of activities; paraphernalia; control of emissions.

(a) All activities of medical marijuana centers, cultivation facilities and medical marijuana-infused products manufacturing operations, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.

(b) Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers, may lawfully be sold at a medical marijuana business. Such items may be sold or provided only to patients or primary caregivers. No medical marijuana or paraphernalia shall be displayed or kept in a medical marijuana business facility so as to be visible from outside the licensed premises.

(c) Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a medical marijuana business facility must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a medical marijuana business facility, the owner of the subject premises and the licensee shall be jointly and severally liable for

such conditions and shall be responsible for immediate, full clean-up and correction of such a condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.3. Disposal of marijuana byproducts.

The disposal of medical marijuana, medical marijuana-infused products, byproducts and paraphernalia shall be done in accordance with plans and procedures approved in advance by the local licensing authority. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.4. Sales tax.

Each licensee shall collect and remit Town sales tax on all medical marijuana, medical marijuana-infused products, paraphernalia and other tangible personal property sold by the licensee. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.5. Required books and records.

(a) Every licensee shall maintain an accurate and complete record of all medical marijuana purchased, sold or dispersed by the medical marijuana business in any usable form. Such record shall include the following:

(1) The identity of the seller and purchaser involved in each transaction;

(2) The total quantity of and amount paid for the medical marijuana and/or the medical marijuana-infused products; and

(3) The date, time and location of each transaction.

(b) Every patient or primary caregiver shall provide to the licensee and the licensee shall record the following information for such books and records:

(1) The patient or primary caregiver's name, date of birth and current street address, including Town, state and zip code.

(2) The form of identification that was presented by the patient or primary caregiver, which may include any of the following, and the identifying number, if any, from such form:

a. An identification card issued in accordance with Section 42-2-302, C.R.S.;

b. A valid state driver's license;

c. A military identification card; or

d. An alien registration card.

(3) A registry identification card or its functional equivalent under Section 14(3)(d) of Amendment 20 and, in the case of a primary caregiver, the date the primary caregiver was designated by the patient for whom the medical marijuana was purchased.

(c) Information provided to the licensee by a patient or primary caregiver under the provisions of this Section need not include any information regarding the patient's physical or medical condition.

(d) All transactions shall be kept in a numerical register in the order in which they occur.

(e) All records required to be kept under this Article must be kept in the English language in a legible manner and must be preserved and made available for inspection for a period of three (3) years after the date of the transaction. Information inspected by the Police Department or other Town departments pursuant to this Article shall be used for regulatory and law enforcement purposes only and shall not be a matter of public record. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.6. Nonrenewal, suspension or revocation of license.

(a) The local licensing authority may, after notice and hearing, suspend, revoke or refuse to renew a license for good cause, including suspension or revocation of the licensee's state license. The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings.

(b) The local licensing authority may, in its discretion, revoke or elect not to renew any license if it determines that the licensed premises has been inactive, without good cause, for at least one (1) year. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.7. Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Article, any person, including but not limited to any licensee, manager or employee of a medical marijuana business, or any customer of such business who violates any of the provisions of this Article shall be subject to the following penalties:

(1) It shall be a misdemeanor offense for any person to violate any provision of this Article. Any person convicted of having violated any provision of this Article shall be punished as set forth in Chapter 1, Article IV of this Code.

(2) The operation of a medical marijuana business without a valid license issued pursuant to this Article may be enjoined by the Town in an action brought in a court of competent jurisdiction, including the Municipal Court.

(3) The operation of a medical marijuana business without a valid license issued pursuant to this Article is also specifically determined to be a public nuisance pursuant to Section 7-1 of this Code. (Ord. 20 §1, 2012; Ord. 9 §§ 2, 3, 2013)

Sec. 6-69.8. No Town liability; indemnification.

(a) By accepting a license issued pursuant to this Article, the licensee waives and releases the Town, its officers, elected officials, employees, attorneys and agents from any liability for injuries,

damages or liabilities of any kind that result from any arrest or prosecution of center owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations.

(b) By accepting a license issued pursuant to this Article, all licensees, jointly and severally if more than one (1), agree to indemnify, defend and hold harmless the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the medical marijuana business that is the subject of the license. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.9. No waiver of governmental immunity.

In adopting this Article, the Board of Trustees is relying on and does not waive or intend to waive by any provision of this Article, the monetary limitations (presently one hundred fifty thousand dollars [$150,000.00] per person and six hundred thousand dollars [$600,000.00] per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or any other limitation, right, immunity or protection otherwise available to the Town, its officers or its employees. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.10. Other laws remain applicable.

(a) To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marijuana or medical marijuana-infused products, the additional or stricter regulation shall control the establishment or operation of any medical marijuana business in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this Article, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

(b) Any licensee may be required to demonstrate, upon demand by the local licensing authority or by law enforcement officers, that the source and quality of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

(c) If the State prohibits the sale or other distribution of marijuana through medical marijuana centers, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

(d) The issuance of any license pursuant to this Article shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution or use of marijuana. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.11. Severability.

If any provision of this Article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Article which can be

given effect without the invalid provision or application, and, to this end, the provisions of this Article are declared to be severable. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

Sec. 6-69.12. 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. (Ord. 20 §1, 2012; Ord. 9 §2, 2013)

ARTICLE V

Sexually Oriented Businesses

Sec. 6-70. Purpose.

The purpose of this Article is to promote and protect the public health, safety and welfare by regulating sexually oriented businesses through the establishment of reasonable and uniform regulations to reduce the adverse secondary effects of sexually oriented businesses within the Town. This Article is not intended to limit or restrict the content of any communicative materials, including sexually oriented materials. This Article is not intended to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or Article II, § 10 of the Colorado Constitution or to deny access of distributors or exhibitors of sexually oriented entertainment to their intended market. Finally, this Article is not intended to condone or legitimize the distribution of obscene material. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-71. Definitions.

For purposes of this Article, the following terms shall have the following meanings, unless the context indicates otherwise:

Adult arcade means any commercial establishment in which the public is permitted or invited where, for any form of consideration, one (1) or more motion picture projectors, slide projectors, image or virtual reality producing machines or similar machines, for viewing by five (5) or fewer persons per machine at any one (1) time, are used regularly to show films, motion pictures, video cassettes, slides, digital images, electronic reproductions or photographs describing, simulating or depicting specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, bar, restaurant or similar commercial establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

Adult motion picture theater means a commercial establishment which is characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides, compact discs, digital video discs (DVDs), digital images or other visual representations that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult store means any commercial establishment which, as one (1) of its principal business purposes, offers for sale or rent for any form of consideration one (1) or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, compact discs, digital video discs (DVDs), digital images or other visual representations which are characterized by their emphasis on the depiction or description of specified sexual activities or specified anatomical areas; or

b. Instruments, devices or paraphernalia designed for use in connection with specified sexual activities.

Adult theater means a theater, auditorium or similar commercial establishment which, for any form of consideration, regularly features live performances which are characterized by an emphasis on exposure of specified anatomical areas or specified sexual activities.

Convicted means having been found guilty by a judge or a jury or entering a guilty plea or a plea of nolo contendere, and includes deferred judgments, deferred sentences, deferred adjudications and plea bargains, whether or not an appeal of such conviction is pending; excluding any conviction overturned or vacated by appeal or other force of law.

Employee means a person who works or performs work or service in or for a sexually oriented business on a full-time, part-time or contract basis, with or without compensation, regardless of whether such person is designated as an employee, independent contractor, agent, volunteer or any other status; excluding any person on the premises for repair or maintenance of the premises or for delivering or removing tangible personal property to or from the premises.

Licensed premises means the building or structure in which a licensed sexually oriented business is operating.

Sexually oriented business means an adult arcade, adult store, adult cabaret, adult motion picture theater or adult theater, except an establishment where a medical practitioner, psychologist, psychiatrist or similar professional licensed by the State engages in approved and recognized sexual therapy.

Specified anatomical areas means any of the following:

a. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, which are not completely and opaquely covered; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified crime means and includes the following crimes committed under the penal or criminal code of any municipality, county, state or country: sex crimes against children; sexual abuse; sexual assault; possession or distribution of child pornography; distribution of an illegal controlled substance; prostitution, promotion of prostitution or pandering; and organized crime if such organized crime is committed within the premises of a sexually oriented business in the Town or elsewhere.

Specified sexual activities means any of the following:

a. Fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation and sodomy;

c. Masturbation, actual or simulated; or

d. Human genitals in a state of sexual stimulation or arousal; human excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a. through d. hereof. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-72. License required.

All sexually oriented businesses in the Town shall be licensed as set forth in this Article, and it shall be unlawful for any person to operate a sexually oriented business in the Town without a valid license issued pursuant to this Article. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-73. License application.

(a) Applicants for a sexually oriented business license shall submit a written application to the Town Clerk which includes the following:

(1) The name, address, telephone number and date of birth of the applicant and, if applicable, each of its officers, partners, directors and registered agents;

(2) The trade name of the applicant and copies of all documents recording the trade name, including the trade name affidavit;

(3) The name of any other sexually oriented business in which any officer, director or partner has a financial interest;

(4) The address of the premises to be licensed;

(5) If the applicant is a corporation, copies of the articles of incorporation, bylaws and last annual report;

(6) Copies of documents demonstrating that the applicant has a legal right to possession of the premises to be licensed;

(7) A sketch, drawing or diagram drawn to scale and showing the configuration of the premises, including total floor area to be occupied by each sexually oriented business; and

(8) The type or types of the sexually oriented business proposed, such as an adult store, adult cabaret, adult theater or adult motion picture theater.

(b) Each application shall be verified and acknowledged to be true by the applicant or the managing partner, president or other officer having the authority to sign for the applicant. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-74. Background investigations.

(a) Upon receipt of a completed application, the Town Clerk shall perform a background investigation of the applicant and its officers, directors and partners and the information contained in the application.

(b) The Town Clerk may investigate any fact related to any of the criteria set forth in this Article that may be relevant to determine the eligibility of the applicant for a sexually oriented business license.

(c) The Town Clerk may seek and obtain the assistance of law enforcement agencies in conducting the background investigation.

(d) The background investigation shall be completed within forty-five (45) days of receipt of the completed application. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-75. Issuance or denial.

(a) Within ten (10) days of the completion of the background investigation, the Town Clerk shall either issue the sexually oriented business license or issue a written statement of denial. The license or statement of denial shall be sent via United States mail, postage prepaid, to the applicant at the address provided on the application. The Town Clerk shall issue the license unless one (1) or more of the following is true:

(1) The applicant has not paid all required fees under this Article;

(2) The applicant or any of its officers, directors or partners is under eighteen (18) years of age;

(3) The applicant is not qualified to conduct business under applicable state or federal law or Town ordinances;

(4) The applicant has knowingly provided false information to the Town on an application for a sexually oriented business license;

(5) The location of the proposed sexually oriented business does not comply with the location requirements set forth in the Town's zoning ordinance;

(6) The premises in which the sexually oriented business is proposed to be located do not comply with applicable Town ordinances, such as the building code, electrical code or fire code;

(7) The applicant is delinquent in the payment of any taxes owed to the Town; or

(8) The applicant or any of its directors, officers or partners has been convicted of a specified crime in the two (2) years preceding the date of the application.

(b) Within ten (10) days of the date of a written statement of denial, the applicant may submit a written request that the Town Clerk schedule a public hearing before the Board of Trustees on the

application. The hearing shall be held at the next regularly scheduled Board of Trustees meeting occurring at least ten (10) days after receipt of the written request.

(c) At the hearing, the applicant may present additional evidence, either documentary or through witness testimony, which is relevant to the applicant's eligibility for a sexually oriented business license.

(d) At the conclusion of the hearing or within ten (10) days thereafter, the Board of Trustees shall either order that the Town Clerk issue the sexually oriented business license, or issue a written order denying the application for the sexually oriented business license.

(e) If the Board of Trustees denies the application for a sexually oriented business license, the Board of Trustees' decision shall be final, subject to judicial review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-76. Term of license; renewal.

(a) All sexually oriented business licenses issued under this Article shall be valid for one (1) year from the date of issuance, unless revoked or suspended as provided in this Article.

(b) Written application for renewal of a sexually oriented business license shall be filed with the Town Clerk at least sixty (60) days prior to the expiration of the current license, together with the applicable annual license fee. If no application for renewal is timely filed, the licensee has waived its option to renew the license and must re-apply for a new license.

(c) Applications for renewal shall include the same information as an original application, except as the Town Clerk deems redundant.

(d) The procedures for renewal license applications shall be the same as the procedures for new license applications. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-77. License nontransferable.

A sexually oriented business license issued under this Article is nontransferable. By way of example but not limitation, a new sexually oriented business license shall be required upon: the sale, lease or sublease of the sexually oriented business or the licensed premises; the transfer by sale, exchange or similar means of a controlling interest in the sexually oriented business; or the establishment of a trust, gift or similar legal device which transfers ownership or control of the sexually oriented business or the licensed premises, other than transfer by bequest or other operation of law upon the death of the person possessing ownership or control. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-78. Suspension and revocation.

(a) The Town Clerk may suspend or revoke any sexually oriented business license issued under this Article if the Town Clerk receives reliable information to establish that:

(1) A nuisance is being maintained on the licensed premises;

(2) The licensed premises are unsanitary as certified by the Chaffee County Department of Health;

(3) The licensed premises are unsafe as certified by the Building Official, the Fire Marshal or the Fire Chief with jurisdiction over the premises;

(4) The licensee has knowingly permitted on the licensed premises: the possession, sale or use of illegal controlled substances; any specified sexual activity; or prostitution;

(5) The licensee or any of its officers, directors, partners or employees has been convicted of a specified crime during the term of the license; or

(6) The licensee knowingly provided false information on an application for a sexually oriented business license or renewal of such a license.

(b) At least twenty (20) days before the Town Clerk suspends or revokes any sexually oriented business license, the Town Clerk shall provide written notice to the licensee, via United States mail, postage prepaid, to the address provided on the most recent application, of the allegations supporting the suspension or revocation.

(c) During the twenty-day period, the licensee may file a written request for a stay of the suspension or revocation pending a public hearing before the Board of Trustees on the allegations to support the suspension or revocation.

(d) The public hearing shall be held at the next regularly scheduled Board of Trustees meeting at least ten (10) days after receipt of the request.

(e) At the hearing, the applicant may present additional evidence, either documentary or through witness testimony, which is relevant to the suspension or revocation.

(f) At the conclusion of the hearing or within ten (10) days thereafter, the Board of Trustees shall order that the sexually oriented business license be suspended for a period of time not to exceed one hundred eighty (180) days, that the license be revoked or that no action be taken with respect to the license.

(g) If the Board of Trustees orders suspension or revocation, the Board of Trustees' decision shall be final, subject to judicial review pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-79. General regulations.

(a) All licensed premises shall comply with all applicable Town regulations and ordinances, including but not limited to the building code, fire code, electrical code and zoning regulations.

(b) Every sexually oriented business license issued under this Article shall be displayed in a conspicuous place on the licensed premises in a clear cover or frame and shall be available for inspection at all times by the public.

(c) All licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary.

(d) Trash and garbage shall not be permitted to accumulate in any licensed premises or on the property outside any licensed premises.

(e) All materials, devices and novelties offered by a sexually oriented business which depict specified sexual activities or specified anatomical areas shall be displayed so that they cannot be seen by anyone other than customers who have entered the licensed premises. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-80. Dance and entertainment requirements.

(a) An adult cabaret or adult theater at which employees dance shall have one (1) or more stages or similar structures specially designed for dancing, which shall be constructed in accordance with applicable building code regulations, and located inside the licensed premises. Employees shall dance only upon such stage or structure.

(b) When an employee dances on a structure which is designed to hold not more than two (2) persons, the structure shall be level, of sturdy construction and securely fastened to the floor or wall during dance performances. Steps and handrails shall be required on all such stages and structures where the platform on which the employee dances is more than eight (8) inches above the surface upon which the structure rests.

(c) Any adult cabaret or adult theatre shall have one (1) or more separate areas designated in the diagram submitted as part of the application as a stage for the licensee or employees to perform as entertainers. Entertainers shall perform only upon the stage, and the stage shall be fixed and immovable.

(d) No seating for the audience shall be permitted within three (3) feet of the edge of any stage, and no members of the audience shall be permitted upon any stage or within three (3) feet of the edge of any stage. A physical barrier, such as a roped-off cordon, shall separate the edge of the stage from the area customers are permitted.

(e) No private rooms or screened areas that are accessible to non-employees are permitted inside an adult cabaret or adult theater, such as rooms or screened areas available for private dance performances by individuals or groups to the exclusion of other customers of the establishment.

(f) No activity, materials or merchandise inside a sexually oriented business shall be visible from the exterior. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-81. Lighting requirements.

(a) When the occupant capacity of any licensed premises, as determined by the Fire Department, is at least fifty (50) persons, such licensed premises shall have electric, battery-operated emergency lights using reliable storage batteries properly maintained and charged.

(b) The interior portion of a licensed premises to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place at an illumination of not less than two (2) foot- candles as measured at the floor level. It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-82. Hours of operation.

It is unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises on any Monday through Saturday between 2:00 a.m. and 7:00 a.m.; and on any Sunday between 2:00 a.m. and 8:00 a.m. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-83. Age restrictions.

(a) It is unlawful for a licensee to admit or permit the admission of any person under eighteen (18) years of age into any sexually oriented business.

(b) It is unlawful for any person to sell, barter, give or offer for sale, barter or gift, to any person under eighteen (18) years of age any service, material, device or thing sold or offered for sale by any adult store or adult motion picture theater.

(c) Employees of any sexually oriented business shall be at least eighteen (18) years of age. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-84. Conduct.

(a) No licensee or employee shall encourage or knowingly permit any person on or within the licensed premises to touch, caress or fondle the genitals, pubic region, buttocks, anus or breasts of any person.

(b) No licensee or employee shall knowingly fail to immediately report to the Police Department any criminal conduct or violation of any Town ordinance or state or federal law, rule or regulation that occurs on or within the licensed premises.

(c) No person shall engage in specified sexual activities on or within a licensed premises.

(d) No licensee or employee mingling with patrons or serving food or drinks shall be unclothed or in such attire, costume or clothing so as to expose to view any specified anatomical area.

(e) No employee shall receive tips from patrons except as provided herein. A licensee that desires to provide for tips from its patrons shall establish one (1) or more boxes or other containers to receive tips. All tips for employees shall be placed by patrons into the tip box. The licensee shall post one (1) or more signs to be conspicuously visible to patrons in letters at least one (1) inch high to read as follows:

> All tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between the patron and the entertainer is strictly prohibited.

(Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-85. Inspection.

Every licensee shall permit law enforcement officers, and any other federal, state, county or Town agency in the performance of any function connected with the enforcement of this Article and normally and regularly conducted by such agency, to inspect the licensed premises for the purpose of ensuring compliance with this Article at any time the licensed premises is occupied or open for business. (Ord. 20 §1, 2010; Ord. 24 §1, 2010)

Sec. 6-86. Employee identification.

Each licensee shall provide to the Town Clerk, in writing, the full name, any aliases, date of birth and the current address and telephone number of every employee of the licensee within five (5) days of employment. (Ord. 20-2010 §1; Ord. 24-2010 §1)

Sec. 6-87. Exemptions.

Notwithstanding anything to the contrary in this Article, the following businesses and activities shall be exempt from the requirements of this Article:

(1) Any adult store which derives less than ten percent (10%) of its gross income from the sale of materials depicting specified sexual activities or specified anatomical areas if such materials are located in a separate room or booth containing those materials only.

(2) Any college, junior college or university supported, in whole or in part, by tax revenue and offering educational programs which, for educational purposes, may include the depiction of specified sexual activities or specified anatomical areas. (Ord. 20-2010 §1; Ord. 24-2010 §1)

Sec. 6-88. Regulations not exclusive.

Nothing contained in this Article shall limit the effectiveness or applicability of any other provision of this Code to any sexually oriented business. (Ord. 20-2010 §1; Ord. 24-2010 §1)

Sec. 6-89. Penalties.

(a) Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person found guilty of or who pleads guilty or nolo contendere to a violation of any section of this Article shall be subject to a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed one (1) year, or both such fine and imprisonment. Each and every day of violation of the provisions of this Article shall constitute a separate offense punishable as such.

(b) In the event of violation of any of the terms and regulations set forth herein, the Town may obtain equitable relief, including injunctive relief, to require compliance with the provisions hereof. In the event the Town is successful in obtaining injunctive or other equitable relief, the costs and attorney fees incurred by the Town in such action shall be awarded to the Town in addition to any other relief.

(c) Nothing contained herein shall preclude the Town from enforcing the suspension and revocation provisions of this Article in addition to simultaneously or subsequently prosecuting alleged violations of this Article, under this Section. (Ord. 20-2010 §1; Ord. 24-2010 §1)

Secs. 6-90—6-110. Reserved.

CHAPTER 7

Health, Sanitation and Animals

ARTICLE I

Administration and Abatement of Nuisances

Sec. 7-1. Public nuisance defined.

A public nuisance is a substance, act, occupation, condition or use of property which is of such nature and continues for such length of time as to:

(1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

(2) In any way render the public insecure in life or in the use of property; or

(3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way. (Prior code 9.46.010)

Sec. 7-2. Common law and statutes adopted.

In all cases where no provision is made defining what are nuisances and how the same may be removed, abated or prevented, in addition to what may be declared such herein, those offenses which are known to the common law of the land and state statutes as nuisances may, in case the same exist within the Town, be treated as such and proceeded against as provided in this Article, or in accordance with any other provisions of law. (Prior code 9.46.020)

Sec. 7-3. Responsibility for nuisances.

(a) Where a nuisance exists upon private property and is the outgrowth of the usual, natural or necessary use of the property, the owner thereof or his or her agent is declared the author thereof; but where any such nuisance arises from the unusual use to which any such property may be put, or from any business thereon conducted, the occupant shall also be deemed the author thereof; and any person who, by himself, herself or an agent, causes or creates the same shall be deemed the author of such nuisance.

(b) In the event a nuisance must be abated by the Town, no provision of this Section should be construed to relieve any property owner from any of the provisions contained in Section7-9. (Prior code 9.46.030)

Sec. 7-4. Complaints of nuisances.

Complaints of nuisances may be made to the Town Administrator, Chief of Police or any other Town official. Whenever possible, any complaint shall state the nature of such nuisance, the location including street address, the name of the owner, agent or occupant of the building or lot, if known, and the name and address of the complainant. (Prior code 9.46.040)

Sec. 7-5. Abatement authorized.

(a) Each and every nuisance mentioned, declared or defined by any ordinance of the Town or the laws of the State is prohibited, and the Mayor or the Chief of Police is authorized, in his or her

discretion, to cause the same to be summarily abated in such manner as he or she may direct, subject to the limitations of Subsection (b) of this Section.

(b) Upon authorization and only upon authorization by the Mayor or the Chief of Police, if any nuisance found to exist causes such imminent danger to the life, limb, property or health as to require immediate abatement, any such nuisance may summarily be abated by action of the Chief of Police, a police officer, police officers or the Building Official, as may be directed by the Chief of Police or Mayor.

(c) Action for summary abatement shall be taken only where the Chief of Police or Mayor determines that there is imminent danger to life, limb, health or property which cannot await abatement of the nuisance by any other means available under this Chapter. (Prior code 9.46.060)

Sec. 7-6. Notice of abatement.

In the case of any nuisance not requiring summary abatement in the judgment of the Mayor or Chief of Police, it shall be the duty of said officials, or one (1) of them, to cause notice to be served upon the person responsible for any nuisance which may be found, requiring the person to abate the same in a reasonable time and in such reasonable manner as prescribed, and such notice may be given or served by any officer directed or deputized to give or make the same. In causing notice to be served, the Mayor or Chief of Police may authorize Town officials, inspector or any other appropriate Town employee to issue a notice of abatement. The reasonable time for abatement shall not exceed fourteen (14) days unless it appears from the facts and circumstances that compliance could not reasonably be made within fourteen (14) days or that a good faith attempt at compliance is being made. Such notice shall be in writing, signed by the official issuing the same and shall be personally served upon the person responsible for the nuisance if the person occupies the premises upon which the nuisance exists, but if not occupied by the responsible person, then by posting the same prominently at some place on the premises upon which the nuisance exists. If service is by posting as aforesaid, then a copy of the notice shall also be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the County tax rolls at the address of such owner as therein shown. (Prior code 9.46.070)

Sec. 7-7. Abatement procedures.

(a) Upon notification, if the person so notified neglects or refuses to comply with the requirements of the notice to abate the nuisance within the time specified, such person is guilty of a violation of this Chapter, and the Mayor, Chief of Police and Town Attorney, or their authorized agent, may proceed at once, upon the expiration of the time specified in such notice, to commence appropriate legal action to cause such nuisance to be abated; provided that, if the owner or person responsible for the nuisance is unknown or cannot be found, the Chief of Police may proceed to abate such nuisance after notice has been posted for the period equal to the time specified to abate the nuisance. In either case, the expense of such abatement shall be collected from the person who caused, created, continued or suffered the nuisance to exist.

(b) When any person has responsibility for a nuisance as provided in Section 7-3 and such nuisance exists or is found and the responsible person fails to abate the same after the giving of such notice as provided for in Section 7-6 within the time limited therein or as extended, then the Town Attorney is authorized to institute proceedings in a court of competent jurisdiction to obtain a judicial

determination that such nuisance exists, to abate such nuisance, to enjoin the same, and for such other and further relief as may seem necessary or proper, including but not limited to collection of the costs and expenses of abatement, including reasonable attorney's fees.

(c) Upon a judicial determination that a nuisance exists, the Town Administrator may be authorized to abate the nuisance or cause the same to be abated employing such forces and persons as may be necessary to abate the same, including Town employees by contract or otherwise. The Town Administrator and all other Town officials and employees are authorized and directed to render such assistance to the Chief of Police as may be required for the abatement of such nuisance and in connection with the enforcement thereof.

(d) Any officer or employee of the Town who is authorized herein to abate any nuisance specified in this title shall have authority to engage the necessary assistance and incur the necessary expenses thereof. In any case where a nuisance is to be abated by the Town, it shall be the duty of the authorized person to employ such assistance and adopt such means as may be necessary to effect abatement of the nuisance. It shall also be the duty of the Town to proceed in all abatement cases with due care and without any unnecessary destruction of property. (Prior code 9.46.080)

Sec. 7-8. Costs and charges.

(a) The person or persons responsible for any nuisance within the Town shall be liable for and pay and bear all costs and expenses of the abatement of the nuisance, including reasonable attorney's fees for costs of collection, which costs and expenses may be collected by the Town Attorney on a contingency basis in his or her discretion, collected in connection with an action to abate a nuisance, or assessed against the property as hereinafter provided.

(b) The notice required in Section 7-6 shall, in addition to the requirements of that Section, state that if the nuisance is not abated within the time stated in the notice, the costs of such abatement may be assessed as a lien against the property (describing the same) pursuant to the terms of this Chapter, referring to this Chapter, together with an additional five percent (5%) assessment for inspection and incidental costs and an additional ten percent (10%) assessment for costs of collection, and collected in the same manner as real estate taxes against the property. If the owner of the property is not personally served with a copy of such notice, then a true copy of such notice shall be mailed by certified mail, return receipt requested, to the owner of such property as shown upon the County tax rolls at the address of such owner as therein shown.

(c) If, after the expiration of the period of time provided for in the notice, or as extended, costs or expenses are incurred by or on behalf of the Town in the abatement or in connection with the abatement of the nuisance, and the costs are not otherwise collected, then the Chief of Police may thereafter certify to the Town Clerk the legal description of the property upon which such work was done, together with the name of the owner thereof as shown by the County tax rolls, together with a statement of the work performed, the date of performance and the costs thereof.

(d) Upon receipt of such a statement from the Chief of Police, the Town Clerk shall mail a notice to the owner of the premises as shown by the tax roll at the address shown upon the tax rolls, by first class mail, postage prepaid, notifying such owner that work has been performed pursuant to this Chapter, stating the date of performance of the work, the nature of the work and demanding payment of the costs thereof (as certified by the Chief of Police), together with five percent (5%) assessment

for inspection and other incidental costs in connection therewith. Such notice shall state that, if said amount is not paid within thirty (30) days of mailing the notice, it shall become an assessment on and a lien against the property of the owner, describing the same, and will be certified as an assessment against such property, together with the ten percent (10%) assessment for costs of collection, and the above-mentioned assessments will be collected in the same manner as real estate tax upon property.

(e) If the Town Clerk does not receive payment within the period of thirty (30) days following the mailing of such notice, the Town Clerk shall inform the Board of Trustees of such fact and the Board of Trustees shall thereupon enact an ordinance assessing the whole cost of such work, including a charge of five percent (5%) of the whole costs for inspection and other incidental costs in connection therewith, and together with a charge of ten percent (10%) of the whole costs for costs of collection upon the lots and tracts of land upon which the nuisance was abated.

(f) Following the passage of such ordinance, the Town Clerk shall certify the same to the County Treasurer, who shall collect the assessment, including the ten percent (10%) charge for cost of collection, in the same manner as other taxes are collected.

(g) Each such assessment shall be a lien against each lot or tract of land until paid and shall have a priority over other liens except general taxes and prior special assessments. (Prior code 9.46.090)

Sec. 7-9. Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge, conviction or violation of this Chapter in the Municipal Court of the Town, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist. In addition to the specific remedies set forth in this Chapter, violations of the Chapter shall be punishable as set forth in Section 1-72 of this Code. (Ord. 10 §1, 2011)

Sec. 7-10. 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 the municipal ordinances or any other provision of law. (Prior code 9.46.110)

Secs. 7-11—7-30. Reserved.

ARTICLE II

Nuisances

Sec. 7-31. Flammable liquids; storage or parking of tank vehicles.

It is unlawful to store or cause to be stored or parked, except for unloading, any vehicle used for the purpose of storage of flammable liquids, gases, explosives or toxicants upon any streets, ways or

avenues of the Town, or any other part of the Town except those areas zoned for such use. (Prior code 9.42.010)

Sec. 7-32. Abandoned containers.

(a) It is unlawful for any person to discard, abandon or leave in any place accessible to children any refrigerator, icebox, deep-freeze locker, stove, oven, trunk or any self-latching container having a capacity of one and one-half (1½) cubic feet or more, which is no longer in use, and which has not had the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door, or for any owner, lessee or manager to knowingly permit such a refrigerator, icebox, deep-freeze locker, stove, oven, trunk or self-latching container to remain on premises under his or her control without having the door removed or the hinges and such portion of the latch mechanism removed as to prevent latching or locking of the door.

(b) The provisions of this Section shall not apply to any vendor or seller of refrigerators, iceboxes, deep-freeze lockers, stoves, ovens, trunks or self-latching containers, who keeps or stores them for sale purposes in a showroom or salesroom ordinarily watched or attended by sales personnel during business hours and locked to prevent entry when not open for business, or if such vendor or seller takes reasonable precaution to effectively secure the door of any such refrigerator, icebox, deep-freeze locker, stove, oven, trunk or self-latching container so as to prevent entrance by children small enough to fit therein. (Prior code 9.44.010)

Sec. 7-33. Stagnant water, contaminated or impure wells or cisterns.

(a) A contaminated or impure well or cistern is a nuisance when the water therein is used for human consumption.

(b) Any well or cistern on any property within the limits of the Town, whenever a chemical analysis or other proper test or the location of the same shows that the water of the well or cistern is probably contaminated, impure or unwholesome, is a nuisance.

(c) Every owner, tenant, occupant, lessee or other person in possession of any premises or any part thereof, upon which there is located a well containing contaminated, impure or unwholesome water, shall abandon the use of the same and cause the same to be filled with earth or such other material as may be designated by the Chief of Police. (Prior code 9.48.010)

Sec. 7-34. Offensive and dangerous business, trade or condition.

(a) Any offensive or unwholesome business or establishment, or any business or establishment carried on in an offensive or unwholesome manner within the Town, is a nuisance and prohibited, and the Chief of Police shall have power to abate the same.

(b) Whenever any trade, business or manufacture, or the maintenance of any substance, condition or things, is dangerous to the public health, the same constitutes a nuisance and shall be abated as such. (Prior code 9.48.020)

Sec. 7-35. Scattering debris.

Dumping, throwing or placing any rubbish, cans, boxes, debris, grass clippings or other waste materials on any public place in the Town is a nuisance and prohibited. Dumping of waste materials in a public dump specifically designated by order of the Chief of Police as a dump in compliance with such regulations as the Chief of Police may direct shall not be deemed a violation of this Section. (Prior code 9.48.030)

Sec. 7-36. Piling of rubbish.

It is unlawful and constitutes a nuisance for any person to pile, store or allow to accumulate any rubbish, trash, garbage or animal feces on any lot or real estate within the Town which could harbor and conceal harmful vermin, rodents or insects, or which are unsafe, unhealthy or unsightly to the public. (Prior code 9.48.040)

Sec. 7-37. Dead animals.

When any animal dies in this Town, it shall be the duty of the owner or keeper thereof to remove the body of such animal forthwith beyond the limits of the Town. If such body shall not forthwith be removed, the same shall be deemed a nuisance, and such owner or keeper shall cause a nuisance to exist and shall be subject to the terms and provisions of this Chapter. When the body of any such dead animal is in any street, highway or public grounds in this Town, it shall be the duty of the Chief of Police to cause such body to be removed forthwith beyond the limits of the Town. (Prior code 9.48.050)

Sec. 7-38. Trailers and mobile homes in residence districts.

All trailers or mobile homes are prohibited from human habitation except in areas where zoning is such to allow such habitation and appropriate sanitation regulations are complied with. (Prior code 9.48.060)

Sec. 7-39. Junked or wrecked vehicles and trailers and junked vehicle or machinery parts.

It is unlawful and shall constitute a public nuisance for any person to place, keep, store, display or maintain any junked or wrecked vehicle or trailer, or junked or wrecked vehicle or machinery part, on any lot or parcel within the Town unless the same is fully enclosed in a garage or other building; except when the placement, storage or maintenance of such vehicle, trailer or part is carried out pursuant to the operation of a duly licensed business being conducted in conformity with all applicable zoning regulations. *Junked or wrecked vehicle* shall have the meaning as provided in Article III of Chapter 8 of this Code. (Ord. 5-2000 §1)

Sec. 7-40. Nonresidential property maintenance.

(a) Any person, or the agent thereof, owning, leasing or having charge or possession of any nonresidential properties in the Town shall keep and maintain such properties and the rights-of-way abutting such properties in a safe, clean, orderly, sanitary and aesthetic condition. For the purpose of this Section, *vacant* shall mean any nonresidential building not in use or occupied for commercial activity.

(1) Any person, or the agent thereof, owning, leasing or having charge or possession of vacant nonresidential property in the Town shall be required to submit a landscaping, fencing and maintenance plan to the Town Administrator for approval.

(2) As a condition of any approval of the landscaping, fencing and maintenance plan by the Town Administrator, the plan must be accompanied by an agreement with the Town, wherein the vacant nonresidential property owner or person having lawful control of the vacant nonresidential property agrees to landscape, fence and maintain the property in accordance with the plan and the provisions of this Code and to provide for reasonable exterior security of the vacant property.

(3) The maintenance of a vacant property shall conform to the maintenance plan approved the Town Administrator.

(b) Conditions prohibited on vacant nonresidential properties. The following conditions do not comport with a safe, clean, orderly, sanitary and aesthetic condition on vacant nonresidential properties, and are prohibited:

(1) Buildings which are abandoned, boarded up, partially destroyed or partially constructed or incomplete after building permits have expired;

(2) Improperly maintained landscaping which is visible from streets, including but not limited to:

a. Lawns with non-native vegetation in excess of six (6) inches in height;

b. Dying trees, shrubbery, lawns and other plant life due to lack of water or inadequate maintenance; and

c. Overgrown vegetation and dead, decayed or diseased trees, weeds and other vegetation.

(3) Lumber, junk, trash, debris or salvage material stored upon vacant nonresidential properties, which is visible from a public street, alley or adjoining property;

(4) Vacant nonresidential properties having a topography, geology or configuration which, as a result of grading operations or improvements to the land, causes erosion, subsidence, unstable soil conditions or surface or subsurface drainage problems that are potentially injurious to adjacent properties;

(5) Vacant nonresidential properties with mounds of soil, dry grass, weeds, dead trees, tin cans, abandoned asphalt or concrete, rubbish, refuse or waste or other unsanitary material of any kind;

(6) Any unsightly, partly completed or partly destroyed buildings, structures or improvements on vacant nonresidential properties, which endanger neighboring properties or the public health, safety or general welfare; and

(7) Any other condition which adversely affects the public health, welfare or safety.

(c) This Section shall not be construed to limit the applicability of other provisions of this Code regulating maintenance of property within the Town. (Ord. 28 §1, 2010)

Secs. 7-41—7-50. Reserved.

ARTICLE III

Littering and Dumping

Sec. 7-51. Dumping on private or public property.

(a) It is unlawful to place, deposit or dump, or cause to be placed, deposited or dumped, any offal composed of animal or vegetable substance, any dead animal, excrement, garbage, sewage, trash, debris, rocks, dirt, scrap construction materials, nails, mud, snow, ice, waste fuel, oil or other petroleum-based products, paint, chemicals or other waste, whether liquid or solid, or dangerous materials that may cause a traffic hazard in or upon any public or private highway or road, including the right-of-way thereof, or to place, deposit or dump such materials in or upon any public grounds or upon any private property without consent of the owner, save and except property designated or set aside for such purposes. Such dumping upon any private property not zoned or designated by a visible sign or signs for dumping purposes shall be prima facie evidence of the lack of consent to such dumping by the owner of such property.

(b) It is an affirmative defense to any charges brought under this Article that the owner of the property upon which the waste material is placed has given his or her consent to the placement, depositing or dumping; provided that the placement, depositing or dumping is not in violation of any other ordinance or code provision of the Town. (Prior code 9.40.010)

Sec. 7-52. Vehicles causing litter.

(a) It is unlawful for any person to drive or move any truck or other vehicle within the Town, unless such vehicle is loaded or covered so as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place.

(b) It is unlawful for any person to operate or cause to be operated on any highway or public way in the Town any truck or vehicle transporting manure, garbage, trash, swill or offal unless such truck or vehicle is fitted with a substantial tight box or other container thereon so that no portion of such matter will be thrown or fall upon the highway or public way. (Prior code 9.40.020)

Sec. 7-53. Storage of trash or garbage.

Persons storing or placing trash, garbage, scrap construction materials, refuse, debris or waste of any nature whatsoever in any receptacle shall do so in such a manner as to prevent thetrash, garbage, scrap construction materials, refuse, debris or waste from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property. (Prior code 9.40.030)

Sec. 7-54. Covered containers required.

(a) No person shall keep or store any trash, garbage, refuse, debris or waste of any nature that may cause a health or sanitation hazard by reason of being blown or scattered about by wind, children or animals or by reason of being exposed to insects or the elements, unless such trash, garbage, refuse, debris or waste is kept or stored in a covered or tightly closed weatherproof sack or inside a building.

(b) No person shall keep or store any waste or discarded paper or paper products, scrap construction materials or waste debris unless such waste or discarded paper or paper products, scrap construction materials or other waste debris is covered, secured or in some manner protected so as to prevent such materials or waste from being blown or scattered about by wind. (Prior code 9.40.040)

Sec. 7-55. Construction materials covered or secured.

No person shall keep or store any construction materials unless such materials are covered, secured or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes. (Prior code 9.40.050)

Sec. 7-56. Snow or ice deposits.

(a) No person shall deposit or cause any snow or ice to be deposited on or against any fire hydrant or traffic signal control device or appurtenance; nor shall any person deposit or cause to be deposited accumulations of snow or ice upon or adjacent to any sidewalk, street or roadway, loading and unloading area of a public transportation system, or designated emergency access land, such as may retard or in any way interfere with the safe and orderly flow of pedestrian or vehicular traffic by obstructing the view of such traffic on intersecting streets or drives or by any other means, or in any way obstruct or impede street or roadway drainage.

(b) The owners or occupants of property abutting upon or adjacent to sidewalks within the corporate limits of the Town shall at all times keep such sidewalks free and clear of snow and ice. In the event such owners or occupants fail to remove snow and ice from such sidewalks within twenty-four (24) hours after the accumulation of snow and ice thereon, the Town may have the sidewalks cleaned and cleared of snow and ice, and the cost thereof, including inspection and other incidental costs and an additional cost for administration not to exceed ten percent (10%), shall be assessed against the property in accordance with the assessment provisions hereinafter set forth. (Prior code 9.40.060; Ord. 26-1992 §1)

Sec. 7-57. Unlawful use of trash receptacle.

(a) As used in this Section:

Refuse means any solid waste, including but not limited to, trash, garbage, rubbish, waste and similar material.

Refuse container means an outdoor receptacle designed and intended to be used to hold refuse. A refuse container includes, but is not limited to, trash cans, trash dumpsters and similar containers.

(b) It shall be unlawful for any person to intentionally or knowingly deposit, or to cause to be deposited, any refuse in a refuse container located on the property of another, or on public property, without the prior permission of the owner or person in lawful possession of such refuse container.

(c) Any person convicted of violating this Section shall be punished as provided in Section 1-72 of this Code. (Ord. 6-1993 §1)

Secs. 7-58—7-70. Reserved.

ARTICLE IV

Weeds and Brush

Sec. 7-71. Definitions.

For the purpose of this Article, the following words and phrases shall have the following meanings, unless the context indicates otherwise:

Brush means any unsightly, useless, troublesome or injurious volunteer growth of bushes or shrubbery, which shall include all cuttings from said bushes and shrubbery.

Weed means any unsightly, useless, troublesome or injurious herbaceous plant in excess of twelve (12) inches in height. (Ord. 26-1992 §1)

Sec. 7-72. Declaration of nuisance.

Any weeds or brush found growing in any lot or tract of land in the Town is hereby declared to be a nuisance, and it shall be unlawful to permit any such weeds or brush to grow or remain in any such place. (Ord. 26-1992 §1)

Sec. 7-73. Duty of property owner to cut.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to cut to the ground all weeds and brush when said weeds and brush grow to a height of twelve (12) inches or more. (Ord. 26-1992 §1)

Sec. 7-74. Removal from Town.

All weeds and brush cut in accordance with Section 7-73 hereof shall, immediately upon being cut, be removed from the Town or otherwise entirely destroyed by the owner of the lot upon which the weeds and brush have been cut. (Ord. 26-1992 §1)

Sec. 7-75. Designation of Undesirable Plant Management Advisory Commission.

The Chaffee County Weed Control Advisory Board 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 statute. (Ord. 26-1992 §1)

Editor's Note: Section 3.5-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.

Secs. 7-76—7-90. Reserved.

ARTICLE V

Animals and Livestock

Sec. 7-91. Definitions.

As used in this Article, unless the context otherwise requires, the following words shall have the meanings given to them in this Section:

Abandon includes the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

Animal or *animals* includes cattle, horses, sheep and rabbits.

Fowl includes ducks, geese, chickens and turkeys.

Keep means maintain, raise, house, stable or corral.

Mistreatment includes every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering.

Neglect includes failure to provide food, water, protection from the elements, opportunity for exercise or other care normal, usual and proper for an animal's health and well-being. (Prior code 6.08.010, 6.12.010)

Sec. 7-92. Cruelty designated.

(a) For the purpose of this Section only, *animal* means any living dumb creature.

(b) A person commits cruelty to animals if, except as authorized by law, he or she knowingly or with criminal negligence overdrives, overloads, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, carries in or upon any vehicle in a cruel manner, or otherwise mistreats or neglects any animal, or causes or procures it to be done; or, having the charge and custody of any animal, fails to provide it with proper food, drink or protection from the weather, or abandons it. (Prior code 6.08.010, 6.08.020)

Sec. 7-93. Permit; required.

No person shall keep animals or fowl within the corporate limits of the Town unless such person has a valid permit to do so, and no animal or fowl shall be allowed to run or fly at large. (Prior code 6.12.020)

Sec. 7-94. Permit application and annual fee.

Applications for a permit under this Article shall be made to the Town Clerk on forms provided therefor. Except for Special Permits as provided for in Section 7-97, each permit shall be valid through the end of the calendar year in which it was issued, and no permit shall be issued absent the payment of a nonrefundable fee in an amount established by the Board of Trustees. (Prior code 6.12.030; Ord. 6-1998, §6)

Sec. 7-95. Permit; conditions.

Prior to the issuance of any permit, and at all times thereafter when animals or fowl are kept within the Town, the owner or keeper thereof shall comply with the following requirements:

(1) All enclosures designed for the keeping of an animal or animals shall be secure enclosures and shall encompass not less than one thousand (1,000) square feet per horse; one thousand (1,000) square feet per head of cattle and one thousand (1,000) square feet per sheep.

(2) No animal or fowl shall be kept in such a manner as to constitute a public or private nuisance.

(3) Upon complaint, either verbal or written, to the Mayor, Town Administrator or Chief of Police, any animal or fowl being kept shall be kept in a secure enclosure located not less than three (3) feet from all property lines of the owner. (Prior code 6.12.040)

Sec. 7-96. Prohibition against commercial use.

Nothing contained in this Article shall in any way be deemed to vary or alter the terms of Chapter 16 of this Code. No commercial activity or enterprise involving the keeping of animals shall be permitted in those areas zoned as residential under the provisions of Chapter 16 of this Code. (Prior code 6.12.050)

Sec. 7-97. Special permits.

Permission to keep horses, cattle, sheep, rabbits and/or fowl in Town on a temporary basis, for a period not to exceed twenty-four (24) hours in duration, may be obtained without the payment of a permit fee by calling the Town Hall during business hours on weekdays or the Police Department on weekends or holidays and requesting that such permission be given. Such permission must be obtained prior to the time when the temporary keeping is to commence. (Prior code 6.12.060)

Sec. 7-98. Revocation or denial of permits.

(a) The Mayor, Town Administrator or Chief of Police may recommend the revocation of any permit upon satisfactory evidence that the permittee is violating, or has violated, any of the conditions set forth in this Article. Upon such recommendation being filed with the Town Clerk, the Town Clerk shall cause written notice thereof to be mailed to the permittee notifying said permittee that a hearing on such recommendation will be held at a Board of Trustees meeting in not more than twenty (20) days from the date of the mailing of such notice, specifying the time and place of said hearing. If, upon such hearing, said Board of Trustees finds that the permittee has violated conditions provided

in this Article for such permit, the Board of Trustees may forthwith revoke said permit and the permittee shall be allowed ninety-six (96) hours within which to correct the problem or rid the premises of such animals or fowl being kept.

(b) Upon the denial of a permit under the provisions of this Article, the Town Clerk shall cause written notice of such denial to be mailed to the applicant, notifying said applicant thereof. An applicant desiring to appeal such denial shall, within twenty (20) days of receipt of notice of such denial, so notify the Town Clerk in writing, requesting a hearing before the Board of Trustees. Upon receipt of such request for hearing, the Town Clerk shall give notice of hearing to the applicant in the manner provided for in Subsection (a) above for hearings upon revocation. Upon any such hearing of a denial of permit hereunder, the Board of Trustees shall, following such hearing, either direct that such permit be issued or affirm the denial of the permit. (Prior code 6.12.070)

Sec. 7-99. Sanitary regulations.

The premises upon which animals or fowl are to be kept shall be maintained in sanitary conditions and shall comply with all sanitary regulations adopted by the Board of Trustees or the County Health Department. Said premises shall be at all reasonable hours subject to inspection by representatives of the Town or the County Health Department. It shall be unlawful for any person to refuse to allow such inspection. (Prior code 6.12.080)

Secs. 7-100—7-120. Reserved.

ARTICLE VI

Dogs

Sec. 7-121. Title for citation.

This Article shall be known and may be cited as the "Town of Buena Vista Dog Control Ordinance of 1980." (Prior code 6.04.010)

Sec. 7-122. Definitions.

For the purposes of this Article, the following definitions shall apply:

Dog means any animal of the canine species, regardless of sex.

Dog, assistance means a dog that has been specially trained, or is being specially trained, to guide and/or assist a blind, visually impaired, deaf, hearing impaired or physically or mentally disabled or impaired person.

Dog, female means a dog of the female gender on which no surgery of the genital organs has been performed.

Dog, guard means a dog professionally trained and disciplined to protect persons or property by attacking or threatening to attack a person found within the area designated to be patrolled or protected by the dog.

Dog, male means a dog of the masculine gender, either castrated or not castrated.

Dog owner means a person who owns, possesses, controls, maintains, keeps or harbors a dog, or knowingly permits a dog to remain for seven (7) consecutive days on or about property or premises owned, controlled or occupied by him or her. A kennel is not a dog owner within the purview of this definition.

Dog, spayed female means a female dog on which an ovariectomy or ovariohysterectomy has been performed by a licensed veterinarian.

Dog, stray means a dog which does not appear to have an owner or whose owner is unknown, and which is unlicensed or does not appear to be licensed, and/or found unattached or loose anywhere within the Town.

Dog, vicious means a dog that unprovokedly attacks or bites a person or another animal on public or private property, or in a threatening manner approaches a person or another animal in an obvious attitude of attack; provided, however, that a dog shall not be deemed a *vicious dog* solely by reason of having bitten or attacked the following:

a. A person engaged in an unlawful entry into or upon the dog owner's property where the dog is kept.

b. A person engaged in the unlawful entry into or upon the dog owner's automobile or other vehicle wherein the dog is confined.

c. A person engaged in a physical attack upon the dog's owner or some other person.

d. A person engaged in attempting to stop an altercation between the subject dog and another animal.

e. A person who willfully provokes, incites or encourages the subject dog to bite or attack such person or another person or animal.

Kennel means a person, entity or operation which is licensed or permitted by the State and/or the Town and which keeps and maintains dogs for sale, resale, boarding, breeding, show, hunting or other commercial or recreational purposes.

License year means January 1 through December 31 of each calendar year.

Rabies means a communicable disease of both wild and domestic animals, especially dogs, transmittable to humans as defined by the U.S. Department of Agriculture.

Vaccination, inoculation or *vaccination for rabies* means the inoculation of a dog with vaccine approved by the U.S. Department of Agriculture for use in the prevention of rabies. (Prior code 6.04.020; Ord. 4-2003 §1)

Sec. 7-123. License required and rabies inoculation.

No dog over the age of six (6) months shall be kept, maintained or harbored within the Town for seven (7) or more consecutive days unless the dog owner shall have had the dog vaccinated against rabies and obtained a Town dog license and tag. (Prior code 6.04.030; Ord. 6-1998 §7)

Sec. 7-124. Application for license and tag; fees.

Applications for dog licenses and tags shall be made to the Town Clerk on forms provided therefor. No license or tag shall be issued absent presentation of a valid rabies vaccination certificate. A nonrefundable fee established by the Board of Trustees shall be paid for each license issued. (Prior code 6.04.040; Ord. 6-1998 §7)

Sec. 7-125. Duration of license.

A dog license shall expire at the end of the calendar year in which it was issued. (Prior code 6.04.050; Ord. 6-1998 §7)

Sec. 7-126. Information on license.

A dog license shall state the following information:

(1) Name and address of the dog owner;

(2) Breed, sex, age and description of the licensed dog;

(3) Date of vaccination or inoculation against rabies;

(4) Amount of license fee paid;

(5) Date of issuance of license; and

(6) Number of the license. (Prior code 6.04.060)

Sec. 7-127. Issuance procedure for tag.

A dog tag shall be issued with the dog license to the dog owner and shall be regarded as a part of the license. The tag will be made of a durable material, shall be suitable to be attached to a dog collar or harness, and will state the year of issuance and the number of the dog license. (Prior code 6.04.070)

Sec. 7-128. Tag not transferable.

Dog tags shall not be transferable from one dog to another, and no refunds shall be made for any dog license fee because of the death of the licensed dog or due to the licensed dog's permanent removal from the Town prior to the expiration of the license year. (Prior code 6.04.080)

Sec. 7-129. License and tag; use restricted.

It is unlawful to knowingly possess and/or fix a license and respective tag to or for any dog other than that specific animal for which the respective license and tag have been issued. (Prior code 6.04.090)

Sec. 7-130. Fees for licenses and tags.

Licenses and other fees as required to be paid under this Article shall be established by the Board of Trustees; except that no license fees or charges shall be charged to a person with a disability for the licensing of an assistance dog. (Prior code 6.04.100; Ord. 6-1998 §7; Ord. 4-2003 §2)

Sec. 7-131. Receipt for license and tag; duplicate tag.

Upon payment of the license fee as provided in Section 7-130, the official receiving said license fee shall issue to the applicant a receipt for the payment received for each dog licensed. The receipt shall contain the number of the license as shown on the tag. Said receipt shall be retained by the respective owner for inspection as may be reasonably required by the authorized enforcement authorities of the Town. In the event a dog tag is lost, destroyed or mutilated, a duplicate tag may be issued by the appropriate official, upon presentation of the receipt showing the payment of the license fee for the current year, and upon the additional payment of a fee in the amount of two dollars ($2.00) for such duplicate tag. (Prior code 6.04.110)

Sec. 7-132. Registration.

(a) Dogs over the age of six (6) months shall be licensed by January 1 of each year, or within thirty (30) days after having attained the age of six (6) months.

(b) Late registration shall be permitted after January 1 of each year, subject to the payment of the late registration fee.

(c) With respect to a dog brought into the Town subsequent to January 1 of each year, within thirty (30) days after the entry of such dog, the dog owner shall obtain a license for the dog and the regular fee shall apply to the registration. After such thirty (30) days, the late registration fee shall be paid. (Prior code 6.04.120; Ord. 6-1998 §7)

Sec. 7-133. Vaccination, inoculation by veterinarian.

(a) The vaccination or inoculation against rabies required in order to obtain a dog license must be performed by a licensed veterinarian.

(b) The dog owner shall obtain from the veterinarian a vaccination certificate which states the type of vaccination with which the dog was inoculated, date of the inoculation and recommended year of renewal of inoculation. (Prior code 6.04.130)

Sec. 7-134. Display of license and tag.

(a) A dog owner who obtains a dog license shall retain it during the license year and is required to present it for inspection by the authorized enforcement authorities of the Town in connection with the enforcement of this Article.

(b) A dog owner who obtains a dog tag in conjunction with the dog license shall attach the tag to the collar or harness of the licensed dog, and said collar or harness must be worn by said dog at all times. (Prior code 6.04.140)

Sec. 7-135. Kennel exemption for license.

Dogs kept or maintained by a licensed kennel need not be licensed pursuant to the provisions of this Article while they are within the confines of the kennel premises. (Prior code 6.04.150)

Sec. 7-136. Running at large.

(a) It is unlawful for a dog owner to permit his or her dog to run at large except as set forth in Subsections (b) and (c) below. A dog shall be deemed to be running at large when off or away from the property or premises of the dog owner and not under the direct control of the owner, a responsible member of the owner's family or an employee or agent of the owner, either by leash, rope or chain not more than twenty (20) feet in length.

(b) Dogs shall be allowed off leash while actually working livestock, locating or retrieving wild game in season for a licensed hunter, assisting law enforcement officers or actually being trained for any of these pursuits.

(c) Dogs shall be allowed off leash at areas designated by the Board of Trustees by resolution. (Ord. 2 §1, 2012)

Sec. 7-136.5. Harassment of assistance dogs prohibited.

(a) No person shall distract, harass, strike, injure, seize, entice, intimidate, frighten or otherwise interfere with any assistance dog that is accompanying, guiding, leading or physically in the control of a disabled person, or that is engaged in training with a handler.

(b) No dog owner, or person charged with the custody or control of a dog shall allow their dog, or a dog over which they are to have control, to attack, injure, harass, frighten or otherwise interfere with an assistance dog that is guiding, leading, accompanying or being controlled by a disabled person or an assistance dog training handler.

(c) For purposes of this Section, *disabled person* shall mean a blind, visually impaired, deaf, hearing impaired or physically or mentally handicapped or impaired person. (Ord. 04-2003 §3)

Sec. 7-137. Impounding.

(a) It shall be the duty of the Chief of Police or other person authorized by the Board of Trustees to apprehend any stray dog or any dog found running at large contrary to the provisions of Section 7-136 and to impound such dog in the Town animal shelter or other suitable place; and, upon receiving any dog, to make a complete registry entering the breed, sex and color of such dog and whether licensed; and if licensed, to enter the name and address of the owner and the date and number of the dog tag.

(b) Not later than seven (7) days after the impounding of a dog, the dog owner, if known, shall be given notice by the U.S. certified mail, return receipt requested. If the owner of the dog is unknown

or the dog is a stray dog, notice shall be published once or posted at one (1) or more conspicuous places in the Town for three (3) days, describing the dog and the place and time of taking. The owner of the dog so impounded may reclaim said dog upon payment of the license fee, if unpaid, and of all costs and charges incurred by the Town for the impounding and maintenance of said dog. Said charges shall be in addition to any penalties imposed on the dog owner under other provisions of this Article. (Prior code 6.04.170; Ord. 6-1998 §7)

Sec. 7-138. Quarantine.

(a) A dog which is known to have bitten or injured any person so as to cause an abrasion of the skin or a dog which, in the opinion of the Chief of Police or a licensed veterinarian, appears to be afflicted with rabies, shall be closely confined by the dog owner in accordance with the directions of the Chief of Police for a period of not less than ten (10) days. If said dog dies while confined or impounded as provided in this Section, proper medical tests shall be conducted at the expense of the dog owner upon said dog to determine whether the animal was suffering from rabies at the date of death.

(b) If the owner of a dog referred to in the preceding Subsection (a) cannot be determined or located, the Town shall confine said dog for a period of not less than five (5) days. If the owner of said dog is not determined or located or the dog claimed from confinement within said five (5) days, the Chief of Police may order such dog destroyed. If said dog is determined by a veterinarian to be suffering from rabies, it shall be destroyed immediately.

(c) It is unlawful for a dog owner, knowing or reasonably suspecting that a dog has rabies, to allow such dog to be taken off his or her property or premises or beyond the limits of the Town without the written permission of the Chief of Police. Every dog owner or other person, upon ascertaining that a dog is rabid, shall immediately notify the Chief of Police who shall either remove the dog to an animal shelter or other suitable place or, if necessary for the protection of the public, immediately destroy the dog. (Prior code 6.04.180)

Sec. 7-139. Disposition of unclaimed or diseased dogs.

(a) With respect to a dog which has been impounded or quarantined pursuant to the provisions of Sections 7-137 and 7-138, and which has not been claimed, released or disposed of in accordance with said sections, the Chief of Police shall keep said dog in an animal shelter or other suitable place for not less than five (5) days, after which said custodian may have said dog destroyed, except as provided in this Section.

(b) After said five (5) days, in lieu of having the dog destroyed, the Chief of Police may release such dog, if unclaimed and not diseased, to a bona fide humane society; or with respect to a stray dog, to a person having no previous interest in said dog in accordance with the provisions of this Article and upon the payment of an adoption fee. Upon payment of said adoption fee, there shall be neither additional charge for the current year's license nor any charges for daily boarding; provided, however, that at the time of adoption, a deposit shall be paid to the Town Clerk to guarantee that the subject animal shall be spayed or neutered. If within six (6) months from the time of adoption satisfactory written evidence is presented to the Animal Control Officer that the subject animal has been spayed or neutered, said deposit shall be returned to the respective person by the Town Clerk. (Prior code 6.04.190; Ord. 6-1998, §7)

Sec. 7-140. Quarantine and destruction of rabid dogs.

Dogs known to have been bitten by or exposed to a rabid animal:

(1) Shall be placed in suitable quarantine for a period of not less than ten (10) days at the expense of the dog owner. If said dog dies while quarantined, a medical test shall be conducted upon said dog at the expense of the dog's owner to determine whether the animal was suffering from rabies at the time of death.

(2) May be immediately destroyed where, in the reasonable discretion of the Chief of Police, said dog is endangering the life or person of another or inflicting death or injury to livestock or wildlife.

(3) Shall be released if not diseased upon proof of immunization and "booster" injections given by a licensed veterinarian at the expense of the dog owner. (Prior code 6.04.200)

Sec. 7-141. Vicious dogs prohibited; confinement.

(a) It is unlawful for any person to own, keep, harbor or possess a vicious dog anywhere in the Town, and such dog shall constitute a public nuisance that may be abated in accordance with the terms of this Chapter.

(b) It shall be the responsibility of a police or animal control officer to seize and impound a vicious dog running at large. If an officer determines that a vicious dog cannot be seized without exposing the officer or other persons to immediate danger of injury from the vicious dog, it shall be lawful for the officer to destroy the dog with or without notice to the dog's owner, keeper or possessor. Additionally, and upon a showing that reasonable efforts to determine or locate the owner of a vicious dog have failed, the Municipal Court may order the destruction of the animal.

(c) The Municipal Court may order the owner of or a person possessing a vicious dog to destroy or dispose of the dog upon a conviction under this Section, and the refusal or failure of such owner or person to comply with the order shall constitute a separate offense of this Section. Further, upon the failure of an owner or person to comply with the court order, the Police Department shall, upon order of the court, impound the vicious dog and shall cause it to be humanely destroyed, with the owner or person failing to comply with the order to pay all fees, costs and expenses of the impoundment and destruction of the animal.

(d) This Section shall not apply to *guard dogs* acting in performance of their duties; provided that the premises wherein such dogs are patrolling are in full compliance with the requirements of Subsection (e) below.

(e) It is unlawful for any person to place or maintain a *guard dog* in any area for the protection of persons or property unless the dog is physically confined to a specific enclosed area and the area or premises in which a *guard dog* is confined is conspicuously posted with one (1) or more warning signs bearing letters not less than two (2) inches high stating the following:

"WARNING—THESE PREMISES PATROLLED BY GUARD DOGS TRAINED TO ATTACK."

The sign shall also depict a decal or a logo that provides pictorial warning of a guard dog. (Prior code 6.04.210; Ord. 04-2003 §5)

Sec. 7-142. Muzzling and confinement.

(a) Whenever it becomes necessary to safeguard the public from the dangers of rabies, the Board of Trustees, if it deems it necessary, shall issue a proclamation ordering every person owning or keeping a dog to confine it securely on his or her property or premises unless such dog has a muzzle of sufficient strength to prevent its biting any person. Any unmuzzled dog running at large during the time of the proclamation shall be seized and impounded, and if noticeably infected with rabies and displaying vicious propensities, shall be destroyed by the Chief of Police.

(b) A dog impounded during the first two (2) days of such proclamation shall, if claimed within five (5) days after being impounded, be released to the owner, unless infected with rabies, upon payment of the charge provided for in Section 7-137. If unclaimed within five (5) days after said period, such dog may be immediately destroyed.

(c) A dog impounded during the first two (2) days of such proclamation shall, if claimed within five (5) days after being impounded, be released to the owner, unless infected with rabies, upon payment of all impoundment fees or charges. If unclaimed within five (5) days after said period, such dog may be immediately destroyed. (Prior code 6.04.220; Ord. 6-1998 §7)

Sec. 7-143. Noise, dog.

(a) It shall be unlawful for any person to harbor any dog which, by barking, howling, baying, yelping, crying, whining or other utterance, disturbs the peace and quiet of the neighborhood. For purposes of this Section, the following definition shall apply:

Harbor means the act of keeping and caring for an animal or of providing premises to which the animal returns for food, shelter or care.

(b) Any noise emitted by a dog which is audible from the boundary of the animal harborer's property shall be presumed to disturb the peace and quiet of the neighborhood, if any peace officer for the Town investigates the report thereof and determines that such noise is occurring as defined herein, taking into consideration the proximity of the complainant's residence or place of business with respect to the point of origin of the noise, and determining that such noise would disturb the senses of the average citizen or resident of the neighborhood under the circumstances complained of. Such presumption shall be rebuttable by the defendant.

(c) Prior to issuance of a citation for violation of this Section, the Animal Control Officer shall issue a written warning to the harborer of the dog causing the noise and request that the dog be silenced. If the same dog is a repeat offender of the offense defined in this Section, and such repeat offense occurs within sixty (60) days of the issuance of the warning, a citation shall be issued to the harborer of the offending dog.

(d) It is an affirmative defense to a charge under this Section that the dog was barking due to provocation. (Prior code 6.04.230; Ord. 4-1991 §1; Ord. 7-2005 §1)

Sec. 7-144. Effect of provisions on existing licenses.

The enactment of the ordinance codified in this Article, regardless of its repeal of other dog control ordinances of the Town, shall not in any way affect the validity of an unexpired dog license heretofore issued by the Town. Any such license then in effect will continue to have efficacy until the expiration date thereof. (Prior code 6.04.240)

Sec. 7-145. Enforcement.

The provisions of this Article shall be enforced by the Chief of Police or other persons so authorized by the Board of Trustees. (Prior code 6.04.250)

Sec. 7-146. Minimum fines.

(a) A person convicted of violating any provision of this Article shall be punished in accordance with the general penalty provisions set forth in this Code; provided, however, that the minimum penalty for any such violation shall be as follows:

(1) Upon first conviction within any three-year period, a fine of twenty-five dollars ($25.00);

(2) Upon second conviction within any three-year period, a fine of fifty dollars ($50.00); and

(3) Upon third or subsequent conviction within any three-year period, a fine of one hundred dollars ($100.00).

(4) Notwithstanding any other provision to the contrary contained in this Section, the minimum penalty for a violation of Section 7-136.5 shall be a fine not less than five hundred dollars ($500.00).

(b) Such minimum fines may be exceeded in the discretion of the Municipal Judge. (Prior code 6.04.260; Ord. 04-2003 §5)

Secs. 7-147—7-160. Reserved.

ARTICLE VII

Noise

Sec. 7-161. Intent and scope.

This Article is enacted to protect, preserve and promote the health, safety, welfare, peace and quiet of the citizens of the Town through the reduction, control and prevention of noise. It is the intent of this Article to establish standards that will eliminate and reduce all unnecessary and excessive noise that is physically harmful and otherwise detrimental to individuals and the community in the enjoyment of life, property and the conduct of business. The regulations contained in this Article will apply to all noise originating within the Town. (Ord. 5-2002 §1)

Sec. 7-162. Definitions.

As used in this Chapter, the following words are defined as follows:

A-weighted sound pressure level means the sound pressure level as measured with a sound level meter using the A-weighting network. The standard notation is dB(A) or dBA.

Ambient sound pressure level means the A-weighted sound pressure level of all noise associated with a given environment; usually a composite of sounds from many sources.

Commercial district means the B-1 "General Business District" and B-2 "Highway Business District."

Commercial power equipment shall mean any equipment or device rated at more than five (5) horsepower and used for building repairs or property maintenance, excluding snow removal and lawn care equipment.

Construction means any site preparation, assembly, erection, excavation, substantial repair, demolition, alteration or similar action with regard to any public or private rights-of-way, buildings, structures, utilities or similar property.

Construction activities means any and all activities incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereto, including land clearing, grading, excavation and filling.

Construction equipment means any device or mechanical apparatus operated by fuel, electric or pneumatic power in the excavation, repair, maintenance or demolition of any building, structure, lot, parcel, street, pipeline or appurtenance thereto.

Continuous noise means any sound that exists essentially without interruption for a period of ten (10) minutes or more.

Decibel (dB) means a unit measure of sound level.

Demolition means any dismantling, intentional destruction or removal of structures, utilities, public or private right-of-way surfaces or similar property.

Domestic power equipment shall mean any equipment or device rated at five (5) horsepower or less and used for building repairs, excluding grounds maintenance and snow removal equipment.

Emergency vehicle means a motor vehicle authorized to have sound warning devices such as sirens and/or bells which may lawfully be used when responding to an emergency or a police or fire activity.

Emergency work means any work performed for the purpose of preventing or alleviating injury, or threatened injury, to persons or property caused by an emergency.

Engine compression braking device (commonly referred to as Jacobs Brake or Jake Brake) means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.

Grounds maintenance equipment means equipment necessary to maintain yards, parks or lots, and includes, but is not limited to, lawn mowers, edgers, trimmers, tillers, chainsaws and leaf blowers.

Impulse noise means sound of short duration, usually less than one (1) second and of high-intensity, with an abrupt onset and rapid decay, examples of which include explosions, air horns or the discharge of firearms.

Industrial district means I-1 "Light Industrial District."

Motor vehicle means every vehicle which is self-propelled by mechanical power including, but not limited to, passenger cars, trucks, truck trailers, campers, motorcycles, minibikes, mopeds, semi-trailers, go carts and snowmobiles.

Muffler and sound dissipative device means a device for abating the sound of escaping gases from an internal combustion engine.

Noise means sound that is unwanted and that annoys or disturbs humans or causes, or tends to cause, an adverse psychological or physiological effect on humans.

Nuisance means the doing of or the failure to do something that allows or permits noise to be emitted from any source in excess of the standards contained in this Article.

Person means any human being, firm, association, organization, partnership, business, trust, corporation, company, contractor, supplier, installer, user, owner or operator, including any municipal corporation, state or federal government agency, district, and any officer or employee thereof.

Property boundary or line means an imaginary line normally drawn at the ground surface, and its vertical extension, which separates real property owned or occupied by one person from that owned or occupied by another person, including multiple dwelling units from adjoining units.

Public right-of-way means any street, avenue, boulevard, highway, sidewalks, alley, public use easement, public trail or similar place owned or controlled by a governmental entity.

Residential district means any parcel of land zoned as R-1, R-2, R-3 or a PUD zoned primarily for residential purposes.

Snow removal equipment means any equipment used for removing snow from land or building surfaces and shall include snowplows, snowblowers, snowsweepers and snow shovels.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter which induces auditory sensation. A description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound level meter means an instrument of a design and character of a Type 2 or better instrument as established by the American National Standards Institute, Publication S1.4-1971, entitled *Specification for Sound Level Meters,* or its successor publication, and that includes a

microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

Sound pressure means the instantaneous difference between the actual pressure and the average or parametric pressure at any given point in space, as produced by sound energy.

Use district means those zone districts established by the Town zoning ordinances. (Ord. 5-2002 §1)

Sec. 7-163. Excessive noise prohibited.

(a) It shall be unlawful and a public nuisance for any person to emit, cause or permit any noise that exceeds the decibel levels set forth in this Section. In determining whether a violation of the decibel levels established in this Section is occurring, the noise and/or noise source must be continuous for more than five (5) minutes, or occur for ten (10) or more minutes within any sixty (60) minute period, or be measured at a point or points along the property line enclosing the property on which the noise source is located. Periodic, impulse or shrill noises shall be deemed unlawful and a public nuisance when they are measured at a decibel level of five (5) dB(A) less than those levels contained in the table below.

Maximum Permitted Noise Levels (dB(A)

Use District	*7:00 a.m. to 7:00 p.m.*	*7:00 p.m. to 7:00 a.m.*
Residential Districts	55	50
Commercial Districts	60	55
Light Industrial Districts	70	65

(b) When a noise source can be identified and its source is measured in more than one (1) use district, the limits for the most restrictive district shall apply at the boundaries between the districts.

(c) In a PUD overlay/zone district, except as otherwise provided for in the approved applicable PUD zoning, the maximum permitted noise level shall be in conformance with the underlying zone district, or that zone district listed in the "Maximum Permitted Noise Levels" table most similar to the PUD district as determined by the Town Administrator. (Ord. 5-2002 §1)

Sec. 7-164. Prohibited noise activity.

Notwithstanding the maximum permitted noise levels as elsewhere set forth in this Article, the following noise creating activities are prohibited everywhere in the Town:

(1) *Vehicle horns and audible warning devices.* No person shall at any time sound any horn or other audible signal device of a motor vehicle in excess of ten (10) seconds unless it is necessary as a warning to prevent or avoid a traffic accident, or is reasonably necessary to inform or warn of a vehicle presence, inclusive of audible back-up safety warning devices.

(2) *Amplified sound devices in public parks, rights-of-way and recreation areas.* Except for an authorized public address system utilized to announce a sporting or recreational event, no noise

shall be emitted from any radio, tape/CD player, electronic sound system, or similar electronic amplified sound reproduction or receiving device on or within any public street, right-of-way or sidewalk, or public park or recreational area at a volume plainly audible at a distance of twenty-five (25) feet or greater from the noise source unless authorized under a permit as obtained under this Article.

(3) *Engine compression brake devices.* The operation or use of engine compression braking devices on trucks or other motor vehicles is prohibited within the Town except in circumstances of an emergency where the use of conventional braking equipment is insufficient to avoid a collision or other accident.

(4) *Construction equipment and activities.* No person shall operate any construction equipment, or conduct any construction activities, between the hours of 7:00 p.m. and 7:00 a.m. that exceeds the noise limits established in Section 7-163 of this Article, and further:

a. At no time shall construction noise exceed eighty (80) dB(A);

b. On Sundays in residential zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed fifty (50) dB(A);

c. On Sundays in commercial zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed fifty-five (55) dB(A);

d. On Sundays in light industrial zone districts between the hours of 7:00 a.m. and 9:00 a.m., and between 5:00 p.m. and 7:00 p.m., no construction noise shall exceed sixty-five (65) dB(A).

e. The Town may grant variances from the construction noise restrictions if it can be demonstrated that a construction project will interfere with traffic if completed during daytime hours, or that other extenuating circumstances exist requiring relief from the prohibitions contained in this Section. (Ord. 5-2002 §1)

Sec. 7-165. Exemptions.

The maximum permitted noise levels set forth in this Article shall not apply to the following noise emissions or activities:

(1) Any bell or chime from any building clock, school or church, but excluding any amplified bell or chime sounds emitted from loudspeakers.

(2) Any siren, whistle, bell or audible warning device lawfully used by an emergency vehicle or on construction equipment, or any other alarm system used in case of fire, collision, civil defense, police activity or imminent danger; provided, however, that burglar alarms or construction equipment alarms or warning devices not terminated within fifteen (15) minutes after being activated shall be deemed a nuisance and unlawful.

(3) Any aircraft in flight subject to federal law regarding noise control and any helicopter operating in an emergency, or in the act of landing or taking off at a helipad authorized by the

Town so long as the helicopter is not landing or taking off in violation of any conditions or restrictions of the helipad's authorization.

(4) Any ground-based aircraft activity, including testing or engine run-up noise, provided, however, that emission of such noise in excess of a noise level of eighty (80) dB(A) when measured upon an inhabited residential premises shall be deemed an unlawful nuisance.

(5) Any grounds maintenance equipment operated during the time period between 7:00 a.m. and 7:00 p.m.; provided, however, that the operation of such equipment between the hours of 7:00 p.m. and 7:00 a.m. shall not exceed the maximum noise levels specified in Section 7-163 above.

(6) Any construction equipment or activities in compliance with Section 7-164(4) above.

(7) Any domestic power equipment operated between 7:00 a.m. and 7:00 p.m., provided that such equipment does not exceed a noise level of seventy (70) dB(A) when measured twenty-five (25) feet from the property line of the property on which the equipment is being operated; and further provided that between the hours of 7:00 p.m. and 7:00 a.m., such equipment does not exceed the maximum noise levels as specified in Section 7-163 above.

(8) Any commercial power equipment operated between 7:00 a.m. and 7:00 p.m., provided that such equipment does not exceed a noise level of eighty (80) dB(A) when measured twenty-five (25) feet from the property lines of the property on which the equipment is being operated; and further provided that between 7:00 p.m. and 7:00 a.m., such equipment does not exceed the maximum noise levels as specified in Section 7-163 above.

(9) The musical instruments of any school marching band while performing at any sporting event, parade or marching band competition, and the musical instruments of any school marching band practicing on school grounds that do not exceed sixty-five (65) dB(A) when measured at the property line of any residential premises at which the band noise is audible.

(10) Snow removal equipment operated on any premises following a snowstorm between the hours of 5:00 a.m. and 9:00 p.m., provided that such equipment does not exceed noise limits of eighty (80) dB(A) for commercial power equipment, or seventy (70) dB(A) for domestic power equipment, when measured at a distance of twenty-five (25) feet from the property line of the property on which the equipment is being operated.

(11) The operation of lawn sprinklers.

(12) Any power generator providing emergency electrical power at any hospital, health clinic, nursing home or similar facility where the loss of electrical power poses an immediate risk to the health, safety or welfare of any person, or at any premises where such equipment is required by the Fire Department. Additionally, the noise emitted during the routine testing of emergency electrical power generators shall not exceed eighty (80) dB(A) at a distance of twenty-five (25) feet from the property line for the property on which the generator is operated. Routine testing shall not exceed one (1) hour in any one-week period, or two (2) hours in any six-week period, and shall be confined to the hours of 10:00 a.m. to 4:00 p.m., or as otherwise approved.

(13) Outdoor events and/or gatherings authorized by permit issued by the Town, or conducted by or directly sponsored by the Town or the School District, including, but not limited to, school sporting events, outdoor activities and performances, Fourth of July, Gold Rush Days, parades and other similar events/activities.

(14) Noise created or caused by employees, contractors or agents of the Town or another government agency while performing emergency work or activities necessary to address a natural or man-made disaster, calamity or emergency. (Ord. 5-2002 §1)

Sec. 7-166. Motor vehicle noise prohibited.

(a) No person shall operate, nor shall the owner permit the operation of, any motor vehicle or combination of motor vehicles at any time or place when such operation exceeds the noise levels for the category of motor vehicle specified in this Section. The noise levels shall apply to the total noise emitted from a motor vehicle, including any and all equipment thereon, and under any condition of acceleration, deceleration, idle, grade or load, and whether or not in motion; but excepting audible backup safety warning devices.

(b) It shall also be unlawful for any person to drive or move, or for the owner of any motor vehicle to permit to be driven or moved, any motor vehicle which is not equipped with an approved exhaust muffler satisfying the requirements of this Section; and/or to modify or change an approved exhaust muffler, air intake muffler or any other sound-reducing device in such a manner that the noise emitted from the motor vehicle exceeds the noise levels as established in this Section. Muffler cut-outs, by-passes or other devices which increase noise levels or change the original manufactured exhaust system of a motor vehicle shall be considered a violation of this Section. Additionally, all motor vehicles equipped with an engine compression brake device shall be required to have a muffler which will contain engine compression brake noise within the limits set forth below.

Maximum Permissible Noise Levels for Motor Vehicles

Motor Vehicle Type	*Maximum dB(A) at speed limit 35 mph or less*	*Maximum dB(A) at speed limit greater than 35 mph*
Vehicles operating on a public highway or street and weighing 6,000 pounds or more manufacturer's gross vehicle weight and manufactured before January 1, 1973	88	90
Vehicles operating on a public highway or street and weighing 6,000 pounds or more manufacturer's gross vehicle weight and manufactured on or after January 1, 1973	86	90
Any motorcycle operating on a public highway or street and manufactured before January 1, 1973	88	90
Any motorcycle operating on a public highway or street and manufactured on or after January 1, 1973	86	90
Any other motor vehicle or self-propelled recreational vehicle primarily designed for off-highway use operating on a public highway or street	82	86
Any vehicle motor being operated on private or public property not designated as a highway or street	78	78

(c) For the purpose of this Section, a truck, truck tractor or bus that is not equipped with an identification plate or marking bearing the manufacturer's name and manufacturer's gross vehicle weight rating shall be considered as having a manufacturer's gross vehicle weight rating of six thousand (6,000) pounds or more if the unladen weight is more than five thousand (5,000) pounds. (Ord. 5-2002 §1)

Sec. 7-167. Noise level measurements.

(a) Noise level measurements made pursuant to this Article shall be made in accordance with standards promulgated by the American National Standards Institute with a sound level meter of standard design using the A-weighting network/scale. Measurements shall be made when wind velocity at the time and place of the measurement is not more than five (5) mph, or with a wind screen when the wind velocity is greater than five (5) mph. Consideration shall also be given to the ambient sound pressure level at the time and place of any noise level measurement.

(b) Noise level measurements for a motor vehicle operating on a public highway or street shall be measured at a distance of fifty (50) feet from the center of the lane of travel.

(c) Noise level measurements for a motor vehicle operating on private property, or public property not designated as a highway or street, shall be measured at any point along the property line enclosing or delineating the property on which the vehicle is operating. (Ord. 5-2002 §1)

Sec. 7-168. Noise permits.

(a) A permit to vary or temporarily waive the maximum allowable noise levels as specified in this Article may be applied for and obtained from the Town for special events or activities, including, without limitation, musical performances or other entertainment events, fireworks displays, parades and seasonal commercial activities. Applications for a permit shall be made on approved forms and be submitted along with any application fee to the Town Clerk not less than seven (7) working days prior to the date for which the permit is sought. The application shall be promptly routed by the Town Clerk to the Town's zoning and police officials, who shall forward their comments concerning same to the Town Administrator.

(b) The Town Administrator may grant or deny a permit application taking into consideration the nature, volume and duration of the noise/activity sought to be permitted, the location of the proposed noise/activity, the anticipated impact of the proposed noise/activity on surrounding properties and neighborhoods, and whether the public health and safety will be injured or served by the issuance of the permit. The Town Administrator may also waive the permit application deadline set forth in Subsection (a) above for good cause shown.

(c) The Town Administrator may conduct a public hearing to consider a permit application if he or she deems it necessary or appropriate. Notice of the hearing must be sent to the permit applicant at least three (3) days in advance thereof by either telephone, telefacsimile, electronic mail, regular mail, or such other method as will likely and timely reach the applicant. Notice to the public of the hearing shall be timely posted at the places or locations annually designated by the Board of Trustees under Section 24-6-402(2)(c), C.R.S. of the Colorado Open Meetings Law.

(d) The Town Administrator may prescribe such permit conditions or requirements as he or she may deem necessary to minimize the adverse impacts the proposed noise/activity may have upon the community or surrounding neighborhood, including, but not limited to, the hours of operation, maximum decibels, the type of any sound amplification equipment, and the type of sound that may be amplified. A permit granted by the Town Administrator under this Section shall contain all conditions upon which the permit has been granted and shall specify the location and time that the permit shall be effective.

(e) An applicant dissatisfied with a decision of the Town Administrator may seek an appeal of same to the Board of Trustees by submitting a written notice of appeal to the Town Clerk within five (5) days from the date of the decision sought to be appealed. The Board of Trustees shall review the appeal and decision of the Town Administrator as soon as can be reasonably accommodated on the Board's meeting schedule/agenda. The Board of Trustees may reverse, modify or affirm the decision of the Town Administrator. The Board of Trustees' decision shall be final. (Ord. 5-2002 §1)

Secs. 7-169—7-180. Reserved.

ARTICLE VIII

Open Fires and Burning

Sec. 7-181. High fire danger declaration.

At such time as the Fire Chief determines that a high fire danger exists, the Fire Chief shall declare the existence of a high fire danger and announce the imposition of restrictions on open fires and open burning. The Fire Chief may adjust the restrictions on open fires and open burning depending on the nature of the fire danger. In the event that the Fire Chief is unavailable, he or she will appoint, in writing to the Town Administrator, a designee who is empowered with the same authority. The declaration of a high fire danger and related restrictions shall be passed on to the Town Administrator, who shall distribute it to all Town employees, the Board of Trustees and the public. (Ord. 19, §2 2012; Ord. 9 §1, 2013)

Sec. 7-182. Defined.

For the purposes of this Article *open fires* and *open burning* shall mean any outdoor fire, including but not limited to campfires, warming fires, charcoal grill fires, fires in wood-burning stoves or grates, fused explosives and fireworks of all types. (Ord. 19, §2 2012; Ord. 9 §1, 2013)

Sec. 7-183. Prohibited activities.

Open fires and open burning during a period of high fire danger are prohibited. During a period of high fire danger, the smoking of tobacco and other products in cigarettes, cigars or pipes is prohibited outdoors. *Outdoors* shall mean any place outside an enclosed structure or vehicle. The discarding of a lighted cigarette, cigar or pipe tobacco outdoors is prohibited during a period of high fire danger. (Ord. 19, §2 2012; Ord. 9 §1, 2013)

Sec. 7-184. Exemptions.

Unless expressly so stated in the Fire Chief's declaration, fire restrictions shall not apply to gas-fueled grills used out-of-doors, nor to fires within liquid-fueled or gas-fueled stoves and fireplaces within buildings, nor to fires in wood-burning stoves and fireplaces `within private residences. (Ord. 19, §2 2012; Ord. 9 §1, 2013)

Sec. 7-185. Penalties.

Violations of this Article shall be punishable in accordance with the provisions of Section 1-72 of this Code. Additionally, violations of this Article are hereby deemed and declared to be public nuisances and may be abated by injunction or such other remedy as provided by law or equity. (Ord. 19, §2 2012; Ord. 9 §1, 2013)

Secs. 7-186—7-190. Reserved.

CHAPTER 8

Vehicles and Traffic

Sec. 8-126 Parking of vehicles or placement of property on public property, streets or on public places for the purposes of sale unlawful

ARTICLE I

Model Traffic Code

Sec. 8-1. Model Traffic Code adopted.

Pursuant to Part 2 of Article 16 of Title 31, C.R.S., there is hereby adopted by reference Articles I and II, inclusive, of the 2003 Model Traffic Code for Colorado, promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Ave., Denver, Colorado 80222. 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 is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State and the nation. One (1) copy of the Model Traffic Code shall be maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of the code may also be purchased through the Clerk's office at a reasonable price. (Prior code 10.04.010; Ord. 26-1995 §1; Ord. 10-2003 §1)

Sec. 8-2. Additions or modifications to Model Traffic Code.

The Model Traffic Code adopted pursuant to this Article is subject to the following additions and/or modifications:

(1) Article I, Subsection 225, "Mufflers — prevention of noise," is deleted (see Section 7-166, B.V.M.C., Motor vehicle noise prohibited).

(2) Article I, Subsection 1101(2)(c), is amended so as to read in its entirety as follows:

"(c) Twenty-five (25) miles per hour in any residence district, as defined in Section 42-1-102(80), C.R.S."

(3) A new Section 1416, "Driving on sidewalk; animals prohibited on sidewalk," is added to Article I of the code to read as follows:

"**Section 1416. Driving on Sidewalk; animals prohibited on sidewalk**.

"(1) No person shall drive any vehicle upon a sidewalk or sidewalk area within this municipality, except upon a permanent or duly authorized temporary driveway.

"(2) No person shall ride, walk or lead a horse, mule, burro or llama upon any sidewalk or sidewalk area within this municipality; nor shall any person permit any horse, mule, burro or llama under his control to stand upon any sidewalk or sidewalk area within this municipality."

(4) Article I, Section 1701, "Municipalities — traffic offenses classified — schedule of fines," is amended to read as follows:

"**Section 1701. Traffic violations classified.**

"(1) The term 'traffic violation' shall refer to either 'traffic infractions' as defined in paragraph (2), or to 'traffic offenses' as defined in paragraph (3) below.

"(2) It is a 'traffic infraction' for any person to violate any of the provisions of this code, except those violations specifically listed in paragraph (3). Traffic infractions are civil matters to be tried before the court without right to jury trial, and no person found liable for a traffic infraction shall be punished by imprisonment.

"(3) Violation of the following provisions of this code shall be deemed a misdemeanor 'traffic offense,' and the defendant shall have the right to demand a jury trial and may be punished by imprisonment:

"(a) 107, obedience to police officers;

"(b) 228(7) and (8), altering or destroying tire markings and selling vehicle for highway use with noncomplying tires;

"(c) 233, alteration of suspension systems;

"(d) 235, minimum standards for commercial vehicles;

"(e) 507, wheel and axle loads;

"(f) 508, gross weight of vehicles and loads;

"(g) 509, vehicles weighed–excess removed;

"(h) 510, permit for excess size and weight and manufactured homes;

"(i) 607, interference with official devices;

"(j) 611, paraplegic persons or persons with disabilities–distress flag;

"(k) 712, driving in highway work area;

"(l) 806, driving through safety zone prohibited;

"(m) 808, drivers and pedestrians, other than persons in wheelchairs, to yield to persons with disabilities;

"(n) 1010, driving on divided or controlled-access highways;

"(o) 1101, driving twenty-five or more miles per hour in excess of a speed limit;

"(p) 1105, speed contests;

"(q) 1401, reckless driving;

"(r) 1402, careless driving;

"(s) 1403, following fire apparatus prohibited;

"(t) 1404, crossing fire hose;

"(u) 1406(1)(b), foreign matter on highway prohibited (burning material);

"(v) 1408, operation of motor vehicles on property under control of or owned by parks and recreation districts;

"(w) 1409, compulsory insurance;

"(x) 1413, eluding or attempting to elude a police officer;

"(y) 1704, offenses by persons controlling vehicles;

"(z) 1903, school buses—stops—signs—passing;

"(aa) 1904, regulations for school buses—regulations on discharge of passenger—penalty—exception."

(5) Article I, Section 1702, "Counties—traffic offenses classified—schedule of fines," is deleted.

(6) Article I, Section 1704, "Offenses by persons controlling vehicles," is amended to read as follows:

"**Section 1704. Violations by persons controlling vehicles.**

"No owner or any other person employing or otherwise directing the driver of any vehicle shall require or knowingly permit the operation of such vehicle upon a highway or street in any manner contrary to law or this code."

(7) Article I, Section 1705, "Person arrested to be taken before the proper court," is amended to read as follows:

"**Section 1705. Person arrested to be taken before the proper court.**

"(1) Whenever a person is arrested for any traffic violation under this code and not promptly released pursuant to subsection (2) below, the arrested person shall be taken without unnecessary delay before the municipal court judge.

"(2) A person arrested for a traffic offense may be released by the arresting authority if such authority is satisfied that adequate grounds do not exist to sustain an alleged traffic offense, or the arresting authority is satisfied that the arrestee will obey a summons commanding his or her appearance in the municipal court at a later date. If a person is released under the latter circumstances, he shall be given a summons and complaint to appear at a specified date and time in the municipal court, and shall sign a written acknowledgement of receipt of same and a promise to appear at the place, date and time specified.

"(3) The municipal court judge shall provide a bail bond schedule for utilization in the release of persons arrested for traffic offenses."

(8) Article I, Section 1707, "Summons and complaint or penalty assessment notice for traffic offenses–release–registration," is amended in its following parts to read as follows:

"**Section 1707. Summons and complaint and/or penalty assessment notice for traffic violations.**

"(1) Summonses and complaints issued under this code shall comply with the standards and format as prescribed by the Colorado Municipal Court Rules of Procedure, and shall additionally include the following information: the license number of the vehicle involved, if any; the number of the defendant's driver's license, in any; the date the summons and complaint are served on the defendant; shall be signed by the officer issuing the summons and complaint; and shall contain a place for the defendant to sign for receipt of the summons and complaint and defendant's promise to appear in the municipal court on a date and time specified.

"(3)(a) Whenever a penalty assessment notice for a traffic violation is issued, the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the code alleged to have been violated, a brief description of the offense, the date and approximate location thereof, the amount of the penalty prescribed for such offense, the amount of any surcharge, the number of points, if any, prescribed for such offense pursuant to Section 42-2-127, C.R.S., and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in the municipal court at a specified time and place in the event such penalty and surcharge, if any, thereon is not paid; shall be signed by the peace officer; and shall contain a place for such defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty and surcharge, if any, prescribed thereon within twenty days, as well as such other information as may be required by ordinance and the C.M.R.C. to constitute such penalty assessment notice to be a summons and complaint should the prescribed penalty and surcharge, if any, thereon not be paid within the time allowed by ordinance or court order.

"(5) Whenever a defendant refuses to accept service of a summons and complaint and/or penalty assessment notice, tender of such summons and complaint and/or penalty assessment notice by a peace officer to the defendant shall constitute service thereon upon the defendant.

"(7) A penalty assessment notice shall not be issued and shall not apply to traffic violations when it appears that:

"(a) The defendant exceeded the reasonable and prudent speed by more than twenty-four miles per hour; or

"(b) The alleged violation has caused, or contributed to the cause of, an accident resulting in appreciable damage to property of another, or in injury or death to any person; or

"(c) The defendant has, in the course of the same transaction, violated more than one (1) provision of this code, one (1) or more of which are not specified in the penalty and surcharge schedules established in Chapter 10.04 of the Municipal Code."

(9) Article I, Section 1709, "Penalty assessment notice for traffic offenses – violations of provisions by officer – driver's license," is deleted in its entirety.

(10) Article I, Section 1710, "Failure to pay penalty for traffic offenses – procedures," is amended to read as follows:

"**Section 1710. Failure to pay penalty for traffic infractions — procedures.**

"(1) Unless a person who has been cited for a traffic infraction timely pays the penalty assessment and surcharge, if any, thereon such person shall appear at a hearing on the date and time specified in the citation and answer the complaint against such person.

"(2) If the violator answers that he is guilty or liable, or if the violator fails to appear for the hearing, judgment shall be entered against the violator.

"(3) If the violator denies the allegations in the complaint, a trial on the complaint shall be held subject to the provisions regarding a speedy trial which are contained in Section 18-1-405, C.R.S. If the violator is found guilty or liable at such final hearing, or if the violator fails to appear for a final hearing, judgment shall be entered against the violator.

"(4) If judgment is entered against a violator, the violator shall be assessed an appropriate penalty and surcharge, if any, thereon."

(11) Article I, Section 1716, "Notice to appear or pay fine–failure to appear–penalty," is amended to read as follows:

"**Section 1716. Notice to appear or pay fine—failure to appear—penalty.**

"(1) For the purposes of this part 17, tender by an arresting officer of the summons or penalty assessment notice shall constitute notice to the violator to appear in court at the time specified on such summons or to pay the required fine and surcharge thereon.

"(2) Any person who fails to appear when directed on a summons or penalty assessment notice for a traffic offense may be subject to a bench warrant and punished for contempt of court.

"(3) Any person who violates this section commits a traffic offense."

(12) Article I, Section 1717, "Conviction – attendance at driver improvement school," is amended to read as follows:

"**Section 1717. Conviction – attendance at a driver improvement school.**

"Whenever a person has been convicted or found liable for violating any provision of this code or other law regulating the operation of vehicles on highways, the court, in addition to the penalty provided for the violation or as a condition of either the probation or the suspension of all or any portion of any fine or sentence of imprisonment for a violation, may require the defendant, at his own expense, if any, to attend and satisfactorily complete a course of instruction at any designated driver improvement school located and operating in the county of the defendant's residence and providing instruction in the traffic laws of this state, instruction

in recognition of hazardous traffic situations, and instruction in traffic accident prevention. Unless otherwise provided by law, such school shall be approved by the court."

(13) A new Section 1718, "Notice on illegally parked vehicles," is added to Article I of the code to read as follows:

"**Section 1718. Notice on illegally parked vehicles.**

"Whenever any motor vehicle without driver is found parked or stopped in violation of any of the restrictions imposed by the ordinances of this municipality, the peace officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a penalty assessment notice directing the driver thereof to respond to and answer the charge against him at a place and at a time specified in said notice."

(14) A new Section 1719, "Failure to comply with notice on parked vehicle," is added to Article I of the code to read as follows:

"**Section 1719. Failure to comply with notice on parked vehicle.**

"If the driver or owner of an unattended motor vehicle charged with an apparent violation of the restrictions on stopping, standing or parking under the traffic ordinances of this municipality does not respond within the time specified to a penalty assessment notice affixed to such vehicle as provided in Section 1718 by appearance and payment at the municipal court, or by mailing payment by means of the United States mail, or by other disposition of the charge as provided by law, the clerk of the municipal court shall send a notice by mail to the registered owner of the vehicle to which the original notice was affixed, setting forth the violation and the time, date and place where it occurred and directing the payment of the penalty assessment and surcharge thereon, if any, within twenty days from the issuance of the notice. In the event such notice is disregarded, the Town may exercise any other available legal remedy, including the issuance of a summons and complaint commanding the violator to appear in court."

(15) A new Section 1720, "Presumption in reference to illegal parking," is added to Article I of the code to read as follows:

"**Section 1720. Presumption in reference to illegal parking.**

"In any prosecution charging a violation of any provision governing the stopping, standing or parking of a vehicle, proof that the particular vehicle described in the complaint or penalty assessment was parked in violation of any such regulation, together with proof that the defendant named in the complaint or penalty assessment was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred."

(16) Article II, Section 102, "Definitions," of the code is amended to add the following definitions:

"(55.5) "Private property" means any property under the control, management or operation of any person other than a governmental agency.

"(56.5) "Public property" means any property under the control, management or operation of any governmental agency. Public property includes, but is not limited to, streets, alleys, public rights-of-way, public easements, public parks and publicly owned or operated parking areas."

(Prior code 10.04.020; Ord. 10-1991 §1; Ord. 20-1992 §§1, 2; Ord. 26-1992 §1; Ord. 26-1995 §1; Ord. 10-2003 §1; Ord. 13-2003 §2)

Sec. 8-3. Application.

This Article, and the code adopted by reference herein, shall apply to every street, alley, sidewalk area, driveway, park and to every other public way, public place or public 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 1211, 1401, 1402 and 1413 of the adopted Model Traffic Code, respectively concerning limitations on backing, reckless driving, careless driving and eluding a police officer, shall apply not only to public places and ways but also throughout the Town. (Prior code 10.04.040; Ord. 20-1992 §3; Ord. 26-1995 §1; Ord. 10-2003 §1)

Sec. 8-4. Penalties; double penalties; driver's license.

(a) It is unlawful for any person to violate any of the provisions of the Model Traffic Code (MTC), as amended by Section 8-2 above, or the traffic and vehicle ordinances contained in this Chapter. The penalties set forth below shall apply to such violations. Fines and surcharges shall be paid to the Clerk of the Municipal Court.

(b) Minimum mandatory fine. Any person convicted of or found liable for any violation under the MTC or the traffic and vehicle ordinances in this Chapter shall be punished by a fine of not less than the amount of the penalty assessment as set forth in Section 8-5(c) for each violation for which the person is convicted. If no penalty assessment is set forth in Section 8-5(c) for a violation, then the minimum fine and surcharge for such violation shall be one hundred dollars ($100.00) and twelve dollars ($12.00) respectively. Minimum fines and surcharges are mandatory and shall not be suspended or reduced by any court, unless the court finds that extenuating circumstances and justice manifestly so require. The court may also stay the execution of any minimum mandatory fine and surcharge for no longer than ninety (90) days, or pending an appeal or a rehearing.

(c) Maximum penalty.

(1) In criminal traffic offense actions, the maximum penalty for each conviction shall be a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed one (1) year, or both such fine and imprisonment.

(2) In civil traffic infraction actions, the maximum penalty for each violation shall be a monetary fine not to exceed one thousand dollars ($1,000.00).

(d) Discretion within minimum and maximum penalties. For each violation of the MTC or a traffic or vehicle ordinance for which a defendant is found liable or convicted, the court may set a fine, or for criminal violations, a fine and imprisonment, so long as the fine is not less than the minimum set in Subsection (b) of this Section. The court may suspend any part of a term of imprisonment, as well as that part of a fine which exceeds the minimum set in Subsection (b) of this Section. Whenever a conviction or finding of liability after a trial is for a violation for which a penalty assessment is available under the schedule in Section 8-5(c), it is the policy of the Board of Trustees that the penalty imposed by the court for that violation be no less severe than the twenty-day penalty assessment figure for that violation, unless extenuating circumstances and justice manifestly so require. The reason for this policy is to save judicial and administrative expenses by encouraging defendants to elect to pay penalty assessments.

(e) Double penalties and surcharge. Penalties and surcharges imposed for speeding violations shall be doubled if the violation occurs within a maintenance, repair or construction area designated in accordance with the provisions of the Model Traffic Code. Additionally, penalties and surcharges shall be doubled for any moving violation occurring within a school zone.

(f) Driver's license. The Municipal Court shall notify the Colorado Department of Revenue whenever a judgment entered against a person for a traffic offense of traffic infraction, excluding violations related to parking, or a bench warrant issued against any person for a failure to appear to answer for an alleged traffic offense, remains outstanding in order that such person shall not be allowed or permitted to obtain or renew a driver's license as provided for in Section 42-4-1709(7)(a), C.R.S. (Ord. 26-1995 §2; Ord. 12-1998 §3; Ord. 10-2003 §1)

Sec. 8-5. Penalty assessment.

(a) Notice. Except as otherwise specifically provided, a peace officer shall issue a penalty assessment for all traffic infractions under the MTC, as amended by Section 8-2. Whenever a peace officer issues a summons and complaint for an alleged criminal traffic offense under the MTC which is listed in the schedule set forth in Subsection (c) of this Section, the peace officer may instead offer a penalty assessment notice. Notwithstanding the foregoing, no penalty assessment notice shall be issued or offered when:

(1) The defendant exceeds the reasonable and prudent speed by more than twenty-four (24) miles per hour; or

(2) The violation caused, or contributed to the cause, of an accident resulting in appreciable damage to property of another, i.e., in an amount not less than two hundred dollars ($200.00), or in injury or death to any person; or

(3) More than one (1) violation is alleged, one (1) or more of which are not specified in the penalty schedule set forth in this Section; or

(4) When the officer issuing the notice knows, or reasonably believes, that the alleged violator or vehicle has been involved in a criminal violation of any law of the Town for which there has been a conviction in a court of competent jurisdiction, and for which the sentence or judgment (be it fine or imprisonment) remains as yet unsatisfied.

No person shall be entitled to elect to pay a penalty assessment notice under Subsection (b) of this Section unless an offer of a penalty assessment notice has been made under this Subsection.

(b) Election. Any person offered a penalty assessment notice under Subsection (a) above may elect to pay the penalty assessment and appropriate surcharge instead of proceeding to trial on the alleged violation. The amount of the penalty assessment and surcharge shall be as provided in the schedule set forth in Subsection (c) of this Section. Payment of a penalty assessment and corresponding surcharge constitutes complete satisfaction of the alleged violation if the prescribed payment is postmarked or received at Town Hall within twenty (20) days following service of a penalty assessment on the person for the alleged violation. Payment of a penalty assessment and surcharge constitutes an acknowledgement of liability for the violation described in the summons or citation. If the person offered a penalty assessment notice elects not to make full and timely payment thereunder, an action on the alleged violation shall proceed as otherwise provided by law.

(c) Schedule. The following schedule sets forth the mandatory minimum penalty assessments and surcharges which may be offered for violations of this Chapter and of the MTC. In the event a penalty assessment and surcharge are not paid within twenty (20) days following service thereof for a violation, the penalty assessment shall double unless the Municipal Court finds that extenuating circumstances and justice require a lesser penalty.

Violation	***If paid within 20 days***	***Min. if paid after 20 days***	***Surcharges*** *
General			
MTC 109	$25.00	$50.00	$11.00
MTC 109.5	25.00	50.00	11.00
Equipment			
MTC 201	$45.00	$90.00	$16.00
MTC 202	45.00	90.00	16.00
MTC 204	25.00	50.00	11.00
MTC 205	25.00	50.00	11.00
MTC 205.5	25.00	50.00	11.00
MTC 206	25.00	50.00	11.00
MTC 207	25.00	50.00	11.00
MTC 208	25.00	50.00	11.00
MTC 209	25.00	50.00	11.00
MTC 210	25.00	50.00	11.00
MTC 211	25.00	50.00	11.00
MTC 212	25.00	50.00	11.00
MTC 213	25.00	50.00	11.00
MTC 214	25.00	50.00	11.00
MTC 215	25.00	50.00	11.00
MTC 215.5	25.00	50.00	11.00
MTC 216	25.00	50.00	11.00
MTC 217	25.00	50.00	11.00
MTC 218	25.00	50.00	11.00
MTC 219	25.00	50.00	11.00
MTC 220	25.00	50.00	11.00

MTC 221	25.00	50.00	11.00
MTC 222	25.00	50.00	11.00
MTC 223	25.00	50.00	11.00
MTC 224	25.00	50.00	11.00
MTC 226	25.00	50.00	11.00
MTC 227(1)	25.00	50.00	11.00
MTC 227(2)	25.00	50.00	11.00
MTC 228(1), (2), (3), (5) or (6)	25.00	50.00	11.00
MTC 229	25.00	50.00	11.00
MTC 230	25.00	50.00	11.00
MTC 231	25.00	50.00	11.00
MTC 232	25.00	50.00	11.00
MTC 233	85.00	170.00	26.00
MTC 234	25.00	50.00	11.00
MTC 235	Repealed		
MTC 236	50.00	100.00	18.00
MTC 237	30.00	60.00	13.00
Size, Weight and Load			
MTC 502	$85.00	$170.00	$26.00
MTC 503	35.00	70.00	14.00
MTC 504	85.00	170.00	26.00
MTC 505	85.00	170.00	26.00
MTC 506	25.00	50.00	11.00
MTC 507	175.00	350.00	49.00
MTC 508	175.00	350.00	49.00
MTC 509	75.00	150.00	24.00
MTC 510(9)(a)	50.00	100.00	18.00
MTC 512(1)	85.00	170.00	26.00
Signals, Signs and Markings			
MTC 603	$85.00	$170.00	$26.00
MTC 604	85.00	170.00	26.00
MTC 605	85.00	170.00	26.00
MTC 606	25.00	50.00	11.00
MTC 607	75.00	150.00	24.00
MTC 608	35.00	70.00	14.00
MTC 609	25.00	50.00	11.00
MTC 610	25.00	50.00	11.00
MTC 611	125.00	250.00	36.00
MTC 612	80.00	160.00	25.00
Rights-of-way			
MTC 701	$80.00	$160.00	$25.00
MTC 702	80.00	160.00	25.00
MTC 703	80.00	160.00	25.00
MTC 704	80.00	160.00	25.00

MTC 705	80.00	160.00	25.00
MTC 706	80.00	160.00	25.00
MTC 707	80.00	160.00	25.00
MTC 708	80.00	160.00	25.00
MTC 709	80.00	160.00	25.00
MTC 710	80.00	160.00	25.00
MTC 711	80.00	160.00	25.00
MTC 712	80.00	160.00	25.00
Pedestrians			
MTC 801	$25.00	$50.00	$11.00
MTC 802	25.00	50.00	11.00
MTC 803	25.00	50.00	11.00
MTC 805	25.00	50.00	11.00
MTC 806	80.00	160.00	25.00
MTC 807	80.00	160.00	25.00
MTC 808	80.00	160.00	25.00
Turning and Stopping			
MTC 901	$80.00	$160.00	$25.00
MTC 902	80.00	160.00	25.00
MTC 903	80.00	160.00	25.00
Driving, Overtaking and Passing			
MTC 1001	$80.00	$160.00	$25.00
MTC 1002	110.00	220.00	33.00
MTC 1003	110.00	220.00	33.00
MTC 1004	110.00	220.00	33.00
MTC 1005	110.00	220.00	33.00
MTC 1006	80.00	160.00	25.00
MTC 1007	110.00	220.00	33.00
MTC 1008	60.00	120.00	20.00
MTC 1009	80.00	160.00	25.00
MTC 1010	80.00	160.00	25.00
MTC 1011	125.00	250.00	36.00
MTC 1012	65.00	130.00	21.00
MTC 1903(1)(a)	125.00	250.00	36.00
Speeding			
MTC 1101 (1-4 mph over limit)	$50.00	$100.00	$18.00
MTC 1101 (5-9 mph over limit)	70.00	140.00	23.00
MTC 1101 (10-19 mph over limit)	120.00	240.00	35.00
MTC 1101 (20-24 mph over limit)	170.00	340.00	48.00
MTC 1101(3)	85.00	170.00	26.00
MTC 1103	60.00	120.00	20.00
MTC 1104	40.00	80.00	15.00
Parking			
MTC 1201	$40.00	$80.00	$15.00

MTC 1202	40.00	80.00	15.00
MTC 1204	25.00	50.00	11.00
MTC 1205	25.00	50.00	11.00
MTC 1206	25.00	50.00	11.00
MTC 1207	25.00	50.00	11.00
MTC1208 (5), (6), (7) or (9)	110.00	220.00	33.00
MTC 1211	40.00	80.00	15.00
Other MTC Offenses			
MTC 1402	$110.00	$220.00	$33.00
MTC 1403	60.00	120.00	20.00
MTC 1405	25.00	50.00	11.00
MTC 1406(1)(a), (2), (3) or (4)	45.00	90.00	16.00
MTC 1407	45.00	90.00	16.00
MTC 1407.5	45.00	90.00	16.00
MTC 1408	25.00	50.00	11.00
MTC 1411	25.00	50.00	11.00
MTC 1412	25.00	50.00	11.00
MTC 1414	25.00	50.00	11.00
MTC 1415	500.00	1,000.00	130.00
MTC 1416	25.00	50.00	11.00
MTC 1704	25.00	50.00	11.00
MTC 1901	35.00	70.00	14.00
MTC 1903(2) or (5)	35.00	70.00	14.00
MTC 1904(1)	100.00	200.00	30.00
Motorcycles			
MTC 1502	$40.00	$80.00	$15.00
MTC 1503	40.00	80.00	15.00
MTC 1504	40.00	80.00	15.00
Buena Vista Municipal Code			
7-164(1)	$25.00	$50.00	$11.00
7-164(3)	25.00	50.00	11.00
7-166(a)	25.00	50.00	11.00
7-166(b)	80.00	160.00	25.00
7-166(b)	500.00	1,000.00	130.00
(No compression brake muffler)			
8-21	$50.00	$100.00	$18.00

* $5.00 for Victims/Witness Fund, balance to Education Fund per Section 1-78, B.V.M.C.

(Ord. 10-2003 §1; Ord. 13-2003 §1; Ord. 8 §1, 2013)

Sec. 8-6. Surcharges for traffic violations.

Pursuant to Section 24-4.2-109, C.R.S., and Section 1-78 of this Code, surcharges shall be levied and collected on all traffic violations resulting in a plea or admission of guilt or liability, or a conviction or finding of guilt or liability after trial, inclusive of pleas or admissions entered pursuant

to a deferred sentence. The amount of all surcharges shall be set forth within the schedule found at Section 8-5 of this Article. Monies collected under this provision shall be deposited in the special funds established under Sections 4-34 and 4-36 of the Municipal Code. (Ord. 10-2003 §1)

Sec. 8-7. Parental notification.

Whenever a minor driver receives a summons for a traffic violation as provided for in this Article, the minor's parent or legal guardian or, if the minor is without parents or guardian, the person who signed the minor driver's application for a license shall immediately be notified by the court. (Ord. 10-2003 §1)

Sec. 8-8. Points assessment reduction.

(a) If a person receives a penalty assessment notice for a violation of the Model Traffic Code as adopted hereinabove, and such person pays the fine and surcharge for the violation on or before the date payment is due, the points assessed for such violation under the point system adopted at Section 42-2-127, C.R.S., shall be reduced as follows:

(1) For a violation having an assessment of three (3) or more points, the points shall be reduced by two (2) points.

(2) For a violation having an assessment of two (2) points, the points shall be reduced by one (1) point.

(b) The point reductions as provided for in this Section shall only be valid in accordance with the authority provided to municipalities under Section 42-2-127(5.6), C.R.S., and in the event such statute is amended and/or repealed, this Section shall, correspondingly, be amended and/or repealed. (Ord. 10-2003 §1)

Secs. 8-9—8-20. Reserved.

ARTICLE II

Vehicle Weight Limits

Sec. 8-21. Maximum allowable weight.

Except as allowed by Section 8-22, or except as otherwise posted, the maximum total vehicular weight for any vehicle operated upon any street, highway or alleyway within the Town shall be twenty thousand (20,000) pounds. (Prior code 10.16.010)

Sec. 8-22. Exceptions.

Vehicles engaged in making local deliveries or vehicles involved in local construction projects of a temporary nature, and only such vehicles, may exceed the weight limitation provided in Section 8-21; provided, however, that the maximum vehicular weight of any vehicle engaged in local deliveries or in a local construction project shall not exceed eighteen thousand (18,000) pounds per axle of any

such vehicle, nor exceed a total of eighty-five thousand (85,000) pounds for any one (1) vehicle. (Prior code 10.16.020)

Sec. 8-23. Signs.

There shall be placed in conspicuous areas throughout the Town appropriate signs informing the public of the weight limitations established in this Article in compliance with Sections 42-4-106(3) and 42-4-111(2), C.R.S. (Prior code 10.16.030; Ord. 12-1998 §6)

Secs. 8-24—8-40. Reserved.

ARTICLE III

Towing and Impoundment of Vehicles

Sec. 8-41. Definitions.

As used in this Article, unless the context otherwise requires:

(1) *Abandoned vehicle* means:

a. Any motor vehicle left unattended on private property for a period of seventy-two (72) hours without the consent of the owner or lessee of such property or his or her legally authorized agent;

b. Any motor vehicle left unattended on public property, including any portion of a highway right-of-way, within the corporate limits of the Town, for a period of seventy-two (72) hours; or

c. Any motor vehicle stored in an impound lot at the request of its owner, the owner's agent or a law enforcement agency and not removed within seventy-two (72) hours from the time the law enforcement agency notifies the owner that the vehicle is available for release upon payment of the applicable charges or fees.

(2) *Antique vehicle* means a motor vehicle valued principally because of its early date of manufacture or historical character or design, and which if not operable is substantially intact. A *junked* vehicle shall not qualify as an *antique vehicle*.

(3) *Junked vehicle* means a motor vehicle with a registration that expired at least twelve (12) months previously or that is in a state of disrepair or disassembly, and/or is inoperable or exhibits signs of physical deterioration, including rust or the loss of exterior paint and parts, or is damaged to the extent that it has value only for parts, salvage or junk, and includes *wrecked vehicles*.

(4) *Private property* means any real property which is not public property.

(5) *Property* means any real property within the Town which is not a street or highway.

(6) *Public place* means any location to which the public has access or is invited to enter. This definition does not include a private residence, if used for the sale of the owner's or tenant's personal vehicle.

(7) *Public property* means any real property having its title, ownership, use or possession held by the federal government, the State, County, Town or any other governmental entity of the State.

(8) *Street* or *highway* means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

(9) *Vehicle* means a machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and shall include, without limitation, automobile, airplane, truck, trailer, motorcycle, motor scooter, tractor, buggy and wagon. The term *vehicle* shall not include antique vehicles as defined in this Section.

(10) *Wrecked vehicle* means the same as *junked vehicle*. (Prior code 9.48.080; 10.20.010; Ord. 5-2000 §2; Ord. 15-2012 §§1, 2)

Sec. 8-42. Applicability.

The provisions of this Article shall apply to the towing, impoundment and sale of abandoned motor vehicles within the Town. Except as expressly modified hereby, the provisions of Part 16 of Article 4 of Title 42, C.R.S. (Section 42-4-1601, *et seq.*), shall also apply to the towing, impoundment and sale of abandoned motor vehicles within the Town. (Prior code 10.20.020)

Sec. 8-43. Authority to tow and impound vehicles.

The Police Department of the Town shall have the authority to tow and impound motor vehicles under the following circumstances:

(1) Interference with traffic or street maintenance. Whenever any police officer finds a vehicle, attended or unattended, standing upon any portion of a street, alley or highway right-of-way within the Town in such a manner or under such conditions as to interfere with free movement of traffic or proper street, alley or highway maintenance, such officer shall require such vehicle to be removed and placed in storage in the Town's designated storage facility. In the case of a vehicle interfering with proper street, alley or highway maintenance, such vehicle shall not be impounded until the officer or other Town employee has made a reasonable attempt to locate the owner or lawful custodian of said vehicle and require such person to remove the vehicle. Neither the Town, the police officer nor anyone acting under his or her direction shall be liable for any damage to any such vehicle occasioned by such removal.

(2) Abandoned or junked vehicles on public property. Whenever any police officer finds a motor vehicle which he or she has reasonable grounds to believe has been abandoned standing upon any public property within the Town, such officer shall make a reasonable effort to locate the owner or lawful custodian of such vehicle and require such person to remove the vehicle. If the owner or lawful custodian fails to remove such vehicle within one (1) hour after receiving

directions to do so, or if the owner or lawful custodian cannot reasonably be located, the officer shall require such vehicle to be removed and placed in storage in the Town's designated storage facility.

(3) Abandoned or junked vehicles on private property. In the event of the abandonment of a vehicle on private property of another, the owner of such property shall notify the Police Department. The Police Department shall then determine, in its discretion, whether it will request the towing of such vehicle. It is unlawful to store junked vehicles on private property unless the property is licensed as a vehicle junk yard business. The code enforcement officer will notify the owner of the vehicle and the property that they have thirty (30) days to remove the vehicle from the property or it may be towed to the Town impound. The owner of the vehicle or the property may appeal to the Municipal Judge prior to the end of the thirty-day time period.

(4) Emergencies. In the event of an emergency requiring the immediate removal of a vehicle parked in a street, alley or highway, the Police Department shall have the authority to require such vehicle to be removed and placed in storage in the Town's designated storage facility or other appropriate location without prior notice to the vehicle's owner or lawful custodian. However, if time permits prior to removing such vehicle, the Police Department shall make a reasonable effort to locate the owner or lawful custodian of such vehicle and require such person to remove the vehicle. Neither the Town, the police officer nor anyone acting under his or her direction shall be liable for any damage to any such vehicle occasioned by such removal.

(5) Compliance with law. In the event a motor vehicle is towed at the request of the Police Department, the Police Department shall thereafter comply with the provisions of Part 16 of Article 4 of Title 42, C.R.S., pertaining to public tows. (Prior code 10.20.030; Ord. 15-2012 §3)

Sec. 8-44. Post-impoundment hearing for impounded vehicles.

As to any vehicle impounded pursuant to this Article by or at the request of the Town, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a post-impoundment hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand for such hearing with the Town Clerk within ten (10) days after such person has learned that the vehicle has been impounded, or within ten (10) days after such person has been notified pursuant to law of the impoundment of such vehicle, whichever occurs first. Failure to request a hearing within such time shall operate as a waiver of the right to such hearing. (Prior code 10.20.040)

Sec. 8-45. Conduct of hearing.

(a) A hearing shall be conducted before the Municipal Judge within forty-eight (48) hours of receipt by the Town Clerk of the written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays and Town holidays are to be excluded from the calculation of the forty-eight (48) hour period. The sole issue at the hearing shall be whether there was a probable cause to impound the vehicle in question.

(b) *Probable cause to impound* means such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle.

(c) The person demanding the hearing shall have the burden of establishing that such person has the right to possession of the vehicle. The Town shall then have the burden of establishing that there was probable cause to impound the vehicle in question. The judge's decision shall in no way affect any criminal or municipal proceeding in connection with the impound question.

(d) The failure of the person requesting the hearing to attend such hearing shall be deemed a waiver of the right to such hearing. (Prior code 10.20.050)

Sec. 8-46. Decision of Municipal Judge.

At the conclusion of the hearing, the Municipal Judge shall only determine that, as to the vehicle in question either: (a) there was probable cause to impound the vehicle; or (b) there was no such probable cause. In the event of a determination that there was no probable cause, the Town shall forthwith release the vehicle to the person entitled to possession thereof and no towing, storage or processing fees shall be required to be paid by such person. (Prior code 10.20.060)

Sec. 8-47. Towing, storage and processing fees.

(a) In the case of a vehicle lawfully impounded pursuant to this Article, prior to such vehicle being released or in connection with the sale of such vehicle, there shall be paid in full to the Town the following:

(1) Towing fee and mileage. The fee actually charged to the Town by the person performing the towing service.

(2) Storage fee. A fee of four dollars ($4.00) per day for each day of storage.

(3) Processing fee. A fee of fifteen dollars ($15.00) for the cost of processing the vehicle.

(b) The towing, storage and processing fees are independent of any fine imposed by the Municipal Court for a violation of this Code, and such fees shall not be collected by the Municipal Court, nor shall such Court have the power to waive, suspend or modify the requirements of this Section.

(c) In the event of the towing and impoundment of a vehicle in an emergency situation pursuant to Section 8-43(4), the owner of such vehicle shall not be charged the towing, storage and processing fees provided for in this Section. Such fees shall be paid by the party responsible for causing the emergency, or in default thereof, by the Town. (Prior code 10.20.070)

Sec. 8-48. Sale of abandoned vehicles by Town.

Abandoned vehicles towed at the request of the Town or a law enforcement agency shall be sold at public or private sale held not less than thirty (30) days nor more than sixty (60) days after the notice required by Section 42-4-1604(4), C.R.S., has been mailed. All such sales shall be subject to the provisions of Part 16 of Article 4 of Title 42, C.R.S. (Prior code 10.20.080)

Sec. 8-49. Unlawful to abandon vehicle.

It shall be unlawful for any person to abandon a motor vehicle on either public property or private property other than his or her own. Any person who violates the provisions of this Section shall, upon conviction, be punished as provided in Section 1-72 of this Code. (Prior code 10.20.090)

Secs. 8-50—8-70. Reserved.

ARTICLE IV

Inoperable Vehicles

Sec. 8-71. Inoperable vehicle – parking prohibited.

(a) *Inoperable vehicle* means a motor vehicle or trailer that:

(1) Is not properly licensed and registered as required by Article 3 of Title 42, C.R.S.;

(2) Does not display current and valid license plates; or

(3) Lacks any part necessary for legal operation on a public street.

(b) It is unlawful to park any inoperable vehicle on a street, alley, park or other public way or public place within the Town, including private property available for public use. (Ord. 7 §1, 2011).

Secs. 8-72—8-90. Reserved.

ARTICLE V

Airport Rules and Regulations

Sec. 8-91. Adoption.

The Rules and Regulations for the Central Colorado Regional Airport as prepared by the Town of Buena Vista, Colorado, 210 East Main Street, P.O. Box 2002, Buena Vista, Colorado 81211, and dated September 28, 2010, are hereby adopted by reference. (Ord. 17 §1, 2010)

Sec. 8-92. Purpose.

The purpose of this Article is to adopt comprehensive rules and regulations regarding activity at the Central Colorado Regional Airport to ensure its efficient operation and to safeguard life and property from dangerous conditions at said airport. (Ord. 17 §1, 2010)

Sec. 8-93. Copy on file.

At least one (1) certified true copy of the Rules and Regulations for the Central Colorado Regional Airport shall be on file in the office of the Town Clerk and available for inspection during regular business hours. (Ord. 17 §1, 2010)

Sec. 8-94. Violations of Airport Rules and Regulations; penalty.

(a) It shall be unlawful and a municipal offense for any person to violate the Rules and Regulations for the Colorado Regional Airport, as amended. Upon conviction for such offense, a

person shall be punished by up to ninety (90) days in jail, a fine of not more than five hundred dollars ($500.00), or both.

(b) In addition to any other action allowed at law, including a Municipal Court action, the following remedies shall be available to the Town:

(1) Cease and desist order. The Airport Manager may order any person to cease and desist any activities or conduct violation of or in noncompliance with the Rules and Regulations for the Central Colorado Regional Airport.

(2) Removal from or denial of access to airport. The Airport Manager may order any person who knowingly fails to comply with a cease and desist order removed from or denied access to the airport. An order of removal from or denial of access to the airport shall be issued by the Airport Manager, and written orders may be hand-delivered or sent by certified mail to the person's last known address. Such order shall set forth the reasons for and dates on which removal or denial of access shall begin and end.

(3) Removal of property.

a. The Airport Manager may remove or cause to be removed from any restricted or reserved areas, any roadway or right-of-way or any other unauthorized area or structure at the airport, any property which is disabled, abandoned or which creates an operations problem, nuisance, security or safety hazard or which otherwise is placed in an illegal, improper or unauthorized manner.

b. Any property impounded by the airport shall be released to the owner or operator thereof, upon proper identification of the property, provided that the person claiming it pays any towing, removal or stage charges and any other accrued fees. The Town shall not be liable for any damage which may be caused to the property or loss or diminution of value which may be caused by the act of removal.

(c) Upon receipt of an order from the airport manager, the person subject to the order may submit, within ten (10) days of receipt of the order, a written appeal requesting review of the order to the Board of Trustees. Such request shall be in writing and shall specify all reasons why the order should be changed or modified. Within thirty (30) days of receipt of the written appeal, the Board of Trustees or a hearing officer designated by the Board of Trustees shall review the written appeal and render a decision. The decision shall be final and subject to appeal in accordance with the laws of the State of Colorado. (Ord. 17 §1, 2010)

Secs. 8-95—8-110. Reserved.

ARTICLE VI

Railroad Regulations

Sec. 8-111. Crossing signal authorization.

(a) The Denver and Rio Grande Western Railroad Company, its successors and assigns, is granted the right to install and maintain two (2) automatic crossing signals on the centerline of Main Street in the Town, in the vicinity of the intersection of the tracks of said railroad company with Main Street. Said signals shall be placed in concrete bases approximately five (5) feet wide by six (6) feet long by two (2) feet high, the center of one (1) of these bases to be approximately fifteen (15) feet southwesterly from the centerline of the passing track of the railroad company, and the center of the other base to be approximately fifteen (15) feet northeasterly from the centerline of the main track of said railroad company, both to be equipped with visible flashing light indication and with marker lights near the bases, and one (1) of said signals to be equipped also with a bell for audible warning. Said railroad company shall assume all responsibility for any change that may be required in case the State Highway Department should designate said street as a part of the state highway system.

(b) The railroad company, on completion of the installation of such automatic crossing signal, shall use due diligence to maintain the same in working order so as to give due warning to traffic of the approach of locomotives and for trains.

(c) After the installation of said automatic crossing signal in working order and condition, said railroad company, its successors and assigns, shall not be required to maintain a watchman at said crossing, all orders and resolutions of the Town notwithstanding. (Prior code 10.12.010)

Sec. 8-112. Speed limit for trains.

It is unlawful for railroad trains, including locomotives, railroad cars and/or cabooses to pass over the public streets and alleys of the Town at a speed in excess of forty (40) miles per hour. (Prior code 10.12.020)

Sec. 8-113. Enforcement.

It shall be the duty of the Chief of Police and all other police officers of the Town to serve a summons to any and all engineers or other persons in charge of railroad cars, trains or locomotives who violate Section 8-112 and to make arrangements for such person or persons to appear before the Municipal Court of the Town for trial. (Prior code 10.12.030)

Secs. 8-114—8-119. Reserved.

ARTICLE VII

Horse-Drawn Carriages

Sec. 8-120. Operation of horse-drawn carriages on public streets; permits required.

No person may drive or operate for commercial purposes a horse-drawn carriage or other animal-drawn vehicle on any street or public place within the Town except pursuant to an authorized permit issued by the Town Administrator in accordance with the terms of this Article. (Ord. 8-2002 §1)

Sec. 8-121. Horse-drawn carriage permit procedure; application fee.

(a) Applications for a horse-drawn carriage permit, or for a permit to commercially operate any animal-drawn vehicle, shall be made in writing to the Town Clerk on a form provided therefor. Each application shall be accompanied by the appropriate fee and contain, at a minimum, the following information:

(1) The name, telephone number and business address of the applicant.

(2) An identification of the type and number of animals and carriages or other animal-drawn vehicles sought to be permitted.

(3) A specification of the type and number of lights, reflectors and other safety devices or equipment to be used in the operation of each carriage or other vehicle.

(4) The name, telephone number, address and valid motor vehicle driver's license number for each person who will drive or operate a horse-drawn carriage or other animal-drawn vehicle, and a written statement illustrating each driver's experience, skill and training in the control of horses and/or large animals and the operation of animal-drawn vehicles.

(5) An identification of all proposed carriage travel routes, days and hours of operation, frequency of trips, and loading/ unloading locations. A map clearly depicting the proposed routes and loading/unloading locations for the carriage operation shall accompany the application.

(6) Written proof of the availability of broad coverage liability insurance covering claims for injury to persons or property arising from the operation of the horse-drawn carriage or other animal-drawn vehicle or service.

(7) A written sanitation plan for the disposal of animal waste, including the utilization of harness bags to capture manure.

(b) Upon the submission of a complete application and the payment of the appropriate application fee, the Town Clerk shall forward same to the Town Administrator for review and approval. The Town Administrator may require additional information from the applicant as necessary to fully evaluate the application. The Town Administrator shall approve or deny the application in a prompt fashion, and in any event within thirty (30) days from the date upon which all application materials were deemed complete. The Town Administrator may approve a permit subject to such terms and conditions as he or she deems necessary and reasonable for the protection of the public health and safety, including the specification of permitted travel routes and hours of operation.

An applicant dissatisfied with a decision by the Town Administrator may appeal same to the Board of Trustees by submitting a written notice of appeal to the Town Clerk within five (5) business days from the date of the decision appealed from. The notice of appeal shall set forth in plain language the reasons for the appeal and describe the relief sought. The Board of Trustees shall conduct a hearing on the appeal at a regular or special meeting. Written (mailed) or personal (telephone) notice of the hearing shall be provided to the appellant by the Town Clerk not less than ten (10) days in advance of the hearing. An unexcused failure by the appellant to attend the hearing in person or by an authorized representative will be deemed to be an abandonment of the appeal and the appeal shall be automatically denied. The decision by the Board of Trustees on appeal shall be made by written resolution and shall be final. (Ord. 8-2002 §1)

Sec. 8-122. Permits; insurance; exemptions; fee.

(a) All permits to operate a horse-drawn carriage or other animal-drawn vehicle shall be issued in writing on forms prepared by the Town for such purpose and shall be signed by the Town Administrator and the permittee. Unless otherwise authorized on the face of the permit, a permit shall automatically expire one hundred and eighty (180) days from its date of issuance.

(b) No permit shall be issued except upon written proof supplied by the permittee of a current policy of general liability insurance insuring the permittee against claims for injury to persons and property arising from the operation of the carriage or other animal-drawn vehicle, including death, in amounts not less than those limits then currently set forth in the Colorado Governmental Immunity Act. At the time of the adoption of this Article, such limits are one hundred fifty thousand dollars ($150,000.00) per person in any single occurrence, and six hundred thousand dollars ($600,000.00) total per occurrence. Such insurance coverage shall constitute the minimum mandatory coverage and shall in no way be deemed or intended to limit or lessen the liability of a permittee for acts or omissions committed by the permittee or the permittee's employees while performing under the permit. Such insurance policy shall also specifically name and include the Town as an additional or co-insured thereunder, and contain an endorsement requiring that the Town receive thirty (30) days advance written notice of any material change to, or the expiration or cancellation of, said policy. A failure by a permittee to obtain or maintain insurance coverage as required in this Section shall result in the automatic revocation and cancellation of the permit. Insurance policies secured in compliance with this Section shall act as primary insurance with respect to any claim.

(c) The holder of a permit issued under the terms of this Article, and every person acting under the authority of said permit, shall indemnify, defend and hold harmless the Town, its officers and employees, from and against any and all claims, actions, demands, judgments, damages and costs of any kind whatsoever, inclusive of attorney fees, directly or indirectly caused by or arising from the permittee's acts or omissions taken in performing activities under the permit.

(d) No permit shall be issued absent the full and timely payment to the Town of the permit fee established by the Board of Trustees from time to time.

(e) A permit may be extended or renewed upon the submission to the Town Clerk of an application in the same manner as if applying for a new permit.

(f) Horse-drawn carriages and other animal-drawn vehicles participating without compensation in a parade or other civic event shall be exempt from having to obtain a permit as otherwise required under this Article. (Ord. 8-2002 §1)

Sec. 8-123. Permitting and operational standards.

(a) All operators or drivers of any commercially operated horse-drawn carriage or other animal-drawn vehicle must possess a valid Colorado motor vehicle operator's license.

(b) All commercially operated animal-drawn vehicles shall be equipped with running lights, reflectors and all other safety devices required by the Model Traffic Code and state vehicle equipment regulations, including, but not limited to, unobstructed rear-mounted reflective triangular slow-moving emblems and at least one (1) white light visible from a distance of not less than five hundred (500) feet from the front, and not less than two (2) lamps displaying red lights visible from a distance of not less than five hundred (500) feet from the rear, or one (1) red lamp and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of the head lamps of a trailing vehicle.

(c) All drawing animals shall be equipped with a manure capture device so as to eliminate manure deposits on public streets, and all operators or drivers shall promptly clean up and properly dispose of any manure that should fall onto any street or public right-of-way or property.

(d) All animal-drawn vehicles shall be operated in conformity with all traffic regulations contained in the Model Traffic Code as adopted by the Town pursuant to Article I of this chapter, except those which by their very nature have no application to animal-drawn vehicles.

(e) All animal-drawn vehicles shall be operated in conformity with the days, hours, routes and other terms and conditions as may be set forth in the permit authorizing their operation.

(f) At no time shall an animal-drawn vehicle be left unattended while in or on any public street or public place, and the driver or operator shall maintain control of the animal and carriage or other animal-drawn vehicle at all times.

(g) A certified copy of the horse-drawn carriage permit shall be maintained on the carriage or other permitted animal-drawn vehicle at all times when such vehicle is in use or operation, and the driver or operator shall display same to any law enforcement officer or carriage customer upon request.

(h) No advertising or other signage shall be displayed on a carriage or other animal-drawn vehicle except in accordance with the Town's sign regulations.

(i) No animal drawing a carriage or other vehicle shall be overworked or physically abused, and sufficient amounts of water and rest shall be provided to each animal. (Ord. 8-2002 §1)

Sec. 8-124. Delegation of authority to adopt additional rules and regulations.

The Town Administrator may devise and adopt administrative rules, regulations and standards as he or she deems reasonably necessary to implement the provisions of this Article. All administrative regulations and standards shall be consistent with the provisions contained in this Article and shall be

reviewed and approved by the Board of Trustees by written resolution prior to implementation. (Ord. 8-2002 §1)

ARTICLE VIII

Municipal Parking Regulations

Sec. 8-125. Parking of oversize commercial vehicles unlawful in Zones R-1, R-2, R-3 and S-1; limited to two (2) hours on streets.

(a) It shall be unlawful for any person to park or allow to be parked any oversize commercial vehicle on any property under his or her control on any portion of a front yard, side yard or rear yard of any area or district which is residentially or recreationally zoned under the Town's zoning provisions or which is used for residential purposes.

(b) For purposes of this Section, *oversize commercial vehicle* shall mean any vehicle designed for the transport of property or cargo with a gross weight, registered weight or gross weight rating, as those terms are defined in state law, of more than fifteen thousand (15,000) pounds, or any vehicle designed for the transport of more than fifteen (15) passengers, inclusive of the driver. *Designated vehicles*, for purposes of this Section, include, without limitation, dump trucks, truck-tractors, concrete mixing trucks, stake-bed trucks, buses, trailers which are more than twenty (20) feet in length from end to end, more than seven (7) feet in width at their widest point or more than seven (7) feet in height at their highest point, or vehicles similar to any of the listed vehicles. The term *oversize vehicle* shall exclude any self-contained recreational vehicle which has a kitchen, bath or sleeping quarters and is designed for recreational purposes.

(c) It shall be unlawful for the driver, owner or operator of an oversize commercial vehicle to park the same, or permit the same to be parked, stand or remain motionless for a period in excess of two (2) hours on any street in the Town; provided that oversized commercial vehicles used for the transport of household goods may remain parked on the public street for a maximum of six (6) hours while being loaded or unloaded. (Ord. 15-2012 §4)

Sec. 8-126. Parking of vehicles or placement of property on public property, streets or on public places for the purposes of sale unlawful.

(a) It shall be unlawful for any person to leave, stand or park any motor vehicle, boat, trailer or other personal property on any public property, including any street, highway, parking lot, alley or easement, or upon any public place, including vacant land, shopping center parking lots, apartment complex parking lots or any other similar area, for the purpose of displaying such motor vehicle, boat, trailer or other personal property for sale, unless the property on which such item is located is zoned for such use or a permit has been issued by the Town authorizing the sale at the location.

(b) It shall be presumed that any motor vehicle, boat, trailer or personal property bearing a "for sale" or other similar sign which is parked on public property or a public place for more than four (4) consecutive hours is parked with a purpose of soliciting buyers or otherwise offering the item for sale.

(c) The display of one (1) motor vehicle directly in front of the motor vehicle's owner's residence shall be exempt from this Section. (Ord. 15-2012 §4)

Secs. 8-126—8-140. Reserved.

CHAPTER 10

General Offenses

ARTICLE I

General Provisions

Sec. 10-1. Legislative intent and construction.

It is the intent and purpose of this Chapter not to cover and include those offenses which are felonies under state statutes, and this Chapter shall be so construed notwithstanding any language contained in the same which might otherwise be construed to the contrary. (Prior code 9.52.010)

Sec. 10-2. Criminal attempt.

(a) A person commits criminal attempt if, acting with the kind of culpability otherwise required for commission of an offense, he or she engages in conduct constituting a substantial step toward commission of the offense. A substantial step is any conduct, whether act, commission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be nor is it a defense that the crime attempted was actually perpetrated by the accused.

(b) A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish his or her complicity under Section 10-23 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.

(c) It is an affirmative defense to a charge under this Section that the defendant abandoned his or her effort to commit the crime or otherwise prevented its commission under circumstances manifesting the complete and voluntary renunciation of his or her criminal intent. (Ord. 26-1992 §1)

Sec. 10-3. Property held as evidence.

The Chief of Police shall keep in his or her custody all articles of personal property seized or held as evidence, which property has been delivered to the custodian or one (1) of his or her subordinates for care, custody and control for use in a pending or prospective court proceeding, unless otherwise ordered by a court having jurisdiction, or upon proper authorization of a prosecuting attorney, until final disposition of any pending charges, including appeals, or the lapse of time for filing an appeal. Thereafter, unless ordered to the contrary by the court having jurisdiction, the custodian shall dispose of such property in accordance with the provisions of Chapter 1, Article VI of this Code. (Prior code 9.02.030)

Sec. 10-4. Definitions.

(a) Except as set forth in Subsection (b) below, terms used in this Chapter shall be as defined in Title 18, C.R.S., or as used in their ordinary, usual and accepted sense and meaning.

(b) As used in this Chapter, the following words have the meanings hereinafter set forth:

(1) *Blackjack* means any billy, sandclub, sandbag, sap or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance, and at the

handle end, a strap or springy shaft which increases the force of impact, or any device or article consisting of two (2) or more separate portions, linked together by a chain, strap or other fastener, which configuration is designed to increase the striking force or impact of the device or article.

(2) *Conceal* means the deliberate hiding of a weapon upon or near the person with the intent to avoid the lawful detection thereof. It shall be evidence of concealment that the weapon is hidden in such manner as to make it immediately available for use in the fashion in which the weapon is designed to be used.

(3) *Crossbow* includes any device resembling a rifle or handgun in configuration, having a bow or similar device mounted perpendicularly to a stock, grip or frame, and usually equipped with a winch or similar device which draws back the bowstring and cocks the weapon, and which fires an arrow, bolt, quarrel, stone or similar shaft from a groove or depression in the stock, grip or frame by the manipulation of a trigger or similar mechanism.

(4) *Custodian* means the Chief of Police or a designee thereof.

(5) *Firearm* means any pistol, revolver, self-loading pistol, rifle, shotgun or any other device designed to shoot, project, throw or hurl a projectile or projectiles by means of the explosion of gunpowder or other explosive substance.

(6) *Government* includes any branch, subdivision, institution or agency of the government of the State or any political subdivision within it.

(7) *Government function* includes any activity which a public servant is legally authorized to undertake on behalf of a government.

(8) *Gravity knife* means any knife, the blade of which is released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, and which blade, upon release, becomes locked in place by means of a button, spring, plate, lever or other device.

(9) *Knife* means any dagger, knife, bayonet, straight-razor, dirk, machete, stiletto, sword or swordcane with a blade over three and one-half (3½) inches in length, or any other dangerous instrument designed to inflict cutting, stabbing or tearing wounds; but, as used in this Section, does not include a knife or hatchet of the type customarily used in hunting, fishing or camping, when such is being carried for sporting use; and does not include any instrument being used in pursuance of a lawful home use, trade, occupation or profession, or otherwise being lawful under federal or state statutes, used as an item of display or a collector's item in any home or place of business.

(10) *Park* means any place for the resort of the public for recreation, but does not include any grounds or premises owned by any person where the public is admitted for a charge made by such person for the purpose of private profit.

(11) *Public place* means any place commonly or usually open to the general public, or to which members of the general public may resort, or accessible to members of the general public. By way of illustration, such public places include but are not limited to public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, shopping center malls, places of

business usually open to the general public, and automobiles or other vehicles in or upon any such place or places, but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments.

(12) *Public servant* means any officer or employee of government, whether elected or appointed, and any person participating as an advisor or consultant, engaged in the service of process or otherwise performing a governmental function; but the term does not include witnesses.

(13) *Switchblade knife* means any knife, the blade of which opens automatically by hand pressure applied to a button, spring or other device in its handle. (Prior code 9.02.010, 9.08.010, 9.32.020, 9.50.010, 9.52.030, 9.52.040)

Secs. 10-5--10-20. Reserved.

ARTICLE II

Parties to Offenses, Accountability

Sec. 10-21. Liability based upon behavior, generally.

A person is guilty of an offense if it is committed by the behavior of another person for which he or she is legally accountable as provided in Sections 10-22 through 10-27. (Ord. 26-1992 §1)

Sec. 10-22. Accountability for behavior of another.

(a) A person is legally accountable for the behavior of another person if:

(1) He or she is made accountable for the conduct of that person by the ordinance defining the offense, or by specific provisions of this Code; or

(2) He or she acts with the culpable mental state sufficient for the commission of the offense in question and he or she causes an innocent person to engage in such behavior.

(b) As used in Subsection (a) above, *innocent person* includes any person who is not guilty of the offense in question, despite his or her behavior, because of duress, legal incapacity or exemption, or unawareness of the criminal nature of the conduct in question or of the defendant's criminal purpose, or any other factor precluding the mental state sufficient for the commission of the offense in question. (Ord. 26-1992 §1)

Sec. 10-23. Complicity.

A person is legally accountable as principal for the behavior of another constituting a municipal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets or advises the other person in planning or committing the offense. (Ord. 26-1992 §1)

Sec. 10-24. Liability based upon behavior of another, exemptions.

(a) Unless otherwise provided by the ordinance defining the offense, a person shall not be legally accountable for behavior of another constituting an offense if he or she is a victim of that offense or the offense is so defined that his or her conduct is inevitably incidental to its commission.

(b) It shall be an affirmative defense to a charge under Section 10-23 if, prior to the commission of the offense, the defendant terminated his or her effort to promote or facilitate its commission and either gave timely warning to law enforcement authorities or gave timely warning to the intended victim. (Ord. 26-1992 §1)

Sec. 10-25. Liability based upon behavior of another, no defense.

In any prosecution for an offense in which criminal liability is based upon the behavior of another pursuant to this Article, it is no defense that the other person has not been prosecuted for or convicted of any offense based upon the behavior in question, or has been convicted of a different offense or degree of offense, or the defendant belongs to a class of persons who by definition of the offense are legally incapable of committing the offense in an individual capacity. (Ord. 26-1992 §1)

Sec. 10-26. Liability of corporations.

(a) A corporation is guilty of an offense if:

(1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the board of directors or by a high managerial agent acting within the scope of his or her employment or in behalf of the corporation.

(b) As used in this Section, *agent* means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation, and *high managerial agent* means an officer of a corporation, or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

(c) For every offense committed by a corporation, the corporation shall only be subject to the imposition of a fine as provided in Section 1-72 of this Code. (Ord. 26-1992 §1)

Sec. 10-27. Liability of an individual for corporate conduct.

A person is criminally liable for conduct constituting an offense which he or she performs or causes to occur in the name of or in behalf of a corporation to the same extent as if that conduct were performed or caused by him or her in his or her own name or behalf. (Ord. 26-1992 §1)

Secs. 10-28--10-40. Reserved.

ARTICLE III

Justification and Exemption from Responsibility

Sec. 10-41. Execution of public duty.

(a) Unless inconsistent with other provisions of Sections 10-43 through 10-47, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is required or authorized by a provision of law or a judicial decree binding in the State.

(b) A *provision of law* and a *judicial decree* in Subsection (a) above means:

(1) Laws defining duties and functions of public servants.

(2) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions.

(3) Laws governing the execution of legal process.

(4) Laws governing the military service and conduct of war.

(5) Judgments and orders of court. (Ord. 26-1992 §1)

Sec. 10-42. Choice of evils.

(a) Unless inconsistent with other provisions of Sections 10-43 through 10-47, defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable and shall not constitute an offense when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no conduct of the actor, and which is of sufficient gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

(b) The necessity and justifiability of conduct under Subsection (a) above shall not rest upon considerations pertaining only to the morality and advisability of the ordinance, either in its general application or with respect to its application to a particular class of cases arising thereunder. When evidence relating to the defense of justification under this Section is offered by the defendant, before it is submitted for the consideration of the jury, the court shall first rule as a matter of law whether the claimed facts and circumstances would, if established, constitute a justification. (Ord. 26-1992 §1)

Sec. 10-43. Use of physical force, special relationships.

The use of physical force upon another person which would otherwise constitute an offense is justifiable and shall not constitute an offense under any of the following circumstances:

(1) A parent, guardian or other person entrusted with the care and supervision of a minor or an incompetent person, and a teacher or other person entrusted with the care and supervision of a

minor, may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent it is reasonably necessary and appropriate to maintain discipline or promote the welfare of the minor or incompetent person.

(2) A superintendent or other authorized official of a jail, prison or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when and to the extent that he or she reasonably believes it necessary to maintain order and discipline.

(3) A person responsible for the maintenance of order in a common carrier of passengers, or a person acting under his or her direction, may use reasonable and appropriate physical force when and to the extent that it is necessary to maintain order and discipline.

(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself or herself may use reasonable and appropriate physical force upon that person to the extent that it is reasonably necessary to thwart the result.

(5) A duly licensed physician, or a person acting under his or her direction, may use reasonable and appropriate physical force for the purpose of administering a recognized form of treatment which he or she reasonably believes to be adapted to promoting the physical or mental health of the patient if:

a. The treatment is administered with the consent of the patient, or if the patient is a minor or an incompetent person, with the consent of his or her parent, guardian or other person entrusted with his or her care and supervision; or

b. The treatment is administered in an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent. (Ord. 26-1992 §1)

Sec. 10-44. Physical force; defense of a person.

A person is justified in using physical force upon another person in order to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he or she may use a degree of force which he or she reasonably believes to be necessary for that purpose. (Ord. 26-1992 §1)

Sec. 10-45. Physical force; defense of premises.

A person in possession or control of any building, realty or other premises, or a person who is licensed or privileged to be thereon, is justified in using reasonable and appropriate physical force upon another person when and to the extent that it is reasonably necessary to prevent or terminate what he or she reasonably believes to be the commission or attempted commission of an unlawful trespass by the other person in or upon the building, realty or premises. (Ord. 26-1992 §1)

Sec. 10-46. Physical force; defense of property.

A person is justified in using reasonable and appropriate physical force upon another person when and to the extent that he or she reasonably believes it necessary to prevent what he or she reasonably

believes to be an attempt by the other person to commit theft, criminal mischief or criminal tampering involving property. (Ord. 26-1992 §1)

Sec. 10-47. Physical force; arrest, escape.

A police officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he or she reasonably believes it necessary to do the following:

(1) To effect an arrest or prevent the escape from custody of an arrested person unless he or she knows that the arrest is unauthorized.

(2) To defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape. (Ord. 26-1992 §1)

Sec. 10-48. Entrapment.

The commission of acts which would otherwise constitute an offense shall not constitute an offense if the defendant engaged in the proscribed conduct because he or she was induced to do so by a law enforcement official or other person acting under his or her direction, seeking to obtain evidence for the purpose of prosecution, and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, but for such inducement, would not have conceived of or engaged in conduct of the sort induced. Merely affording a person an opportunity to commit an offense is not entrapment even though representations or inducements calculated to overcome the offender's fear of detection are used. (Ord. 26-1992 §1)

Sec. 10-49. Duress.

A person may not be convicted of an offense based upon conduct in which he or she engaged at the direction of another person because of the use or threatened use of unlawful force upon him or her or upon another person, which force or threatened use thereof a reasonable person in his or her situation would have been unable to resist. This defense is not available when a person intentionally or recklessly places himself or herself in a situation in which it is foreseeable that he or she will be subjected to such force or threatened use thereof. The choice of evils defense, provided in Section 10-42, shall not be available to a defendant in addition to the defense of duress provided under this Section unless separate facts exist which warrant its application. (Ord. 26-1992 §1)

Sec. 10-50. Insufficient age.

The responsibility of a person for his or her conduct is the same for persons between the ages of ten (10) and eighteen (18) years, except to the extent that responsibility is modified by the provisions of the "Colorado Children's Code," Title 19, C.R.S. No child under ten (10) years of age shall be found guilty of any offense. (Ord. 26-1992 §1)

Sec. 10-51. Intoxication.

(a) Intoxication of the accused is not a defense to a charge, except as provided in Subsection (c) below, but in prosecution for an offense, evidence of intoxication of the defendant may be offered by

the defendant when it is relevant to negate the existence of a specific intent if such intent is an element of the offense charged.

(b) Intoxication does not, in itself, constitute a mental disease or defect.

(c) A person is not criminally responsible for his or her conduct if, by reason of intoxication that is not self-induced at the time he or she acts, he or she lacks capacity to conform his or her conduct to the requirements of the law.

(d) *Intoxication*, as used in this Section, means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

(e) *Self-induced intoxication* means intoxication caused by substances which the defendant knows or ought to know have the tendency to cause intoxication and which he or she knowingly introduced or allowed to be introduced into his or her body, unless they were introduced pursuant to medical advice or under circumstances that would afford a defense to a charge of any offense under this Code. (Ord. 26-1992 §1)

Sec. 10-52. Affirmative defenses.

The issues of justification, exemption from liability or responsibility under Sections 10-41 through 10-51 are affirmative defenses. The defendant may assert any other affirmative defense known to the common law. (Ord. 26-1992 §1)

Secs. 10-53--10-70. Reserved.

ARTICLE IV

Offenses Relating to Public Officers and Government

Sec. 10-71. Impersonating police officers.

(a) It is unlawful for any person other than a police officer of the Town to wear the insignias of office of a police officer of the Town or any other insignia of office like or similar to or a colorable imitation of that adopted and worn by the police officers of the Town.

(b) It is unlawful for any person other than a police officer of the Town to in any manner represent himself or herself to another as a police officer of the Town. (Prior code 9.06.010)

Sec. 10-72. Counterfeit insignias.

It is unlawful for any person to counterfeit, imitate or cause to be counterfeited, imitated or colorably imitated, the badge or insignia of office used by the Police Department of the Town. (Prior code 9.06.020)

Sec. 10-73. Unlawful impersonation; performance of duties.

(a) It is unlawful for any person other than a Town officer or employee to willfully represent himself or herself to be a Town officer or employee.

(b) It is unlawful for any person to purport to perform the duties of any Town officer or employee when he or she is not an authorized officer or employee of the Town. (Prior code 9.06.030)

Sec. 10-74. Obstructing government operations.

(a) A person commits obstructing government operations if he or she intentionally obstructs, impairs or hinders the performance of a governmental function by a public servant, by using or threatening to use violence, force or physical interference or obstacle.

(b) The following shall be affirmative defenses:

(1) The obstruction, impairment or hindrance was of unlawful action by a public servant; or

(2) The obstruction, impairment or hindrance was of the making of an arrest.

(c) Any action taken by a public servant in the course of his or her public duties shall be presumed to be lawful. (Prior code 9.08.020)

Sec. 10-75. Obstructing a peace officer or fireman.

(a) A person commits obstructing a peace officer or fireman when, by using or threatening to use violence, force or physical interference or obstacle, he or she knowingly obstructs, impairs or hinders the enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his or her official authority; or knowingly obstructs, impairs or hinders the prevention, control or abatement of fire by a fireman acting under color of his or her official authority; or knowingly disobeys any order of a peace officer or fireman made in the course of the prevention, control or abatement of a fire, including the direction of traffic and persons in connection therewith.

(b) It is no defense to prosecution under this Section that the peace officer was acting in an illegal manner, if he or she was acting under color of his or her official authority as defined in Section 10-76.

(c) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest. (Prior code 9.08.040)

Sec. 10-76. Resisting arrest.

(a) A person commits resisting arrest if he or she knowingly prevents or attempts to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, by the following actions:

(1) Using or threatening to use physical force or violence against the peace officer or another;

(2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(3) Running from, eluding or attempting to run from or elude a peace officer.

(b) It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest which in fact was unlawful, if he or she was acting under color of his or her official authority, and in attempting to make the arrest he or she was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer acts "under color of his or her official authority" when, in the regular course of assigned duties, he or she is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him or her.

(c) The term *peace officer*, as used in this Section and Section 10-75, means a peace officer in uniform or, if out of uniform, one who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted. (Prior code 9.08.030)

Sec. 10-77. Accessory to offense.

(a) A person is an accessory to an offense if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of an offense, he or she renders assistance to such person.

(b) *Render assistance* has the following meanings:

(1) Harbor or conceal the other;

(2) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;

(3) Provide such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;

(4) By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or

(5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person. (Prior code 9.08.050)

Sec. 10-78. Refusal to permit inspections.

(a) A person commits refusal to permit inspections if, knowing that a public servant is legally authorized to inspect property:

(1) He or she refuses to produce or make available the property for inspection at a reasonable hour; or

(2) If the property is available for inspection, he or she refuses to permit the inspection at a reasonable hour.

(b) For purposes of this Section, *property* means any real or personal property, including books, records and documents which are owned, possessed or otherwise subject to the control of the defendant. A *legally authorized inspection* means any lawful search, sampling, testing or other examination of property, in connection with the regulation of a business or occupation, that is authorized by ordinance or state statute. (Prior code 9.08.060)

Sec. 10-79. Refusing to aid a peace officer.

A person eighteen (18) years of age or older commits refusing to aid a peace officer when, upon command by a person known to him or her to be a peace officer, he or she unreasonably refuses or fails to aid the peace officer in effecting or securing an arrest or preventing the commission by another of any offense. (Prior code 9.08.070)

Sec. 10-80. Refusing to obey peace officer.

It is unlawful for any person to knowingly disobey the lawful or reasonable order of any peace officer given incident to the discharge of the official duties of such peace officer. (Prior code 9.08.080)

Sec. 10-81. Compounding.

(a) A person commits compounding if he or she accepts or agrees to accept any pecuniary benefit as consideration for the following:

(1) Refraining from seeking prosecution of an offender; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime.

(b) It is an affirmative defense to prosecution under this Section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due in restitution or indemnification for harm caused by the crime. (Prior code 9.08.090)

Sec. 10-82. False reporting to authorities.

A person commits false reporting to authorities if he or she does the following:

(1) Knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, ambulance service or any other government agency which deals with emergencies involving danger to life or property;

(2) Makes a report or knowingly causes the transmission of a report to law enforcement authorities of a crime or other incident within their official concern, when he or she knows that it did not occur; or

(3) Makes a report or knowingly causes the transmission of a report to law enforcement authorities pretending to furnish information relating to an offense or other incident within their official concern when he or she knows that he or she has no such information or knows that the information is false. (Prior code 9.08.100)

Sec. 10-83. Aiding escape.

(a) Any person who knowingly aids, abets or assists another person to escape or attempt to escape from custody or confinement commits the offense of aiding escape.

(b) *Escape* is deemed to be a continuing activity commencing with the conception of the design to escape and continuing until the escapee is returned to custody or the attempt to escape is thwarted or abandoned.

(c) *Assist* includes any activity characterized as *rendering assistance* in Section 10-77. (Prior code 9.08.110)

Sec. 10-84. Escape.

(a) It is unlawful for any person who is in the custody of a peace officer to knowingly escape or attempt to escape from the custody of such peace officer or from the custody of any person aiding such peace officer after being commanded by such peace officer to do so.

(b) This Section shall not apply whenever the escapee is being held on account of a felony or charged with or held for any felony. (Prior code 9.08.120)

Sec. 10-85. Failure to obey summons or notice.

It is unlawful for any person to violate his or her written promise to appear given to an officer upon arrest or issuance of a summons or notice for any violation of this Code. This Section shall not apply to a failure to appear when the offense charged is under the Model Traffic Code for Colorado Municipalities as adopted and enforced by the Town. (Prior code 9.08.130)

Sec. 10-86. Violations designated; exceptions.

(a) It is unlawful for any person to report the existence of a fire or other emergency to the Police Department, Fire Department or any other agency empowered to deal with an emergency involving risk or injury to persons or property, when such person knows the report to be false. For purposes of this subsection, *Fire Department* means any fire protection district or fire-fighting agency of the State, County or Town, whether the employees or officers of such agency are volunteers or receive compensation for their services as firemen, or both.

(b) It is unlawful for any person to report or cause to be reported to any police agency any information concerning the commission of any offense or other incident, which would require police action, when:

(1) He or she knows that no such offense or other incident has occurred; or

(2) He or she knows the information is false or that he or she has no such information.

(c) This Section does not apply to reports of the existence or placement of a bomb or other explosive in any public or private place or vehicle designed for transportation of persons or property. (Prior code 9.04.010)

Sec. 10-87. Failure to conserve water.

(a) It shall be unlawful and a municipal offense for any person to violate the restrictions or regulations concerning the use of water from the Town's municipal water system established by the Mayor or Board of Trustees pursuant to Section 13-41(c) of this Code. Failure to conserve water is a strict liability offense.

(b) It shall be an affirmative defense to a prosecution under this Section that at the time of the alleged offense there was in existence a valid certificate issued by the Town exempting the property where the offense allegedly occurred from compliance with the restrictions or regulations on the use of water established by the Mayor or Board of Trustees.

(c) Any person convicted of violating this Section shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 6, 1995 §1)

Secs. 10-88--10-100. Reserved.

ARTICLE V

Offenses Against Public Decency

Sec. 10-101. Public indecency.

It is unlawful to commit public indecency. Any person who performs any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

(1) An act of sexual intercourse;

(2) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or

(3) A lewd fondling or caress of the body of another person. (Ord. 26-1992 §1)

Sec. 10-102. Window peeping.

It is unlawful for any person to trespass upon the property owned or occupied by another in the Town for the purpose of looking or peeping into any window, door, skylight or other opening in a house, room or building, or to loiter in a public street, alley, parking lot or other public place, for the purpose of wrongfully observing the actions of the occupants of such house, room or building. (Prior code 9.16.020)

Sec. 10-103. Indecent exposure.

It is unlawful for a person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person. (Ord. 26-1992 §1)

Secs. 10-104--10-120. Reserved.

ARTICLE VI

Offenses Against Property

Sec. 10-121. Criminal mischief.

It is unlawful for any person to knowingly damage the real or personal property of one (1) or more other persons in the course of a single criminal episode where the aggregate damage to the real or personal property is less than four hundred dollars ($400.00). (Ord. 26-1992 §1)

Sec. 10-122. Trespassing deemed unlawful.

It is unlawful for any person without legal privilege to enter or to remain upon the premises of another, or to fail or refuse to remove himself or herself from said premises when requested to leave by the owner, occupant or person having lawful control thereof. (Prior code 9.30.010)

Sec. 10-123. Theft.

(a) A person commits theft when he or she knowingly obtains or exercises control over anything of value of another without authorization, by threat or deception, or knowing said thing of value to have been stolen, and does the following:

(1) Intends to deprive the other person permanently of the use or benefit of the thing of value;

(2) Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;

(3) Uses, conceals or abandons the thing of value intending that such use, concealment or abandonment will deprive the other person permanently of its use and benefit; or

(4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.

(b) This Section shall apply only to theft of things of a value of less than four hundred dollars ($400.00). (Prior code 9.28.010)

Sec. 10-124. Theft of rental property.

It is unlawful for a person to commit theft of rental property. A person commits theft of rental property if he or she:

(1) Obtains the temporary use of personal property of another, which is available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the personal property;

(2) Having lawfully obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return the property to the owner thereof or his or her representative or to the person from whom he or she has received it within seventy-two (72) hours after the time at which he or she agreed to return it; and

(3) The value of the property involved is less than four hundred dollars ($400.00). (Ord. 26-1992 §1)

Sec. 10-125. Theft by receiving.

It is unlawful to commit theft by receiving. A person commits theft by receiving when he or she receives, retains, loans money by pawn or pledge on or disposes of anything of value of another, knowing or believing that the thing of value has been stolen, and when he or she intends to deprive the lawful owner permanently of the use or benefit of the thing of value, where the value of the thing of value is less than four hundred dollars ($400.00). (Ord. 26-1992 §1)

Sec. 10-126. Price switching.

It is unlawful for any person to willfully alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, with the intent to defraud such store or mercantile establishment; provided, however, that this Section shall not apply to goods, wares or merchandise of a value of three hundred dollars ($300.00) or more. (Prior code 9.28.020)

Sec. 10-127. Procuring food or accommodations with intent to defraud.

Any person who, with intent to defraud, procures food or accommodations in any public establishment without making payment therefor in accordance with his or her agreement with such public establishment is guilty of the offense of procuring food or accommodations with intent to defraud. Removal of baggage from the premises of a public establishment or leaving such establishment without paying for food ordered by such person shall constitute prima facie evidence of intent to defraud. (Prior code 9.28.030)

Sec. 10-128. Concealment of goods.

If any person willfully conceals unpurchased goods, wares or merchandise valued at less than three hundred dollars ($300.00) owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment is on his or her own person or otherwise and whether on or off the premises of the store or mercantile establishment, such concealment constitutes prima facie evidence that the person intended to commit the crime of theft. (Ord. 1-1992 §1; Ord. 26-1992 §1)

Sec. 10-129. Tampering and unauthorized connection.

(a) Any person who connects any pipe, tube, stopcock, wire, cord, socket, motor or other instrument or contrivance with any main, service pipe or other medium conducting or supplying gas, water, electricity or cable television service to any building without the knowledge and consent of the

person supplying such gas, water, electricity or cable television service commits tampering and unauthorized connection, which is unlawful.

(b) Any person who in any manner alters, obstructs or interferes with any meter pit, meter or metering device provided for measuring or registering the quantity of gas, water or electricity passing through said meter without the knowledge and consent of the person owning said meter commits tampering and unauthorized connection, which is unlawful.

(c) A person who tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another, or if he or she knowingly makes unauthorized connection with property of a utility, commits tampering and unauthorized connection, which is unlawful.

(d) Nothing in this Section shall be construed to apply to any licensed electrical or plumbing contractor while performing usual and ordinary services in accordance with recognized customs and standards. (Ord. 26-1992 §1)

Secs. 10-130--10-140. Reserved.

ARTICLE VII

Offenses Relating to Streets and Public and Private Places

Sec. 10-141. Limitations on use of certain vehicles and equipment.

It is unlawful for any person to drive, install, cause the installation to be made, or use upon any motor vehicle any siren, exhaust whistle, bell, any red lights visible from the front of a motor vehicle, or any red spotlight; however, nothing in this Article shall prevent the possession, use or installation of such equipment on any Town-owned, County-owned, State-owned or federal-owned vehicle, or any vehicle authorized or permitted to have or use any such equipment by state laws, if there is compliance with all requirements of any such state laws, including obtaining necessary permits, licenses, approval or approvals, as required by any such state laws or by any applicable Town ordinance. (Prior code 9.10.010)

Sec. 10-142. Solicitation of towing business.

(a) It is unlawful for any person or persons to drive or cause any tow truck or vehicle equipped to provide towing service to be driven to, or to stop or park any such vehicle or cause the same to be stopped or parked at or near, the scene of any fire, explosion, traffic accident or other disaster, when such tow truck or vehicle has not been called to the scene by the owner or operator of a damaged vehicle or the owner of property required to be towed from the scene or by his or her duly authorized agent or insurance carrier, by a police officer or representative of the Police Department of the Town, or by a fireman or other peace officer attending the scene.

(b) It is unlawful for any person or persons to solicit any other person or persons at or near the scene of any fire, explosion, traffic accident or other disaster, for the purpose of procuring towing business, that is, for the purpose of securing authorization or agreement from any person or persons at

or near such scene to tow or haul away any vehicle or other personal property from any such scene, for hire. (Prior code 9.10.020)

Sec. 10-143. Property injury prohibited; exceptions.

It is unlawful for any person to intentionally injure, damage or destroy the real or personal property of another; provided, however, that this Section shall not apply to any person showing a legal right or authority to injure, damage or destroy such property. This Section shall not apply where the aggregate damage to such real or personal property is three hundred dollars ($300.00) or more or where the damage is effected by means of fire or explosives with the intent to defraud. (Prior code 9.26.010)

Sec. 10-144. Injury or removal of signs.

It is unlawful for any unauthorized person to willfully remove, deface, injure, damage or destroy any street sign or traffic control or warning device erected or placed in or adjacent to any street. This Section shall not apply where the aggregate damage to such street sign or traffic control or warning device is three hundred dollars ($300.00) or more. (Prior code 9.26.020)

Sec. 10-145. Destroying posters.

It is unlawful for any person to intentionally tear down, deface or cover up any lawfully posted advertisement or bill of any person; provided, however, that this Section shall not apply to any person showing the lawful right or authority to tear down, deface or cover up any such advertisement or bill. (Prior code 9.26.030)

Sec. 10-146. Lug wheels and treaded vehicles prohibited.

It is unlawful for any vehicles equipped with treads and/or lug wheels which are injurious to pavement to be operated or caused to be operated by any person upon public streets unless the operator of such vehicle first planks and protects such streets from damage. Nothing in this Section shall be construed to prohibit the use of studded snow tires. (Prior code 9.26.040)

Sec. 10-147. Placement of objects.

It is unlawful for any person to intentionally, knowingly or recklessly place in any doorway or driveway not owned by him or her or under his or her lawful control, or on any sidewalk, public highway, street or alley in the Town, any item, article or object which causes or tends to cause the obstruction thereof or any part thereof. (Prior code 9.24.010)

Sec. 10-148. Parking in private driveways or on private property.

It is unlawful for any person to park or stand a vehicle, whether such vehicle is occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in, loading or unloading the vehicle, in a private driveway or on private property without the express or implied consent of the owner or person in lawful control of such driveway or property. (Prior code 9.24.020)

Sec. 10-149. Depositing debris in streams and waters.

It is unlawful for any person to throw, deposit, cause or permit to be thrown or deposited in the Town's water treatment facilities and its appurtenances, and in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough, reservoir, artificially or naturally created, or so near thereto as to be liable to pollute the water, any offal composed of animal or vegetable substance or both, dead animal, sewage, excrement, garbage, trash, debris, waste fuel, oil or other petroleum-based products, paint, chemicals, whether liquid or solid, scrap, construction materials or any other materials that may cause the water to become contaminated. Pursuant to Section 31-15-707(1)(b), C.R.S., the Town's jurisdiction under this Section shall extend to the Town's water treatment facilities and its appurtenances, including all reservoirs, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of such facilities, notwithstanding that such facilities and appurtenances are located outside the corporate limits of the Town, and over all streams and other sources of the water used in the Town's water system for five (5) miles above the point from which it is taken. (Prior code 9.36.010)

Sec. 10-150. Harassing, killing or injuring wildlife.

(a) It is unlawful for any person to willfully and unnecessarily shoot, capture, harass, injure or destroy any wild bird or animal or to attempt to shoot, capture, harass, injure or destroy any such wild bird or animal anywhere within the Town.

(b) No person shall willfully destroy, rob or disturb the nest, nesting place, burrow, eggs or young of any wild bird or animal anywhere within the Town.

(c) *Wild bird* includes all undomesticated birds native to North America and undomesticated game birds implanted in North America by governmental agencies and includes any domestic duck or goose released by any private person or recreational authority upon any recreational area within the Town.

(d) *Wild animal* includes any animal native to the State, but does not include rattlesnakes, fish or any species of amphibians, Norway rats and common house mice.

(e) The provisions of this Article do not apply to personnel of any police, fire or animal control agency, the State Division of Wildlife, Department of Health or other state or federal agency when such persons are acting within the scope of their official duties as employees of said agencies.

(f) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by the laws of the State or the United States of America. (Prior code 9.38.010)

Sec. 10-151. Public buildings; trespass, interference.

(a) It is unlawful for any person to so conduct himself or herself at or in any public building owned, operated or controlled by the Town, the State or any of its political subdivisions, as to willfully deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, use the facilities of or leave any such public building.

(b) It is unlawful for any person, at or in any such public building, to willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, coercion or intimidation, or by force and violence or threat thereof.

(c) It is unlawful for any person to willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer, or designee charged with maintaining order in such public building, if such person has committed, is committing, threatens to commit or incites others to commit any act which did, or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions being carried on in such public building.

(d) It is unlawful for any person, at any meeting or session conducted by any judicial, legislative or administrative body or official at, or in, any public building, to willfully impede, disrupt or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or official engaged in the performance of duties of such meeting or session.

(e) It is unlawful for any person, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official act, or in any public building, to willfully impede, disrupt or hinder the normal proceedings of such body or official. (Prior code 9.18.040)

Sec. 10-152. Operation of motorscooters, motorbicycles, bicycles, inline skates and similar devices prohibited.

(a) No person shall operate, ride or use any motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device upon any public sidewalk, trail, park or other public pedestrian way or area where the use of such device is prohibited by official signage.

(b) Any person operating, riding or using a motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device on any public sidewalk, trail, park or other public pedestrian way or area shall yield the right-of-way at all times to pedestrians and animals and shall otherwise obey all posted regulations and official signage.

(c) Notwithstanding any provision in Subsections (a) or (b) above, no person shall operate, ride or use any motorscooter, motorbicycle, motor-driven cycle, human-propelled scooter, toy vehicle, go-cart, bicycle, inline skates or rollerblades, roller skates, skateboard or similar device on any public tennis court, basketball court, athletic field or other recreational field or area not specifically designed, intended and signed for such operation and use.

(d) For purposes of this Section the terms *motorscooter*, *motorbicycle* and *motor-driven cycle* shall mean a vehicle with or without a seat designed to transport one (1) or two (2) persons and travel on not more than three (3) wheels in contact with the ground and which is powered by an engine or motor not exceeding six (6) brake-horsepower, and shall include motorized skateboards.

(e) The Police Chief is empowered and delegated the authority to install appropriate signage within or along those public sidewalks and/or other public pedestrian ways or areas as he or she deems necessary to protect pedestrians and pedestrian travel from the operation of the motor vehicles and other devices described in this Section. (Ord. 21, 1995 §1; Ord. 21-2003 §1)

Secs. 10-153—10-170. Reserved.

ARTICLE VIII

Public Peace, Order and Safety

Sec. 10-171. Assault.

(a) Intentionally or knowingly without deadly weapon. It is unlawful for any person to intentionally or knowingly cause bodily injury to another person; provided, however, that this Subsection shall not apply to injury caused by means of a deadly weapon, nor shall it apply in the event of a serious bodily injury.

(b) Recklessly. It is unlawful for any person to recklessly cause bodily injury to another person; provided, however, that this Subsection shall not apply in the event of serious bodily injury.

(c) Deadly weapons. It is unlawful for any person with criminal negligence to cause bodily injury to another person by means of a deadly weapon. (Prior code 9.14.010)

Sec. 10-172. Menacing.

It is unlawful for any person to intentionally place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided, however, that if such threat or physical action involves the use of a deadly weapon, this Section shall not apply. (Prior code 9.14.020)

Sec. 10-173. Intimidation.

It is unlawful for anyone without legal authority to threaten to confine, restrain or cause bodily harm to the threatened person of another, or to damage the property or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his or her will to do an act or refrain from doing a lawful act. (Prior code 9.14.030)

Sec. 10-174. Reckless endangerment.

It is unlawful for any person to recklessly engage in conduct which creates substantial risk of serious bodily injury to another person. (Prior code 9.14.040)

Sec. 10-175. Harassment designated; prohibited.

(a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

(1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact;

(2) In a public place directs obscene language or makes an obscene gesture to or at another person;

(3) Follows a person in or about a public place;

(4) Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily harm or property damage, or makes any comment, request, suggestion or proposal by telephone which is obscene;

(5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;

(6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or

(7) Repeatedly insults, taunts, challenges or makes communication in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Subsection (a)(5) of this Section may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received. (Prior code 9.22.010; Ord. 1-1994 §1; Ord. 18-1994 §§1, 2; Ord. 13-1998, §§ 1, 2)

Sec. 10-176. Loitering.

(a) As used in this Section, the word *loiter* means to be dilatory, to stand idly around, to linger, delay or wander about or to remain, abide or tarry in a public place.

(b) A person commits the municipal offense of *loitering* if he or she:

(1) Loiters for the purpose of begging;

(2) Loiters for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia, as those terms are defined by state law;

(3) Loiters for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse, as those terms are defined by state law;

(4) With intent to interfere with or disrupt the school program or with intent to interfere with or endanger schoolchildren, loiters in a school building or on school grounds or within one hundred (100) feet of school grounds when persons under the age of eighteen (18) are present in

the building or on the grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any specific, legitimate reason for being there, and having been asked to leave by a school administrator or his or her representative or by a peace officer; or

(5) Loiters with one (1) or more person for the purpose of unlawfully using or possessing a controlled substance, as defined in Section 12-22-303(7), C.R.S.

(c) It shall be an affirmative defense that the defendant's acts were lawful and that the defendant was exercising his or her rights of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise. (Ord. 24-1994 §1)

Sec. 10-177. Disorderly conduct deemed unlawful.

(a) It is unlawful for any person to intentionally, knowingly or recklessly:

(1) Make a coarse and obviously offensive utterance, gesture or display in a public place when such utterance, gesture or display causes injury or tends to invite an immediate breach of the peace;

(2) Abuse or threaten a person in a public place in an obviously offensive manner when such abuse or threat causes injury or tends to incite an immediate breach of the peace;

(3) Fight with another in a public place except as a participant in a sporting event; or

(4) Make unreasonable noise in a public place or near a private residence that he or she has no right to occupy.

(b) It is an affirmative defense to prosecution under Subsection (a)(2) above where the actor has significant provocation for his or her abusive or threatening conduct. (Prior code 9.18.010; Ord. 18, 1996 §1)

Sec. 10-178. Disrupting lawful assembly.

It is unlawful for any person to disrupt a lawful assembly if, with the intent to prevent or disrupt any lawful meeting, procession or gathering, he or she significantly obstructs or interferes with the meeting, procession or gathering by physical action, verbal utterances or any other means. (Prior code 9.18.020)

Sec. 10-179. Disturbing lawful assemblies.

No person shall disquiet or disturb any congregation or assembly met for religious worship or for any other lawful purpose, by making a noise or by rude and indecent behavior or profane discourse within the place of meeting or so near the same as to disturb the order or solemnity of the occasion; nor shall he or she disturb it in any other manner. (Ord. 26-1992 §1)

Sec. 10-180. Interference with educational institutions.

(a) It is unlawful for any person, on or near the premises or facilities of any educational institution, to willfully deny to students, school officials, employees and invitees:

(1) Lawful freedom of movement on the premises;

(2) Lawful use of the property or facilities of such institution; or

(3) The right of lawful ingress and egress to the institution's physical facilities.

(b) It is unlawful for any person, on the premises of any educational institution or at or in any building or other facilities being used by any educational institution, to willfully impede the staff or faculty of such institution in the lawful performance of their duties, or willfully impede a student of such institution in the lawful pursuit of his or her educational activities, through the use of restraint, coercion or intimidation, or when force and violence are present or threatened.

(c) It is unlawful for any person to willfully refuse or fail to leave the property of, or any building or other facility used by, any educational institution upon being requested to do so by the chief administrative officer, his or her designee charged with maintaining order on the school premises and in its facilities, or a dean of such educational institution, if such person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions of the institution.

(d) Nothing in this Section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, any contractor or subcontractor, or any employees thereof. (Prior code 9.18.030)

Sec. 10-181. Physicians to report wounds.

It shall be the duty of every physician or surgeon practicing within the Town, who attends or has under his or her charge or care any patient or other person suffering from gunshot, puncture or cutting wounds which appear to be a result of violence inflicted by another, to report as soon as practicable to the Chief of Police the name of such patient or other person and all facts pertaining to such case within the knowledge of such physician or surgeon. (Prior code 9.12.010)

Sec. 10-182. Storage of flammable liquids.

It shall be unlawful to store or cause to be stored or parked, except for delivery, any tank vehicle carrying flammable liquids or gases upon any streets, ways or avenues of the Town or in any other part of the Town, except those areas zoned for such uses. (Ord. 26-1992 §1)

Sec. 10-183. Explosives.

It shall be unlawful for any person to store within the Town limits or within one (1) mile thereof any amount of gunpowder, blasting powder, nitroglycerine, dynamite or other high explosive in excess of one (1) fifty (50) pound box or in excess of five hundred (500) caps or other devices used for the detonation of such high explosives. (Ord. 26-1992 §1)

Sec. 10-184. Fraud by check.

(a) As used in this Section, unless the context otherwise requires:

(1) *Check* means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand, and signed by the drawer. *Check*, for the purposes of this Section only, also includes a negotiable order of withdrawal and a share draft.

(2) *Drawee* means the bank upon which a check is drawn or a bank, savings and loan association, industrial bank or credit union on which a negotiable order of withdrawal or a share draft is drawn.

(3) *Drawer* means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature is that of himself or herself or of a person authorized to draw the check on himself or herself.

(4) *Insufficient funds* means a drawer has insufficient funds with the drawee to pay a check when the drawer has no checking account, negotiable order of withdrawal account or share draft account with the drawee, or has funds in such an account with the drawee in an amount less than the amount of the check plus the amount of all other checks outstanding at the time of issuance; and a check dishonored for "no account" shall also be deemed to be dishonored for insufficient funds.

(5) *Issue*. A person issues a check when he or she makes, draws, delivers or passes it or causes it to be made, drawn, delivered or passed.

(6) *Negotiable order of withdrawal* and *share draft* mean negotiable or transferable instruments drawn on a negotiable order of withdrawal account or a share draft account, as the case may be, for the purpose of making payments to third persons or otherwise.

(7) *Negotiable order of withdrawal account* means an account in a bank, savings and loan association or industrial bank, and *share draft account* means an account in a credit union, on which payment of interest or dividends may be made on a deposit with respect to which the bank, savings and loan association, industrial bank or credit union, as the case may be, may require the depositor to give notice of an intended withdrawal not less than thirty (30) days before the withdrawal is made, even though in practice such notice is not required and the depositor is allowed to make withdrawal by negotiable order of withdrawal or share draft.

(b) Any person, knowing he or she has insufficient funds with the drawee who, with intent to defraud, issues a check for a sum less than four hundred dollars ($400.00) for the payment of services, wages, salary, commissions, labor, rent, money, property or other thing of value, commits fraud by check, which is unlawful.

(c) Any person, having acquired rights with respect to a check which is not paid because the drawer has insufficient funds, shall have standing to file a complaint under this Section, whether or not he or she is the payee, holder or bearer of the check.

(d) Any person who opens a checking account, negotiable order of withdrawal account or share draft account using false identification or an assumed name for the purpose of issuing fraudulent checks commits fraud by check, which is unlawful.

(e) If deferred prosecution is ordered, the court as a condition of supervision may require the defendant to make restitution on all checks issued by the defendant which are unpaid as of the date of commencement of the supervision in addition to other terms and conditions appropriate for the treatment or rehabilitation of the defendant.

(f) A bank, savings and loan association, industrial bank or credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to a town attorney, sheriff, deputy sheriff, undersheriff, police officer, district attorney, assistant district attorney, deputy district attorney or authorized investigator for a district attorney investigating or prosecuting a charge under this Section.

(g) This Section does not relieve the prosecution from the necessity of establishing the required culpable mental state. However, for purposes of this Section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:

(1) He or she has no account upon which the check or order is drawn with the bank or other drawee at the time he or she issues the check or order; or

(2) He or she has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentation within thirty (30) days after issue. (Ord. 26-1992 §1)

Secs. 10-185--10-200. Reserved.

ARTICLE IX

Offenses Relating to Alcoholic Beverages

Sec. 10-201. Definitions.

The following definitions are applicable to this Article:

(1) *Alcoholic beverages* means a fermented malt beverage as defined by the Colorado Beer Code (Article 46 of Title 12, C.R.S.) and malt, vinous or spirituous liquor as defined by the Colorado Liquor Code (Article 47 of Title 12, C.R.S.)

(2) *Colorado Beer Code* means the provisions of Article 46 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(3) *Colorado Liquor Code* means the provisions of Article 47 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(4) *Employee* means an employee of a licensee.

(5) *Establishment* means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees and occupants associated therewith.

(6) *Ethyl alcohol* means any substance which is or contains ethyl alcohol and includes fermented malt beverages (as defined in the Colorado Beer Code) and malt, vinous and spirituous liquors (as defined in the Colorado Liquor Code).

(7) *License* means a grant to a licensee to sell fermented malt beverages as provided by the Colorado Beer Code, a grant to a licensee to sell malt, vinous or spirituous liquors as provided by the Colorado Liquor Code or a special events permit.

(8) *Licensee* means the holder of a license under the Colorado Beer Code, the Colorado Liquor Code or the holder of a special events permit.

(9) *Licensed premises* means the premises specified in a license under the Colorado Beer Code, the Colorado Liquor Code or for a special events permit, which are owned or are in possession of the licensee and within which such licensee is authorized to sell, dispense or serve alcoholic beverages.

(10) *Manager* means the registered manager of a licensee.

(11) *Motor vehicle* means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways; but the term does not include motorized bicycles as defined by state law or vehicles moved solely by human power. For the purposes of this Article, the term *motor vehicles* includes a farm tractor operated on the streets and highways of the Town.

(12) *Person* means a natural person, partnership, association, company, corporation or organization, or a manager, agent, servant, officer or employee of any of them.

(13) *Possession of ethyl alcohol* means that a person has or holds any amount of ethyl alcohol anywhere on his or her person, or that a person owns or has custody of ethyl alcohol or has ethyl alcohol within his or her immediate presence and control.

(14) *Private property* means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public; and privately owned real property which is not open to the public. *Private property* shall not include:

a. Any establishment which has or is required to have a license pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., pertaining to special events licenses; or

b. Any establishment which leases, rents or provides accommodations to members of the public generally.

(15) *Public place* means a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, streets, sidewalks, transportation facilities, schools, places of amusement, parks, playgrounds and the common areas of public and private buildings and facilities.

(16) *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; 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 traffic in for any consideration promised or obtained, directly or indirectly.

(17) *Special events permits* means a special permit to sell fermented malt beverages or malt, vinous or spirituous liquors issued pursuant to the provisions of Article 48 of Title 12, C.R.S., and the rules and regulations of the Colorado Department of Revenue promulgated thereunder.

(18) *Underage person* means a person under the age of twenty-one (21) years. (Ord. 12-1992 §1)

Sec. 10-202. Illegal possession or consumption of alcohol by underage person.

(a) It shall be unlawful for any underage person to possess or consume ethyl alcohol anywhere within the Town. Illegal possession or consumption of alcohol by an underage person is a strict liability offense.

(b) It shall be an affirmative defense to the offense described in Subsection (a) above that the ethyl alcohol was possessed or consumed by an underage person under the following circumstances:

(1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of such person's parent or legal guardian who was present during such possession or consumption; or

(2) When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half of one percent (.5%) of ethyl alcohol by weight.

(c) Prima facie evidence of a violation of Subsection (a) above shall consist of:

(1) Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed ethyl alcohol anywhere in this Town; or

(2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in this Town.

(d) During any trial for a violation of Subsection (a) above, any bottle, can or any other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or

other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "wine cooler," "champagne," "whiskey," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents in the bottle, can or other container were composed in whole or in part of ethyl alcohol.

(e) A parent or legal guardian of a person under twenty-one (21) years of age, or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of, ethyl alcohol to or by an underage person under the conditions described in Subsection (b)(1) above. This Subsection shall not be construed to permit any establishment which is or is required to be licensed pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., or any members, employees or occupants of any such establishment, to give, provide, make available or sell ethyl alcohol to any underage person.

(f) An underage person shall be required to take and complete, and to cooperate in the taking and completion of, any test or tests of such person's breath for the purpose of determining the presence of ethyl alcohol in such person's breath when so requested and directed by a law enforcement officer having probable cause to believe that such person has violated Subsection (a) above. The breath test shall be administered in accordance with the rules and regulations prescribed by the Colorado State Board of Health; provided, however, that strict compliance with such rules and regulations shall not be a prerequisite to the admissibility of a test result at trial unless the Court finds that the extent of noncompliance with a Board of Health rule has so impaired the validity and reliability of the testing method and the test results so as to render the evidence unreliable. In all other circumstances, failure to strictly comply with such rules and regulations shall only be considered in the weight to be given to the test results and not to the admissibility of such test result. If an underage person refuses to take or to complete, or to cooperate with the completion of, a breath test as described above, such refusal shall be admissible into evidence at any trial for an alleged violation of Subsection (a) above.

(g) In any judicial proceeding in the Municipal Court concerning a charge under Subsection (a) above, the Court shall take judicial notice of methods of testing a person's breath for the presence of ethyl alcohol and of the design and operation of devices certified by the Colorado Department of Health for testing a person's breath for the presence of ethyl alcohol. Nothing in this Subsection shall preclude a defendant from offering evidence concerning the accuracy of such testing device.

(h) No law enforcement officer shall enter upon any private property within the Town to investigate any violation of this Section without probable cause.

(i) Any person convicted of violating the provisions of Subsection (a) above shall be punished as provided in Section 1-72 of this Code. The Court, upon sentencing a defendant for a violation of Subsection (a) above, may, in addition to any fine, order that the defendant perform up to twenty-four (24) hours of useful public service and may further order that the defendant submit to and complete an alcohol evaluation or assessment, an alcohol education program, or an alcohol treatment program, at such defendant's own expense. (Ord. 12-1992 §1)

Sec. 10-203. Unlawful purchasing of alcoholic beverage by underage person.

It shall be unlawful for any underage person to purchase, procure or obtain any alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-204. Unlawful solicitation of alcoholic beverage by underage person.

It shall be unlawful for any underage person to engage or utilize the service of any other person, whether for remuneration or not, to purchase, procure or obtain for such underage person an alcoholic beverage from any place where alcoholic beverages are sold. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-205. Permitting use of false identification by underage person.

It shall be unlawful for any person to intentionally or knowingly permit, or to fail to prevent, the use of any person's identification in connection with the purchase, or attempted purchase, of an alcoholic beverage by an underage person. (Ord. 12-1992 §1)

Sec. 10-206. Unlawful purchasing of alcoholic beverage for underage person.

It shall be unlawful for any person to intentionally or knowingly purchase, procure or obtain an alcoholic beverage for any underage person. (Ord. 12-1992 §1)

Sec. 10-207. Unlawful sale of alcoholic beverage to underage person.

It shall be unlawful for any person to sell, serve, give away, dispose of, exchange or deliver, or permit the sale, service, giving away, delivery or procuring of any alcoholic beverage to or for any underage person. This offense is a strict liability offense. (Ord. 12-1992 §1)

Sec. 10-208. Unlawful sale of alcoholic beverage by unlicensed person.

It shall be unlawful for any person to sell or possess for sale any malt, vinous or spirituous liquor or fermented malt beverage, unless licensed to do so pursuant to the Colorado Beer Code, Colorado Liquor Code or the provisions of Article 48 of Title 12, C.R.S., and unless all required licenses are in full force and effect. (Ord. 12-1992 §1)

Sec. 10-209. Illegal removal of alcoholic beverage from licensed premises.

(a) It shall be unlawful for any licensee, manager or employee to intentionally, knowingly or recklessly permit the removal of any alcoholic beverage from the licensed premises.

(b) It shall be unlawful for any person to remove any alcoholic beverage from a licensed premises. This offense is a strict liability offense.

(c) This Section shall not apply to a duly licensed package liquor store or vendor. (Ord. 12-1992 §1)

Sec. 10-210. Duty of licensee to report.

A licensee shall immediately report to the Police Department any unlawful act, conduct or disturbance committed on the licensed premises. Failure to comply with the requirements of this Section may be considered by the licensing authority in any action relating to revocation, suspension or renewal of a license. Proof of failure on at least three (3) occasions within the licensing period to comply with the requirements of this Section shall constitute prima facie grounds for the suspension, revocation or denial of renewal of a license. (Ord. 12-1992 §1)

Sec. 10-211. Open containers prohibited.

It is unlawful for any person to possess an alcoholic beverage in an open container in any motor vehicle or public place within the Town, except within establishments licensed by the Town to sell such beverages for consumption upon the premises. (Ord. 12-1992 §1)

Secs. 10-212--10-230. Reserved.

ARTICLE X

Offenses Relating to Weapons

Sec. 10-231. Concealing deadly weapons.

(a) It is unlawful for any person to knowingly carry a knife or firearm concealed on or about his or her person; provided, however, that this Article shall not apply to persons in their domiciles or places of business or on property owned or under their control at the time of the act of carrying, or to persons in private automobiles or other private means of conveyance, who are carrying such a weapon for the lawful protection of their or another's person or property or for any other legal purpose.

(b) Nothing in this Section shall apply to peace officers or members of the Armed Forces of the United States or Colorado National Guard acting in the lawful discharge of their duties.

(c) Nothing in this Section shall apply to persons who possess a valid permit or license to conceal such weapon or weapons, which license or permit was duly issued pursuant to applicable state or federal law. (Prior code 9.50.020)

Sec. 10-232. Discharging firearms.

It is unlawful for any person, other than a peace officer or a member of the Armed Forces of the United States or the Colorado National Guard acting in lawful discharge of his or her duties, to discharge or cause to be discharged any firearm within or into the limits of the Town; provided, however, that this Section shall not apply to persons discharging firearms in recognized shooting galleries or at shooting ranges, when Town written consent is obtained in advance, where such firearms may be discharged so as not to endanger persons or property and the projectile or projectiles from such firearms are prevented from traversing any grounds or space outside the limits of such gallery or range, or to the discharge of a firearm in lawful defense of person or property. (Prior code 9.50.030)

Sec. 10-233. Displaying deadly weapons.

(a) It is unlawful for any person to intentionally, knowingly or recklessly display, brandish or flourish a deadly weapon in a public place in a manner calculated to alarm or for any person to intentionally and without lawful excuse, justification or purpose aim or point a firearm at another person; provided, however, that the provisions of this Section shall not apply to any situation that constitutes a felony under state law.

(b) As used in this Section, *deadly weapon* includes, but is not necessarily limited to, firearms, knives, hatchets and dangerous clubs.

(c) Nothing herein shall apply to peace officers or members of the Colorado National Guard or Armed Forces of the United States acting in lawful discharge of their duties. (Prior code 9.50.040)

Sec. 10-234. Confiscation of deadly or illegal weapons.

It shall be the duty of every police officer, upon making any arrest and seizing a weapon carried or used in violation of any provisions of this Article, to keep and place the same in such place of safekeeping as may be directed by the Chief of Police until the final determination of the prosecution for the offense or any offense in the prosecution of which such weapon may be evidence. In the event of entry of a final judgment of guilt, the Chief of Police shall make such disposition of such weapon as may be ordered by the Municipal Court or other court having jurisdiction, and in the absence of such order, such disposition shall be as provided by Chapter 1, Article VI of this Code or by law. (Prior code 9.50.050)

Sec. 10-235. Carrying weapons where liquor is sold.

(a) It is unlawful for any person to carry, conceal or display any dangerous or deadly weapon while such person is on the premises of any establishment where malt, vinous or spirituous liquors are sold for consumption on the premises.

(b) The provisions of this Section shall not apply to peace officers or any other person duly licensed or authorized under applicable state or federal law to carry such weapon concealed, or to persons carrying such weapons in their place of business or having control of the premises at the time of the act of carrying. (Prior code 9.50.060)

Sec. 10-236. Dangerous missiles.

It is unlawful for any person to intentionally, knowingly and recklessly throw, shoot or project any stone, arrow, pellet, dart, ball bearing or other dangerous missile at or against the person, animal, building, structure, personal property or fixture or vehicle of another, except that the provisions of this Section shall not apply to persons throwing, projecting or shooting any such dangerous missile at any animal in order to protect his or her person or property or the person or property of another from physical injury. (Prior code 9.50.070)

Secs. 10-237--10-250. Reserved.

ARTICLE XI

Offenses Relating to Minors

Sec. 10-251. Wrongs to children.

It shall be unlawful for any person having the care, custody, control or confidence of or influence over any child to willfully cause or permit the life of such child to be endangered, the health of such child to be injured or the morals of such child to be impaired, or to willfully cause or permit such child to be placed in such a situation, business or occupation that such child's life, health or morals shall be endangered; to willfully abandon such child; or to torture, torment, cruelly punish or willfully or negligently deprive such child of necessary food, clothing or shelter or in any other manner injure such child unnecessarily. (Ord. 26-1992 §1)

Sec. 10-252. Parental liability.

It shall be unlawful for the parent or legal guardian of any underage person to intentionally, knowingly or under conditions which an average parent or guardian should have knowledge of, permit or allow such underage person to violate any of the provisions of this Article. (Ord. 12-1992 §1)

Sec. 10-253. Encouraging delinquency.

It shall be unlawful for any person, by any act or neglect, to encourage, aid or cause a child to come within the purview of the juvenile authorities, and it shall likewise be unlawful for any person, after notice that a driver's license of any child has been suspended or revoked, to permit such child to operate a motor vehicle during the period that such driver's license is suspended. (Ord. 26-1992 §1)

Sec. 10-254. False statement; false credentials.

It shall be unlawful for any person under twenty-one (21) years of age to make false statements, to furnish, present or exhibit any fictitious or false registration card, identification card, note or other document for any unlawful purpose, or to furnish, present or exhibit such document or documents issued to a person other than the one presenting the same for the purpose of gaining admission to prohibited places for the purpose of procuring the sale, gift or delivery of prohibited articles, including beer, liquor, wine or fermented malt beverages. (Ord. 26-1992 §1)

Sec. 10-255. Services of others.

It shall be unlawful for any person under the age of twenty-one (21) years to engage or utilize the services of any other person, whether for remuneration or not, to procure any article which the minor is forbidden by law to purchase. (Ord. 26-1992 §1)

Sec. 10-256. Loitering and other acts in or about schools.

It shall be unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public, private or parochial school, college or seminary grounds or buildings, either on foot or in or on any vehicle, without having some lawful business therein or thereabout or in connection with such school or the employees thereof, or for any person to:

(1) Annoy, disturb or otherwise prevent the orderly conduct of classes and activities of any such school;

(2) Annoy, disturb, assault or molest any student or employee of any such school, college or seminary while in any such school building or on any school grounds;

(3) Conduct himself or herself in a lewd, wanton or lascivious manner in speech or behavior in or about any school building or school grounds; or

(4) Park or move a vehicle in the immediate vicinity of or on the grounds of any such school, college or seminary for the purpose of annoying or molesting the students or employees thereof or in an effort to induce, entice or invite students into such vehicles for immoral purposes. (Ord. 26-1992 §1)

Secs. 10-257--10-270. Reserved.

ARTICLE XII

Noise

Sec. 10-271. Sirens, whistles, gongs and red lights.

It shall be unlawful for any person to carry or use upon a vehicle, other than Police or Fire Department vehicles or emergency vehicles for public use, any gong, siren, whistle or red light similar to that used on ambulances or vehicles of the Police and Fire Departments. (Ord. 26-1992 §1)

Secs. 10-272--10-290. Reserved.

ARTICLE XIII

Domestic Abuse

Sec. 10-291. Definitions.

As used in this Article, unless the context otherwise requires:

(1) *Adult* means an individual eighteen (18) years of age or over.

(2) *Domestic abuse* means any act or threatened act of violence which is committed by an adult or emancipated minor against another adult or emancipated minor who is a current or former relation or who is living in the same domicile.

(3) *Emancipated minor* means an individual under eighteen (18) years of age who is married and living away from his or her parents or guardians.

(4) *Act of violence* means any harmful physical contact or the destruction of property as a method of coercion, control, revenge or punishment. (Ord. 2-1993 §1)

Sec. 10-292. Domestic abuse prohibited.

It shall be unlawful for a person to intentionally, knowingly or recklessly commit domestic abuse. (Ord. 2-1993 §1)

Secs. 10-293--10-310. Reserved.

Article XIV

Offenses Relating to Marijuana and Drug Paraphernalia

Sec. 10-311. Definitions.

As used in this Article, unless the context otherwise requires:

(1) *Controlled substance* shall have the same meaning set forth in Section 18-18-102(5), C.R.S.

(2) *Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of the State or the Town. *Drug paraphernalia* includes, but is not limited to:

a. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances in violation of the laws of this State or the Town;

b. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

c. Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

d. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

e. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

f. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances; or

g. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. Electric pipes;

10. Air-driven pipes;

11. Chillums;

12. Bongs; or

13. Ice pipes or chillers.

(3) *Marijuana* or *marihuana* means all parts of the plant *cannabis sativa L.*, 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. It does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, or sterilized seed of the plant which is incapable of germination, if these items exist apart from any other item defined as *marijuana* in this Section. *Marijuana* does not include marijuana concentrate as defined below.

(4) *Marijuana concentrate* means hashish, tetrahydrocannabinols or any alkaloid, salt, derivative, preparation, compound or mixture, whether natural or synthesized, of tetrahydrocannabinols. (Ord. 26-1994 §1)

Sec. 10-312. Possession of marijuana prohibited; penalty.

(a) It shall be unlawful and a municipal offense for any person to possess not more than one (1) ounce of marijuana. Upon conviction for such offense, such person shall be punished by a fine of not more than one hundred dollars ($100.00).

(b) Whenever a person is arrested or detained for a violation of Subsection (a) of this Section, the arresting or detaining officer shall prepare a written notice or summons for such person to appear in court. The written notice or summons shall contain the name and address of such arrested or detained

person, the date, time and place where such person shall appear, and a place for the signature of such person indicating the person's written promise to appear on the date and at the time and place indicated on the notice or summons. One (1) copy of said notice or summons shall be given to the person arrested or detained, one (1) copy shall be sent to the Municipal Court and such other copies as may be required by the Town's Police Department shall be sent to the places designated by the Town's Police Department. The date specified in the notice or summons to appear shall be at least five (5) days after such arrest or detention, unless the person arrested or detained demands an earlier hearing. The arrested or detained person, in order to secure release from arrest or detention, shall promise in writing to appear in Municipal Court by signing the notice or summons prepared by the arresting or detaining officer. Any person who does not honor such written promise to appear commits the separate offense of Failure to Obey Summons or Notice as provided in Section 10-85, and upon conviction for such separate offense shall be punished as provided in Article IV of Chapter 1 of this Code.

(c) It shall be unlawful and a municipal offense for any person to openly and publicly display, consume or use not more than one (1) ounce of marijuana. Upon conviction for such offense, such person shall be punished, at a minimum, by a fine of not less than one hundred dollars ($100.00) or, at a maximum, by a fine of not more than one hundred dollars ($100.00) and by fifteen (15) days in jail. (Ord. 26-1994 §1)

Sec. 10-313. Drug paraphernalia; determination; considerations.

(a) In determining whether an object is drug paraphernalia, the Municipal Court, in its discretion, may consider, in addition to all other relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) The proximity of the object to controlled substances;

(3) The existence of any residue of controlled substances on the object;

(4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know, that it will be delivered to persons who he or she knows or reasonably should know, could use the object to facilitate a violation of Section 10-314 through Section 10-316, inclusive;

(5) Instructions, oral or written, provided with the object concerning its use;

(6) Descriptive materials accompanying the object which explain or depict its use;

(7) National or local advertising concerning its use;

(8) The manner in which the object is displayed for sale;

(9) Whether the owner, or anyone in control of the object, is a suppler of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products;

(10) The existence and scope of legal uses for the object in the community; or

(11) Expert testimony concerning its use.

(b) In the event a case brought pursuant to Section 10-314 through Section 10-316, inclusive, is tried before a jury, the Municipal Court shall hold an evidentiary hearing on issues raised pursuant to this Section. Such hearing shall be conducted in camera. (Ord. 26-1994 §1)

Sec. 10-314. Possession of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for a person to possess drug paraphernalia if such person knows or reasonably should know that the drug paraphernalia could be used under circumstances in violation of the laws of this State or the Town. Upon conviction for such offense, such person shall be punished by a fine of not more than one hundred dollars ($100.00). (Ord. 26-1994 §1)

Sec. 10-315. Manufacture, sale or delivery of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for any person to sell or deliver, possess with intent to sell or deliver, or manufacture with intent to sell or deliver, equipment, products or materials if such person knows or reasonably should know that such equipment, products or materials could be used as drug paraphernalia. Upon conviction for such offense, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 26-1994 §1)

Sec. 10-316. Advertisement of drug paraphernalia; penalty.

It shall be unlawful and a municipal offense for any person to place an advertisement in any newspaper, magazine, handbill or other publication if such person intends thereby to promote the sale within the Town of equipment, products or materials designed and intended for use as drug paraphernalia. Upon conviction for such offense, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 26-1994 §1)

Sec. 10-317. Defenses.

The common law defense known as the *procuring agent defense* is not a defense to any violations of this Article. (Ord. 26-1994 §1)

Secs. 10-318--10-330. Reserved.

CHAPTER 11

Streets, Sidewalks and Public Property

ARTICLE I

Street Grades

Sec. 11-1. Purpose.

The purpose of this Article is necessary so that public streets within the Town will be developed in an orderly manner, providing for proper drainage and disposal of surface water. (Prior code 12.08.010)

Sec. 11-2. Official grade map.

(a) The recommended elevations shown on the grade and drainage map as prepared by Robert F. Harrison and Associates, Inc. and filed with the Town Clerk on February 12, 1964, shall be the official elevation for the streets in the Town and all future street construction shall conform with the elevations as shown.

(b) The elevations shown on this map and on all future elevation indications shall refer to elevations above sea level as used and indicated by the United States Coast and Geodetic Survey.

(c) The elevations of all points between the points indicated on the map shall be determined by a uniform slope between elevations indicated. (Prior code 12.08.020)

Sec. 11-3. Changes in map.

(a) Revisions, changes and/or extensions of the official grade map may be made at any time by the Town Engineer or by a state-registered professional engineer designated by resolution of the Board of Trustees. Only one (1) engineer or engineering firm may be so designated at one (1) time, and a new designation shall revoke previous designations.

(b) Any revisions, changes and/or extensions shall be filed with the Town Clerk along with a certificate by the Town Engineer or the above-designated engineer that such revision, change and/or extension has been made with full consideration of existing grades and the existing official grade map, and will result in overall satisfactory surface drainage.

(c) The latest filed revision, change and/or extension shall be the official grades to be followed by all parties. (Prior code 12.08.030)

Sec. 11-4. Additions or annexations.

Any new additions or annexations to the Town shall, before acceptance by the Board of Trustees, have a grade map filed with the Town Clerk and shall include the above required certificate by the Town Engineer or the above-designated professional engineer. (Prior code 12.08.040)

Secs. 11-5—11-20. Reserved.

ARTICLE II

Access and Excavations

Sec. 11-21. Permit required; fees.

(a) No person shall construct, install or connect any private street, driveway or access on or to any public street, alley or other right-of-way, nor disturb any pavement, sidewalk, trail, driveway or other surfacing, or dig or excavate in, on, over or through any street, alley, sidewalk, trail or other public way, without first securing a permit to do so from the Director of Public Works and paying the applicable fee; except in cases of clear emergency where immediate action is required to protect public safety and property, in which event a written report of said action shall be made to the Director of Public Works as soon as possible thereafter and a permit secured for said action after the fact.

(b) The fees for permits issued under this Article shall be established by the Board of Trustees. No portion of a fee shall be refundable.

(c) The Director of Public Works may waive the fee for excavations in paved and unpaved surfaces upon prior arrangement and inspection by the Public Works Department assuring proper completion of the project.

(d) Access to or excavations in, on, under or through any street or road that is part of the state highway system must first be approved and permitted by the appropriate state agency. (Prior code 12.04.010; Ord. 6-1998, §8; Ord. 7-1999 §1)

Sec. 11-22. Permit to be secured in advance; exception.

Any person desiring to do any of the acts provided for in Section 11-21 must secure a permit to do so from the Town in advance of the commencement of any work, except in cases of emergency, as provided in Section 11-21, and must give the Town information regarding the location of the proposed access, disturbance or excavation, the date the same is to be completed, the purpose for which it is being done or was done, and such other information as from time to time may be required by regulation of the Town. (Prior code 12.04.020; Ord. 6-1998, §8; Ord. 7-1999 §1)

Sec. 11-23. Regulations.

(a) The actual number, location and size of any proposed access point to, or cut or excavation to be made in, a public way shall be determined by the Public Works Department of the Town using generally accepted professional engineering standards, inclusive of access standards developed by the Colorado Department of Transportation.

(b) All excavations or cuts to the surface of a public way shall be made by the permittee on both sides of the proposed trench with a concrete saw, pipe saw or other suitable tool. All cut lines shall be neat and straight.

(c) The permittee shall be required to place his or her subsurface installation a minimum number of inches beneath the surface of the Town's right-of-way. The depth of the subsurface installation shall be determined by the Public Works Department.

(d) All material taken from the cut or excavation and not used in the backfill shall be removed and disposed of by the permittee at the time of the cut and excavation. Other materials shall be stored on the site so as to minimize interference with traffic.

(e) Backfill of any excavation made in a street or alley right-of-way shall conform with the following:

(1) Backfill materials shall be placed in layers or lifts not to exceed twelve (12) inches in uncompacted thickness.

(2) Backfill material shall only be native or imported materials containing no stones larger than eight (8) inches in diameter.

(3) Compaction shall be accomplished only with equipment specifically designed for trench compaction, which equipment shall be approved by the Public Works Director.

(4) All backfill material shall be placed when wet so as to achieve ninety-five percent (95%) of maximum dry density.

(5) The top eight (8) inches of the excavation shall be filled with aggregate base course (Class 6).

(6) The top of the aggregate base course shall be finished flush with the adjacent pavement or slightly above to allow for settling.

(7) All compaction must be inspected and approved by the Public Works Director.

(f) All asphalt patches shall be done by the Public Works Department.

(g) If, during the course of making the street opening, the permittee discovers that rock must be blasted in order to facilitate completion of said street opening, the procedure shall be as follows:

(1) The blasting must be accomplished by an individual who possesses a current state explosives permit.

(2) The individual retained to do the required blasting, whether he or she is the permittee or the permittee's agent, must contact the Chief of Police prior to doing the blasting and obtain a letter of authorization to blast. The blaster must present evidence that he or she possesses a current state explosives permit to the Chief of Police at the time of initial contact.

(3) If the Chief of Police is satisfied that the individual does in fact possess a current state explosives permit, he or she shall write a letter of authorization for the individual to do the required blasting. The letter of authorization shall contain: the name of the individual to do the blasting, the identification number of the individual's explosives permit, date and approximate time the blasting will be done, and the location where the blasting will take place.

(h) Where a subsurface installation is to cross any ditch, canal or water-carrying structure, wherever possible it shall be pushed through and beneath in a pipe of larger diameter, thereby

eliminating the necessity of trenching. In no case shall the flow of water be impaired or interrupted, except with prior written consent of the owner(s) of the waterway and the water.

(i) All work must be accomplished by the permittee in accordance with accepted good practices and conform to the recommendations of the National Electric Safety Code, ordinances of the Town, such state statutes as are applicable, such Occupational Health and Safety Administration (OSHA) regulations as are applicable, and such Colorado Occupational Safety and Health (COSH) regulations as are applicable.

(j) The permittee shall maintain the subsurface installation at all times and agree to hold the Town, agencies thereof and their officers and employees harmless from any and all loss and damage which may arise out of or be connected with the installation, maintenance, alteration, removal or presence of the subsurface installation, or any work or facility connected therewith.

(k) The work shall be completed within a specified number of days, as shown on the street opening permit, from the date of the issuance of the permit. No work shall be performed on Saturdays or Sundays. No open trench shall be permitted in traveled roadways after dark, unless otherwise specified in the special provisions shown on the permit form.

(l) The permittee will be required to shut off lines and remove all combustible materials from the street right-of-way when requested to do so by the Town because of necessary street construction or maintenance operations.

(m) If the Town so requires, the permittee shall mark the subsurface installation with markers acceptable to the Town at the locations designated by the Town.

(n) Permits involving encroachment on state highways situate within the municipal boundaries of the Town require concurrence by the State Division of Highways prior to the issuance of a permit by the Town.

(o) The traveling public must be protected during the installation with proper warning signs or signals both day and night. Warning signs and signals shall be installed and maintained by and at the expense of the permittee and in accordance with directions given by the Public Works Director.

(p) The permittee shall be required to submit an accurate sketch of its proposed installation at the time of application for a street opening permit. Said sketch shall show lineal distances from the site of the proposed installation to surrounding landmarks such as street right-of-way lines, fire hydrants, street intersections and known locations of existing underground utility lines. (Prior code 12.04.030; Ord. 7-1999 §1)

Sec. 11-24. Restoration; time of responsibility.

The disturbed portion of the public right-of-way shall be restored to its original condition and maintenance by the permittee at his or her cost for a period of one hundred twenty (120) days following the completion of the project. Additionally, any curbs, gutters, sidewalks or other street improvements or private property altered, damaged or destroyed by the permittee shall promptly be repaired or replaced by the permittee. (Prior code 12.04.040)

Sec. 11-25. Time limit on permit.

Unless said permit is granted for a further length of time, no permit shall be granted for a period greater than five (5) days from the date on said permit, excluding Sundays and legal holidays. (Prior code 12.04.050)

Sec. 11-26. Distribution of permit to utilities.

The Town Clerk, upon the issuance of any permit as hereinabove provided, shall immediately send a copy of said permit to the managing officer of each utility, whether private or public, having franchises or other permit or permission to use the public streets and alleys of said Town for their purposes, in order that said utilities, whether public or private, may be alerted in the event that the permittee may be excavating in the area or position of the location of other utilities or franchises. (Prior code 12.04.060)

Sec. 11-27. Utility location map.

The Town Clerk, from and after the date of the passage of the ordinance codified in this Article, shall maintain a location map of the Town, on which shall be shown the location, as taken from the permits issued, of all utility lines, service connections, poles and facilities located in, on or under the streets, alleys, sidewalks or public ways of the Town, and said map shall be made available for inspection or copy by an interested party at any time. (Prior code 12.04.070)

Sec. 11-28. Liability of permittee.

Any permittee or other person who in any manner damages, breaks or interrupts the use of or the service by any other utility shall be liable to said other utility for all cost of repair, replacement or damage from the interruption or use of service by said other utility. (Prior code 12.04.080)

Secs. 11-29—11-40. Reserved.

ARTICLE III

Building Numbering System

Sec. 11-41. Owner's responsibility.

It is made the duty of all owners and occupants of houses and buildings situated in the corporate limits of the Town to number the same within thirty (30) days after being notified so to do by the Town Clerk in the manner hereafter directed, and by securely fastening a metal plate or sign bearing figures necessary to indicate the proper number of such house or building, over the front door thereof. (Prior code 12.12.010)

Sec. 11-42. Determination of number.

The proper number to be affixed to each of such houses and buildings shall be ascertained and determined in the following manner:

(1) By beginning at that certain street in the Town known as Main Street, and numbering all houses and buildings fronting upon streets running at right angles therewith in accordance with what is known as the decimal system, and by regularly increasing one (1) number, according to the distance from Main Street, allowing one (1) number to each twelve and one-half (12½) feet of space of each block, exclusive of alleys.

(2) The houses and buildings situated upon Main Street, and upon all other streets running parallel or nearly parallel therewith, shall be numbered by the same method and same manner, using that certain street in the Town known as Highway No. 24 as the base or starting point.

(3) The number in each block shall begin with 101 and 102, 201 and 202, 301 and 302, etc., according to whether the same is the first, second or third, etc., block from Main Street; and on all streets or avenues running northerly and southerly even numbers shall be placed on the west side, and on all streets and avenues running easterly and westerly the even numbers shall be placed on the north side, the odd numbers alternating in each case shall be placed on the respective east or south side of the street opposite to that on which the even numbers are to be placed as aforesaid.

(4) All stairways in business blocks shall be numbered with half numbers, such as 150½, 250½, etc.

(5) The number which, by proper computation and measurements, made in accordance with the foregoing provisions, falls to any house or building in the Town, shall thenceforth be and remain the proper and official number thereof. (Prior code 12.12.020)

Sec. 11-43. Visibility of numbers.

The figures used to indicate the number of each house or building in the Town, and to be placed upon the metal plates or signs mentioned in Section 11-41, shall be each at least three (3) inches in height and so inscribed and placed so as to be plainly visible from the street upon which the house or building bearing the number is situated. (Prior code 12.12.030)

Sec. 11-44. Appointment.

The Board of Trustees shall, by resolution, appoint a suitable person or persons to make the necessary measurements and computations to assign each house or building its proper number or numbers. (Prior code 12.12.040)

Sec. 11-45. Application.

Any and all houses and buildings which may be hereafter constructed in the Town shall be subject to the provisions of this Article and numbered in the manner herein prescribed. (Prior code 12.12.060)

Sec. 11-46. Exceptions; Esgar and Collegiate Heights Additions.

Nothing in this Article shall affect or alter the house numbering system presently in use in the Esgar and Collegiate Heights Additions to the Town. (Prior code 12.12.070)

Secs. 11-47—11-60. Reserved.

ARTICLE IV

Street and Alley Vacation Procedures

Sec. 11-61. Request for vacation.

A request for vacation of any public street or other public way shall be made to the Town Administrator in writing, shall be accompanied by a nonrefundable application fee, and shall include the legal description of the property sought to be vacated, the facts justifying or necessitating such request, the name of the person making the request, and the name and address of all persons who own real property immediately adjacent to the public way sought to be vacated. Additionally, the applicant shall provide a current improvement survey of the public way sought to be vacated, which survey shall have been prepared by a surveyor licensed in the State. (Prior code 12.24.010; Ord. 6-1998, §9)

Sec. 11-62. Public hearing and notice.

Upon receipt of a request for vacation, the Board of Trustees shall cause a public hearing to be held upon such request. Notice of such hearing shall be published twice in a newspaper of general circulation in the Town, the first publication being at least fifteen (15) days prior to such hearing and the second publication being at least eight (8) days prior to such hearing. In addition, the Town Clerk shall mail notice of such hearing to all owners of property adjacent to the public way sought to be vacated as shown in the request for vacation, and to all public utility companies providing service within the Town. (Prior code 12.24.020)

Sec. 11-63. Vacation only granted if in public interest.

Following the public hearing, the Board of Trustees shall either allow or deny the request for vacation. In making such decision, the Board of Trustees shall determine whether the requested vacation would be in the public interest. Any action of the Board of Trustees vacating a public way within the Town shall be done by ordinance as required by Section 43-2-303(1)(a), C.R.S. (Prior code 12.24.030)

Sec. 11-64. Reserved.

Sec. 11-65. Reservation of easements and rights-of-way.

Any ordinance vacating a public way shall reserve rights-of-way or easements for the continued use of existing sewer, gas, water or similar pipelines and appurtenances, for ditches or canals and appurtenances, and for electric, telephone and similar lines and appurtenances. (Prior code 12.24.050)

Sec. 11-66. Further conditions and restrictions.

Nothing contained in this Article shall in any way limit or restrict the power of the Board of Trustees to impose further conditions, restrictions or requirements upon a request for vacation or upon such vacation if so granted. (Prior code 12.24.060)

Secs. 11-67—11-80. Reserved.

ARTICLE V

Trees

Sec. 11-81. Purpose.

It is the purpose of this Article to promote the public health, safety and welfare and enhance the natural environment by regulating the planting and maintenance of trees within public rights-of-way and on public property, and by controlling the introduction, propagation and/or maintenance of nuisance, dead or diseased trees on private property. (Prior code 12.20.010; Ord. 4-2002 §1)

Sec. 11-82. Definitions.

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

Planting guide means the *Town of Buena Vista Planting Guide* adopted and as may be amended from time to time by the Board of Trustees.

Tree includes trees, perennial plants and shrubs of all kinds.

Tree Board means the citizen advisory board charged by the Board of Trustees to study and recommend plans and guidelines for the care, preservation and planting of trees. (Prior code 12.20.020; Ord. 4-2002 §1)

Sec. 11-83. Permit required to plant trees on public property; issuance.

(a) It is unlawful for any person to plant, prune, remove, destroy or cause to be planted, pruned, removed or destroyed any tree in or upon the public right-of-way of any street, alley, park, sidewalk or other public place within the Town without having first obtained a permit therefor from the Town Administrator.

(b) A permit may be issued by the Town Administrator under Subsection (a) above only upon proof satisfactory to the Town Administrator that the proposed activity will improve the appearance of the street or other public place and is in the best interest of the Town and its inhabitants, and that the proposed activity will be done in a safe and prudent manner and in compliance with this Article. The Town Administrator may impose such conditions upon the permit as may be reasonable under the circumstances. (Prior code 12.20.030)

Sec. 11-84. Specifications on planting new trees – adherence to Planting Guide.

All trees and other plants planted in or upon any street, alley, sidewalk, park or other public right-of-way or public place within the Town, and such trees and plants required to be planted on public or private land as a condition of any zoning, subdivision or other land development or building approval or permit shall be planted and maintained in accordance with the provisions of this Article and the *Town of Buena Vista Planting Guide,* which guide shall be adhered to and enforced as if set forth in full in this Section. (Prior code 12.20.040; Ord. 4-2002 §1)

Sec. 11-85. Town authority over trees on, in or protruding into public rights-of-way or property.

The Town shall have the authority to plant, prune, spray, preserve and remove trees located within or projecting into the public right-of-way of any street or in any alley, park or other public place within the Town, as may be determined by the Town from time to time to be necessary for the purposes of rendering the streets and other public places safe and convenient; to carry out a plan or system of street improvement or beautification; or to prevent roots from closing sewers and storm drains. The Town Administrator may require the removal, or cause to be removed, any tree or part thereof located within or projecting into the public right-of-way or in any alley, park or other public place which is deemed to present or create an unsafe or dangerous condition, or which presents a danger or threat to underground or overhead utility transmission lines or other public improvements; which is infected by any injurious fungus, disease, insect or pest; or which was planted and/or is being maintained in violation of the *Town of Buena Vista Planting Guide*. (Prior code 12.20.050; Ord. 4-2002 §1)

Sec. 11-86. Pruning of trees on public street or alley.

Every person owning a tree located within or projecting into any public street, right-of-way or alley shall prune the branches of such tree so that the branches of such tree shall not obstruct the light from any street light and shall not obstruct the visibility from any street intersection; and so that there shall be a clear space of at least twelve (12) feet between the surface of the street, right-of-way or alley and the lowest branch of such tree. (Prior code 12.20.060)

Sec. 11-87. Removal of dead or diseased trees on private property.

The Town Administrator shall have the power to provide for and compel the removal of any dead or diseased trees located on private property when such tree presents an immediate or potential threat to public or private health or safety, or to public or private property, or harbors insects or diseases which constitute an actual or potential threat to other trees within the Town. Except in cases of emergency wherein the immediate removal of all or part of a tree is necessary to avert foreseeable immediate injury to persons or property, the Town Administrator shall provide the tree owner with a written order to remove a tree under this Section within sixty (60) days from the date of the notice, or within such shorter time as the Town Administrator may deem necessary. If the tree owner fails or refuses to remove the tree within the time specified in the written notice, the Town may proceed to remove the tree, and the whole cost thereof, including collection expenses, may be assessed against the lot or tracts from which the tree was removed. The assessment shall be an automatic lien against such lot or tract until paid and shall have priority over all other liens except general taxes and prior special assessments. Further, in case such assessment is not paid within ninety (90) days after becoming due, it may be certified by the Town Clerk to the County Treasurer who shall collect the assessment, together with a ten percent (10%) penalty for cost of collection, in the same manner delinquent taxes are collected. (Prior code 12.20.070; Ord. 4-2002 §1)

Secs. 11-88—11-110. Reserved.

ARTICLE VI

Use of Public Places

Sec. 11-111. Definitions.

As used in this Article, unless the context clearly requires a different meaning, the following words shall be defined as follows:

Public park or *recreation area* means a park, recreation area or other open space owned, leased or under the control of the Town or other public entity and shall include the Town's rodeo grounds, softball fields, tennis courts and trails but shall not include the Town's airport.

Public property means any real property, public right-of-way, public park, recreation area or other area owned, leased or under the control of the Town or other public entity.

Public right-of-way means any street, sidewalk, alleyway or other right-of-way owned by the Town, but this term shall not include U.S. Highway 24.

Special event means an organized procession or assemblage of two hundred (200) or more people requiring traffic control, the exclusive use of all or a portion of a public right-of-way, public park or recreation area or other Town facility, or creating a public safety hazard. Examples of special events include, but are not limited to, walkathons, runs, marathons, trail rides, bicycle races, fairs, celebrations, rodeos, demonstrations, parades, aviation events and other similar activities.

Town Administrator means the Town Administrator of the Town of Buena Vista. (Ord. 3 §1, 2010; Ord. 6 §1, 2011)

Sec. 11-112. Closure of public rights-of-way; payment of costs; insurance.

The Board of Trustees may authorize the partial or complete closure of designated portions of a public right-of-way if:

(1) A written application is submitted to the Town Administrator, containing such information as the Town Administrator deems necessary, and the application is approved by the Board of Trustees after recommendation by the Town Administrator.

(2) The applicant pays to the Town, at the time he or she submits the application, such application fee as may be established by the Board of Trustees, and the applicant agrees to pay upon request the actual costs to the Town in providing any services required in connection with the closure over and above normal municipal services. Such costs shall include, without limitation, any regular or overtime salaries, equipment and fuel.

(3) The applicant agrees to pay for and provide liability insurance in such amount and for such coverage as may be required by the Board of Trustees sufficient to protect the Town from any liability for any injuries or damages which may arise out of the closure or the Town's assistance in ensuring the safe conduct of the closure.

(4) The closure is implemented in a manner that will cause the least inconvenience to the public. (Ord. 3 §1, 2010)

Sec. 11-113. Use of public parks and recreation areas.

Town-owned public parks and recreation areas may be reserved and used by groups, associations or similar organizations, by permit issued by the Town Administrator upon compliance with the following terms and conditions:

(1) Written application for a permit shall be submitted to the Town Administrator containing such information as the Town Administrator deems necessary to evaluate the proposed use.

(2) The applicant shall pay an application fee and agrees to pay upon request the actual costs to the Town in providing any additional municipal services as may be required in connection with the use. Additional services shall include any regular or overtime salaries of Town personnel, equipment usage and fuel.

(3) The applicant agrees to pay for and provide proof of liability insurance in an amount and for such coverage as may be required by the Town Administrator to protect the Town from any liability for any injuries or damages of any kind which may arise out of the use.

(4) The use shall be conducted in a manner that creates the least amount of disturbance to those persons residing near the park or recreation area and minimizes damage to public property. The applicant shall compensate the Town for all damage done to public property during the use. (Ord. 3 §1, 2010)

Sec. 11-114. Swimming or wading in public park waters.

It is unlawful for any person to enter, swim or wade in any lake, stream, pond, irrigation ditch, reservoir or other body of water in a public park or recreation area unless the lake, stream, pond or other body of water has been designated by the Town Administrator as an area specifically set aside for swimming or wading. The Town Administrator may designate areas where persons may enter the bodies of water whenever he or she finds that recreational interests may be served without constituting a hazard to public safety, welfare, health and sanitation. This Section shall not apply to persons wading for the purpose of fishing or launching a boat or to any rescue or officially sanctioned demonstration operations. (Ord. 3 §1, 2010)

Sec. 11-115. Motor-powered watercraft.

(a) It is unlawful to bring or operate any motor-powered watercraft upon any waterway or body of water within the Town; provided, however, that this Section shall not apply to any rescue or officially sanctioned demonstration operations.

(b) Each occupant of a non-motor-powered watercraft shall wear a Coast Guard approved life jacket whenever the watercraft is upon any waterway or body of water within the Town. (Ord. 3 §1, 2010)

Sec. 11-116. Hours; extensions; exceptions.

Public parks and recreation areas shall be open daily to the public from 5:00 a.m. until 11:00 p.m. Only employees of the Town or the authority with jurisdiction over the public park or recreation area acting in the scope of their employment may remain at any other time; provided, however, that:

(1) The Town or authority having jurisdiction over such public park or recreation area may, by permit or authorization first had or obtained, or by regulation duly posted in the area affected, extend to a later hour the nighttime closing hour with respect to particular recreational activities in such parks, parkways or areas; and

(2) Nothing contained in this Article shall prevent or make unlawful the conduct of or attendance at a nighttime athletic event or activity in areas set aside and lighted for such events or activities by or with the permission of the authority having jurisdiction of such public park or recreation area. (Ord. 3 §1, 2010)

Sec. 11-117. Prohibition against dog excrement on public property.

It shall be unlawful for any dog owner to fail to remove and clean up any defecation or excrement deposited by a dog on any public property, including any public park, recreation area or public right-of-way. For the purpose of this Section, the terms *dog* and *dog owner* shall have the meaning described in Section 7-122 of this Code. (Ord. 6 §2, 2011)

Secs. 11-118—11-119. Reserved.

ARTICLE VII

Special Events in Public Places

Sec. 11-120. Definitions.

For purposes of this Article, terms shall have the same meaning as set forth in Section 11-111 of Article VI of this Chapter. (Ord. 3 §2, 2010)

Sec. 11-121. Permit required.

Any person desiring to conduct a special event in the Town shall first obtain a permit from the Town Administrator. If a public right-of-way closure or use of a public park or recreation area is desired, the requirements of Sections 11-112 or 11-113 shall also apply, respectively. (Ord. 3, §2, 2010)

Sec. 11-122. Permit application.

(a) Any person desiring to sponsor or conduct a special event shall apply for a permit by filing a verified application with the Town Administrator.

(b) At a minimum, the application shall include the following information:

(1) The applicant's name, address and phone number;

(2) The date and time of the event, including the estimated set-up period, the start time, the end time and the estimated break-down and cleanup period;

(3) A map showing the proposed location of the event, including a detailed map of the route, if applicable;

(4) The nature of the event;

(5) The estimated number of participants and animals, if any;

(6) The estimated number of vehicles;

(7) A clean up plan;

(8) A list of any previous event permits issued by the Town;

(9) A statement as to whether the applicant has ever applied for and been denied or had revoked a parade, demonstration or similar permit by the Town or any other jurisdiction and the grounds therefor;

(10) A description of any planned amplified noise;

(11) A statement as to whether the event will involve hazardous, combustible or flammable materials and, if so, the safeguards planned;

(12) If camping is desired, a specific request that camping may be permitted, the requested location of the camping and an estimate regarding the number of campers; and

(13) Any other information requested by the Town Administrator relevant to either the criteria set forth in Section 11-123 below or the possible conditions that may be imposed pursuant to Section 11-125 of this Article that will aid the Town Administrator in deciding whether to issue the event permit and under what conditions.

(c) Applications shall be submitted not less than fourteen (14) days nor more than eighteen (18) months before the event. The Town Administrator shall, upon a showing of good cause, consider an application that is filed after the filing deadline if there is sufficient time to process and investigate the application and obtain necessary police services for the event. Good cause may be demonstrated by a showing that the circumstance that gave rise to the application did not reasonably allow the applicant to file within the time prescribed. If the Town Administrator refuses to consider a late application, the Town Administrator shall inform the applicant in writing of the reasons therefor and of the applicant's right of appeal.

(d) Each application shall be accompanied by a fee as set by the Board of Trustees, which fee shall defray the costs of processing the application. (Ord. 3 §2, 2010; Ord. 2 §1, 2011; Ord. 6 §2, 2013)

Sec. 11-123. Criteria for denial.

(a) The Town Administrator shall approve an application and issue an event permit unless the Town Administrator determines, upon consideration of the application and other pertinent information, that:

(1) Information contained in the application or supplemental information obtained from the applicant is found to be false in any material detail;

(2) The applicant has failed to complete the application after having been notified of any additional information or documents required;

(3) Another event permit has already been issued, or an application has been received prior in time, to hold another event on the same date and time, or so close in time and place as to cause undue traffic congestion, or as to burden the Town's ability to meet the needs of police, fire or other emergency services to the remainder of the Town;

(4) The time, route or size of the event will substantially interrupt the safe and orderly movement of traffic on or contiguous to the event site or route or will disrupt the use of a public right-of-way at a time when it is usually subject to traffic congestion;

(5) The size, nature or location of the event will present a substantial risk to the health or safety of the public or participants in the event or other persons;

(6) The size of the event will require diversion of so great a number of police officers to ensure that participants stay within the boundaries or route of the event, or to protect participants in the event, as to prevent normal protection to the rest of the Town; provided that nothing herein authorizes denial of a permit because of the need to protect participants from the conduct of others, if reasonable permit conditions can be imposed to allow for adequate protection of participants with the number of police officers available to police the event;

(7) The location of the event will substantially interfere with any construction or maintenance work scheduled to take place on or near a public right-of-way or with any previously issued public right-of-way permit;

(8) The event, as described in the application, would violate any applicable law;

(9) The applicant has failed to pay costs, fees or deposits for any previous event permit; or

(10) The applicant has failed to abide by the terms or conditions of any previous event permit.

(b) When the grounds for denial of an application can be corrected by altering the date, time, duration, route or location of the event, the Town Administrator shall, instead of denying the application, conditionally approve the application upon the applicant's acceptance of appropriate corrective conditions or by making other reasonable modifications to the event. (Ord. 3 §2, 2010)

Sec. 11-124. Issuance.

Within ten (10) days of receipt of a complete application for an event permit, the Town Administrator shall consider the applicable criteria and approve, conditionally approve or deny the application. If the application is denied, the Town Administrator shall inform the applicant in writing of the grounds for denial and the applicant's right of appeal. If the application is approved, the Town Administrator shall issue the event permit, including any conditions. (Ord. 3 §2, 2010; Ord. 2 §1, 2011)

Sec. 11-125. Conditions.

(a) The Town Administrator may impose reasonable conditions on any event permit necessary to protect the safety of persons and property and the control of traffic, including but not limited to the following:

(1) Alteration of the date, time, duration, frequency, route or location of the event;

(2) Conditions concerning the area of assembly and disbanding of parades or other events occurring along a route;

(3) Conditions concerning accommodation of available parking, pedestrian or vehicular traffic, including restricting the event to only a portion of a public right-of-way;

(4) Requirements for the use of traffic cones, barricades or other traffic control devices to be provided, placed and removed by the permittee at its expense;

(5) Requirements for provision of emergency access and first aid or sanitary facilities;

(6) Requirements for arrangement of supplemental fire protection or law enforcement personnel to be present at the event at the permittee's expense;

(7) Requirements for use of event monitors and providing notice of permit conditions to event participants;

(8) Restrictions on the number and type of vehicles, animals or structures at the event and inspection and prior approval of floats, structures and decorated vehicles for fire safety;

(9) Requirements for use of trash receptacles, cleanup and restoration of property;

(10) Restrictions on use of amplified sound;

(11) A requirement that notice be provided to the property owners of property adjacent to any affected public property;

(12) Compliance with any applicable law and obtaining any other legally required permits or licenses; and

(13) Designation of a contact person with decision-making authority who will be continuously available to law enforcement personnel and present at the event.

(b) If camping is to be conducted in conjunction with an event, in addition to all conditions imposed by the Town Administrator, the camping shall be conducted in compliance with all camping rules and regulations established by the Town Administrator. (Ord. 3 §2, 2010; Ord. 6 §3, 2013)

Sec. 11-126. Insurance.

(a) In addition to any other condition allowed by Section 11-125, the Town Administrator may require the applicant to possess liability insurance to protect against loss from liability imposed by law for damages for bodily injury or property damage arising from the event. The Town Administrator shall determine whether to require such insurance and the amount of insurance that shall be required, based upon the considerations routinely taken into account by the Town in evaluating loss exposures, including, without limitation, whether the event poses a substantial risk of damage or injury due to the anticipated number of participants, the nature of the event and activities involved and the physical characteristics of the proposed site or route. Such insurance shall name the Town and its officers, employees and agents as additional insureds.

(b) A copy of the policy or a certificate of insurance along with all necessary endorsements shall be filed with the Town Administrator no less than five (5) days before the event or within forty (48) hours after approval by the Town, whichever is later. (Ord. 3 §2, 2010)

Sec. 11-127. Duties of permittee.

(a) The permittee shall comply with all terms and conditions of the event permit.

(b) The permittee shall ensure that the person leading or in charge of the event is familiar with every provision of the event permit and carries the event permit on his or her person for the duration of the event.

(c) Immediately following the completion of the event, the permittee shall ensure that the area used for the event is cleaned and restored to the same condition as existed prior to the event. If the property used for the event has not been properly cleaned or restored, the permittee shall be required to reimburse the Town for any costs incurred by the Town to clean or restore the area. (Ord. 3 §2, 2010)

Sec. 11-128. Revocation.

(a) The Town Administrator may, at any time prior to an event, revoke or terminate a permit that has been issued for the event if conditions change so that the application could have been denied in the first instance.

(b) The Town Administrator may revoke an event permit during the course of the event if continuation of the event presents a clear and present danger to the participants or the public health, safety or welfare.

(c) The Town Administrator may revoke the permit and terminate the event during the course of the event for noncompliance with any term or condition of the event permit. (Ord. 3 §2, 2010)

Sec. 11-129. Appeal.

(a) Any decision of the Town Administrator under this Article may be appealed to the Board of Trustees by filing a written notice of appeal, setting forth the grounds for appeal, within five (5) days after the decision.

(b) The Board of Trustees shall review the appeal and issue a written decision no later than two (2) regular meetings after the filing of the appeal. The applicant and the Town Administrator may present written evidence or argument to assist the review. The Board of Trustees' decision shall be final, subject only to judicial review.

(c) If an appeal is properly filed, but a decision by the Board of Trustees would not be due prior to twenty-four (24) hours before the start of the event, and the Board of Trustees has not notified the applicant that the Board of Trustees will provide an expedited decision prior to twenty-four (24) hours before the start of the event, the applicant may seek judicial review with no further administrative review. (Ord. 3 §2, 2010)

ARTICLE VIII

Cemetery Rules and Regulations

Sec. 11-130. Designation and definitions.

(a) Designation: The property and all additions that may hereafter be made thereto, now known as the Mt. Olivet Cemetery (hereafter referred to as "the Cemetery"), is designated the Town cemetery of Buena Vista and is set apart and shall be maintained forever for the burial of deceased persons. Nothing in this Article shall be deemed to supersede any covenant or restriction placed on a cemetery plot, including those covenants placed on Blocks 45 through 87 by the Town of Buena Vista Ordinance 7, Series 1990.

(b) Definitions:

Double burials means the stacking or placement of one (1) interment atop or above another.

Immediate family means parents, siblings, spouse and children only.

Indigent means lacking sufficient assets, credit or other means to provide for payment of the burial fee established by the Town. The financial means of the deceased's immediate family shall be taken into consideration when determining whether a deceased individual is indigent.

Occupied burial space means:

a. An unmarked or temporary burial space which contains or shows evidence of containing any interred remains; and

b. A burial space that has a permanent marker.

Plot means a standard five-foot-wide by ten-foot-long space for a casket.

Resident means:

a. An individual who resided in the Town for five (5) consecutive years immediately prior to death;

b. An individual who resided in the Town for five (5) consecutive years prior to residing outside the Town for the specific purpose of receiving care for health problems leading to death;

c. A member of the immediate family of a resident;

d. A member of the immediate family of an individual already buried in the Cemetery; or

e. A person designated as a resident by resolution of the Board of Trustees.

Residing means the act of living within the Town limits a minimum of nine (9) months of a twelve-month period as evidenced by a minimum of two (2) of the following:

a. Payment of Town water and sewer billings;

b. Records of the Colorado Motor Vehicle Department (driver's license);

c. Records of the Chaffee County Clerk and Recorder (license plates) or voter registration; or

d. A copy of a current lease.

Town means the Town of Buena Vista, a municipal corporation in the State of Colorado, being the owner and administrator of the Cemetery.

Unoccupied burial space means a burial space which does not contain or is not known to contain any interred remains. (Ord. 3 §1, 2011; Ord. 10-2012 §1)

Sec. 11-131. Cemetery supervision.

The Town Administrator shall designate and supervise an appropriate person to maintain the grounds of the Cemetery in good condition, attend to the trimming of vegetation, see to the enforcement of rules of this Article as they apply to the care and upkeep of the Cemetery and make such improvements as the Board of Trustees may direct. (Ord. 3 §1, 2011)

Sec. 11-132. General maintenance fee.

From the date of adoption of this Article, burial rights in all Cemetery plots must be granted via an interment agreement by the procedures outlined herein. Revenue received by the Town from the granting of interment rights shall be placed in the Town General Fund and used for the historic preservation, general care and maintenance of the Cemetery. (Ord. 3 §1, 2011)

Sec. 11-133. Granting and recording of burial rights.

(a) All applications for burial plots in the Cemetery shall be made at the office of the Town Clerk, who is hereby authorized to grant interment rights for such plots on behalf of the Town. The

Town Clerk shall exhibit the plat of the Cemetery plots and a schedule of prices of plots therein. The applicant shall submit the following information:

(1) Name, most recent address and phone number of the person (or persons, in the case of multiple cremain interments) to be named on the interment agreement as owner of the burial rights;

(2) Name, address and phone number of the representative, if the person to be named on the interment agreement is being so represented; and

(3) Plot identification.

(b) Upon presentation to the Town Clerk of the above-listed information and any payment due for the sale of a plot to any person, the Town Clerk shall cause an interment agreement to be executed to the named grantee of such plot, containing a description of the plot and signed by the Town Clerk. Burial rights for a plot shall only be granted to one (1) person. The burial rights transferred shall be limited to the right of interment. All other property rights remain with the Town.

(c) Burial rights shall be sold by the Town Clerk for cash or certified funds payments only under the regulations and conditions as provided by the Board of Trustees and for prices as adopted by resolution in the Town's fee schedule.

(1) The Town has the right to refuse sale of plots to nonresidents if at any time it is determined that the number of plots are limited and shall be reserved for residents.

(2) For persons proven to be indigent at their time of death, the burial plot fee may be waived by the Town Clerk.

(d) The Town Clerk shall keep an accurate, easily retrievable and secure record of all transactions regarding the Cemetery, showing the names of the grantee and the number of the plot for which burial rights have been granted, in a book or database provided by the Town for that purpose.

(e) Burial rights that are granted prior to the death to a resident shall be honored if the grantee is no longer a resident at the time of death.

(f) Burial rights may only be owned by or granted or conveyed to natural persons. (Ord. 3 §1, 2011; Ord. 10-2012 §§2, 3)

Sec. 11-134. Burial procedures.

(a) No interment or disinterment shall occur within the Cemetery without a permit lawfully issued by the appropriate agency in the location of death.

(b) No burial shall take place until the Town Clerk has received payment in full for the burial plot and an interment agreement has been executed.

(c) The Town Clerk must receive notification at least seventy-two (72) hours before all burials; provided that, if shorter notice must be provided for religious or other reasonable purposes, this advance notification requirement may be waived. The minimum period for such notification shall not

include Saturday, Sunday or Town holidays, and the notice period shall begin at 8:00 a.m. on any workday.

(d) After notifying the Town Clerk and payment of required fees, the representative of the deceased shall set a burial time and submit an application for burial.

(e) A minimum of two (2) hours shall be allowed between two (2) separate burials on the same day.

(f) The Town will provide no services related to the placement of the remains, including placing of the monument or landscaping.

(g) Notice upon application for burial shall be given to the Town Clerk of the intention to bury the remains of any person who dies of a contagious disease, so the proper time can be appointed and suitable arrangements made for the safety of the public health and the Cemetery employees. (Ord. 3 §1, 2011)

Sec. 11-135. Fees for interments and disinterments.

The fee as set by resolution shall be collected for disinterments of caskets from the Cemetery and for disinterment of cremains. These fees are for administrative tasks; the Town will not participate in the process of disinterment except to ensure that proper approvals and documentation are in place. (Ord. 3 §1, 2011)

Sec. 11-136. Transfer of burial rights.

(a) No burial rights for a Cemetery plot or plots shall be transferred by a grantee as named on a duly executed interment agreement without such transfer first having been recorded with the Town Clerk and a fee having been paid in full. The Town may, at its sole discretion, refuse to recognize and honor any such transfer unless and until it is first recorded with the Town Clerk and the fee paid. An applicant for transfer of an interment agreement must submit a notarized document authorizing such transfer by the existing grantee or, if the grantee is deceased, evidence of death, evidence of interment elsewhere and documentation that the applicant is authorized to receive the transfer. No utilization of a Cemetery plot shall be made until compliance with this Section has been effected.

(b) Any person or the legally authorized representative of a deceased person wishing to resell burial rights for a Cemetery plot to the Town may do so, in which case the Town shall pay no more than the price which the Town charged at the time of issuance of the interment agreement, subject to availability of funds for such repurchase.

(c) Nothing in this Section shall be construed to permit the sale or conveyance of any Cemetery plot which has been used for interment. (Ord. 3 §1, 2011)

Sec. 11-137. Caskets and monuments.

(a) The top of all crypts and vaults must be a minimum of three (3) feet below ground level.

(b) No mausoleums shall be permitted.

(c) All tombstones and grave markers ("monuments") placed on plots in the Cemetery must meet the following requirements:

(1) Monuments shall be made of stone, synthetic stone, concrete or other industry-standard material. Brass plaques may be used.

(2) Monuments shall contain at minimum the name of the deceased, the date of birth and the date of death.

(3) Monuments shall be permanently placed in the ground. Monuments are limited to one (1) upright and one (1) flat marker per casket and cremain per burial plot (which allows for up to nine [9] flat markers if a burial plot has one [1] casket and eight [8] cremains). Veteran markers are exempt from this limit. (Ord. 3 §1, 2011; Ord. 10-2012 §4)

Sec. 11-138. Miscellaneous burial regulations.

(a) Only one (1) casket with a maximum of eight (8) cremains above the casket is permitted per plot.

(b) No double burial of caskets is permitted.

(c) Only burials in strict compliance with these rules are permitted.

(d) If burial rights for a plot are purchased, but not used after a period of one hundred (100) years, the burial rights shall terminate. (Ord. 3 §1, 2011)

Sec. 11-139. Disinterments and opening of graves.

No disinterment shall be allowed without permission of the State of Colorado in accordance with its statutes and regulations and without the permission of the Board of Trustees and the owner of the burial rights for the plot or owner's descendants. If the consent of the owner cannot be obtained, an order of the Court in accordance with Colorado law is required. No disinterment shall be made except by qualified contractors. Disinterment shall be allowed only upon payment in full of the fees outlined in the Town fee schedule. The time of disinterment will be designated by the Town Clerk. No liability shall accrue to the Town for damages incurred during the disinterment, including but not limited to damage to liners, caskets or monuments. (Ord. 3 §1, 2011)

Sec. 11-140. Maintenance and care of plots and graves.

(a) The Town Clerk shall manage the operation of the Cemetery in coordination with the Town Administrator.

(b) The Cemetery shall be operated in such a manner so as to procure a natural and pleasant effect, to protect and preserve the historic character and to ensure proper drainage of the grounds and the grade of all plots and graves in the Cemetery.

(c) All fences, railings, concrete blocks or other enclosures around plots and graves, including trellises and headboards of every type and description, shall be submitted for approval to the Town Clerk. Any fences, railings, curbs or other enclosures around plots and graves shall be maintained by

the heirs of the deceased. Concrete footers are prohibited. If such constructions are not maintained, fees for the care of the same may be assessed to the heirs of the deceased. If no responsible party can be contacted and be responsive, the Town may remove the constructions. Such constructions deemed historically valuable may be maintained by the Town at its sole discretion.

(d) All foundations and monuments placed in the Cemetery shall be set by a licensed memorial company or grave headstone company.

(e) The planting of trees and shrubs on a gravesite as permanent landscaping shall be submitted for approval by the Town Clerk.

(f) Chairs, benches, settees, furniture, unauthorized grave covers, Astro Turf or toys are prohibited; with the exception that one (1) flat stone pedestal bench per plot of no greater than thirty-six (36) inches in length by eighteen (18) inches in height by sixteen (16) inches deep shall be permitted, provided that such bench is placed within the boundaries of the plot. Any articles that are not in keeping with the purpose of this Article are prohibited. Paper boxes and other unsightly articles shall not be placed in the Cemetery. (Ord. 3 §1, 2011; Ord. 10-2012 §5)

Sec. 11-141. Obtaining of plot location.

The location and identity of plots in the Cemetery may be obtained from the Town Clerk at any time during regular Town business hours. (Ord. 3 §1, 2011)

Sec. 11-142. Operation of vehicles.

Riding or driving faster than five (5) mph is prohibited in the Cemetery and only allowed in designated areas. No driving or riding shall be allowed on plots, lawns or walks. This Section also applies to bicycles, but not to wheelchairs required for handicapped access. No other means of transportation is allowed. All persons driving or riding in the Cemetery shall be held responsible for any damage done by them, their vehicles or any animals in their charge. Vehicles shall not be turned around in any avenues, but shall be driven forward following roadways. Parking shall be in designated areas only. (Ord. 3 §1, 2011)

Sec. 11-143. Fraternal society plots.

No fraternal society shall establish a new group of plots except by applying for special permission from the Board of Trustees. Fraternal society plots (including fences, gates, monuments and vegetation) shall be maintained and cared for by the society. If a society demonstrates neglect of its plot, an annual fee shall be levied for the care of said plot. A fraternal society may request relief from the maintenance requirement from the Town Administrator. (Ord. 3 §1, 2011)

Sec. 11-144. Animal control.

Persons bringing animals to the Cemetery shall maintain control over them at all times. Owners are prohibited from permitting their animals to defile any gravesite. (Ord. 3 §1, 2011)

Sec. 11-145. Visiting hours.

Cemetery visiting hours shall be from dawn to dusk. No one shall be allowed in the Cemetery except during visiting hours. (Ord. 3 §1, 2011)

Sec. 11-146. Enforcement and surveillance.

The Police Department shall have the authority to enforce all rules and regulations pertaining to the Cemetery and the authority to enforce the law and apprehend lawbreakers in the Cemetery. (Ord. 3 §1, 2011)

Sec. 11-147. Presumed rights and certificates of ownership.

The Town recognizes that there are persons who have undocumented presumptions of rights to a burial plot in the Cemetery, whether they are residents or nonresidents. The Town intends to identify those parties to the best of their ability as time goes by, adjudicate the specific circumstances and establish any rights approved by the Town Clerk by the issuance of an interment agreement. (Ord. 3 §1, 2011)

Sec. 11-148. Disclaimer on sale of plots.

Since the Town has not controlled burials in the Cemetery from its inception, and since no consistent and complete records exist as to persons buried and at what location, all grants of burial rights are contingent upon the excavation of the burial site. In those cases where a previous burial is unearthed, the owner of the plot will have the option of selling it back to the Town or locating another plot. (Ord. 3 §1, 2011)

Secs. 11-149—11-160. Reserved.

CHAPTER 13

Municipal Utilities

ARTICLE I

General Provisions

Sec. 13-1. Policy and purpose.

(a) It is declared by the Board of Trustees that the rules, regulations and fees set forth in this Chapter will serve a public use and are necessary to insure and protect the health, safety, prosperity, security and general welfare of the inhabitants of the Town.

(b) The purpose of these rules, regulations and fees is to provide for the control, management and operation of the water system of the Town, including additions, extensions and connections thereto. The rules and regulations shall apply to all property owners within the boundaries of the Town, and to all property owners outside the Town who are provided water service by the Town. The fees shall apply to all water service customers. (Prior code 13.04.010)

Sec. 13-2. Creation of Public Works Department.

There is created and established a Public Works Department of the Town, which shall be responsible for the management, maintenance, care and operation of the waterworks of said Town, and for such other responsibilities as may from time to time be assigned to it. (Prior code 13.04.020)

Sec. 13-3. Public Works Director.

The Public Works Director shall have the immediate control and management of all things pertaining to the Town water system and shall perform all acts that may be necessary for the prudent, efficient and economical management and protection of said waterworks, subject to the approval and confirmation of the Board of Trustees. The Board of Trustees shall have the power to prescribe such other rates, fees, rules and regulations as it may deem necessary. (Prior code 13.04.030; Ord. 21 §1, 2012)

Sec. 13-4. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this Chapter shall be as follows:

Actual cost means all direct costs applicable to the construction of a given facility, including construction, engineering, inspection, plan approval, "as-built" drawings and other costs necessary for completion.

Colorado standard specifications means the Standard Specifications for Road and Bridge Construction, latest edition, as published by the State Department of Highways, Division of Highways.

Commercial and industrial customer means wholesale and retail stores, warehouses, office buildings, drinking and dining establishments, factories, workshops, hotels, motels and any other structure, space or building used in connection with the selling, or offering for sale or hire, of goods or services.

Contractor means any person performing work or furnishing materials within the Town.

Customer means any person or governmental authority or agency other than the Town, authorized to connect to a public water main under a permit issued by the Town.

Dedicated water service line which serves a fire-extinguishing system means a water service line which is designed to serve only a fire-extinguishing system as described in the Town's Building Regulations (See Chapter 18).

Public Works Director means the Director of the Public Works Department or, in his or her absence, his or her duly authorized representative.

Owner means the person owning the real property served by the water service system.

Permit means written permission from the Town to connect to a public water main of the Town, pursuant to the rules, regulations and fees of the Town.

Public main means a water main which is owned and controlled by the Town and which is located on public streets or public rights-of-way, to which water services may be connected.

Street means the entire width of right-of-way platted for the use and ownership of the Town, and under which all Town water mains shall lie.

Stub-in means that part of the service line lying within the public right-of-way.

Subdivision means the division of a tract or parcel of land into two (2) or more lots for the purpose, whether immediate or future, of sale, rent, lease or building development.

Subdivision Ordinance means Ordinance 1977-3, codified in Chapter 17 of this Code, or any amendments thereto.

Tap means the connecting, or the connection, of a water line to a water main, and is interchangeable with connection.

User means any person to whom water service is supplied by the water service system owned and operated by the Town.

Water main means a Town-owned water pipeline, carrying potable water only, and installed in a public street or right-of-way.

Water service line means a water line extending from a water main to a lot, property, building or structure, inclusive of the corporation cock, curb valve and box and water meter.

Yard tap means a separate water tap to the Town's water system which extends from the water main to one (1) or more parcels of residential real property, and which is used solely for irrigation purposes. (Prior code 13.04.040; Ord. 25-1992 §1; Ord. 29-1994 §5; Ord. 20-1996 §6; Ord. 19-1997 §7; Ord. 21 §2, 2012)

Sec. 13-5. Additional definitions.

Any other term not herein defined shall be defined as presented in the Glossary—Water and Sewage Control Engineering, American Public Health Association, American Society of Civil Engineers and Water Pollution Control Federation, latest edition. (Prior code 13.04.050; Ord. 19-1997 §7)

Sec. 13-6. Nonliability of Town.

The adoption of this Article shall not create any duty to any person with regard to the enforcement or nonenforcement of this Article. No person shall have any civil remedy against the Town or its officers, employees or agents, for any damage arising out of or in any way connected with the adoption, enforcement or nonenforcement of this Article. Nothing in this Article shall be construed to create any liability, or to waive any of the immunities, limitations on liability or any other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available to the Town, its officers, employees or agents. (Ord. 4-1990 §1)

Secs. 13-7—13-20. Reserved.

ARTICLE II

Water Supply Protection District

Sec. 13-21. Water Supply Protection District established.

There is hereby established the Town of Buena Vista Water Supply Protection District for the purpose of protecting the sources, supply, quantity, quality, delivery, storage, treatment and distribution of water serving the Town, its citizens and water-using customers. (Ord. 5-1999 §1)

Sec. 13-22. Jurisdiction and intent of district regulations.

This Article has been adopted in accordance with Section 31-15-707, C.R.S., and is designed and intended to extend and enforce the Town's legal jurisdiction and authority to the maximum extent allowed by law for the purpose of protecting the Town's drinking water resources and delivery system from interference, pollution and other degradation over an area comprised of all territory within five (5) miles above or around any point or points from which the Town diverts or otherwise draws water for domestic use. The Town's authority and jurisdiction shall extend, by way of example and not limitation, to all reservoirs, streams, trenches, ditches, pipes, drains and other waterworks. All ordinances and regulations adopted under the authority of this Article shall be liberally construed and enforced in order to satisfy and further the purposes and intent as set forth above. (Ord. 5-1999 §1)

Sec. 13-23. Adoption of protection district boundaries and map.

The Town does hereby approve and adopt the official Town of Buena Vista Water Supply Protection District Map dated January, 2000, defining and illustrating the geographical boundaries of the protection district. At least one (1) copy of the map shall at all times be maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of the map may be

ordered for purchase at such cost as deemed necessary and reasonable by the Town Clerk. (Ord. 5-1999 §1; Ord. 1-2000 §1)

Sec. 13-24. Definitions.

As used in this Article, the following words and phrases shall mean as follows unless the context plainly requires otherwise:

Absorption system means a wastewater disposal system or leaching field utilizing and/or inclusive of adjacent soils for the treatment of sewage by means of absorption into the ground.

Absorption trench means a trench in which sewage effluent is transported or directed for percolation into the soil.

Aquifer means a water-bearing formation that contains sufficient ground water to be important as a source of supply.

Best management practice means the most effective means of preventing, reducing or mitigating the harmful impacts of development activities consistent with the standards set forth in this Article.

Development or development activity means any construction or activity which alters or changes the natural or preexisting character and/or use(s) of the land on which the construction or activity occurs, excepting residential gardening or landscaping.

Dispersal system means a system for the disposal of effluent after final treatment in an ISDS by a method which does not depend upon or utilize the treatment capability of the soil.

Effluent means the liquid waste discharge from a sewage disposal system.

Excavating means any act by which ten (10) cubic yards or more of soil or rock is cut into, quarried, uncovered, removed, displaced or relocated, and includes the conditions resulting therefrom.

Filling means the deposition of ten (10) cubic yards or more of material brought from another location by other than natural means.

Foreseeable risk means the reasonable anticipation that harm or injury may result from an act or omission.

Grading means the alteration of the natural surface of any land by leveling, stripping, filling or excavating and involving ten (10) or more cubic yards of soil or other surface material; or the alteration of any natural or preexisting drainage pattern or channel through the alteration, movement or addition of surface materials; or the installation of any road or other surface utilized for the movement of vehicles.

Hydric soil means soil that, in its undrained condition, is saturated, flooded or ponded long enough during a growing season to develop an anaerobic condition that supports the growth or regeneration of hydroponic vegetation.

Individual sewer disposal system (ISDS) means an on-site sewage system of any size or flow designed to collect and treat, neutralize, stabilize and dispose of sewage that is not part of or connected to a permitted municipal sewage treatment works. Examples include, without limitation, conventional septic tanks and leach fields, absorption trenches and pits, constructed wetland treatment systems, evapotranspiration systems and mound systems.

Maximum extent feasible means that no feasible and prudent alternative exists and all possible efforts to comply with a regulation, or minimize potential harm or adverse impacts, have been undertaken.

Person means any individual, partnership, corporation, trust, association, company or other public, governmental or corporate entity, or instrumentality thereof.

Pollute or pollution means the contamination or befouling of the natural biological, chemical, physical or radiological composition or integrity of water or soil through human or human-induced conduct or activities.

Sewage means a combination of liquid wastes that may include chemicals, house wastes, human or animal excreta, or animal or vegetable matter in suspension or solution, and/or other solids in suspension or solution, and that is discharged from, without limitation, a building, vehicle, tank or other structure or facility.

Sewage disposal system or *facility* means a septic tank, leach field or other facility regardless of size or flow designed and constructed for the purpose of receiving, treating or disposing of sewage.

Sewage treatment works means any system or facility for treating, neutralizing, stabilizing or disposing of sewage and which has a designed or operational capacity to receive more than two thousand (2,000) gallons of sewage per day.

Significant degradation means to lessen in grade, quality or desirability so as to create or cause unsafe or harmful impacts.

Stream (primary) means a visible waterway expected to run flowing water for more than one (1) month per year.

Stream (secondary intermittent) means a visible waterway, normally dry and not expected to run flowing water for more than one (1) month per year.

Substantial means material and/or considerable in importance, value, degree, amount or extent.

Surfacing means the compaction, hardening or covering of the natural land surface with asphalt, concrete, gravel or similar materials in an area greater than two hundred (200) square feet.

Wastewater means the same as sewage.

Water Supply Protection District permit (WSPD permit) or *permit* means the written approval issued by the Town under this Article for a land use activity or development within the Buena Vista Water Supply Protection District.

Watershed means the area encompassed by the Buena Vista Water Supply Protection District.

*Waterwork*s means any and all man-made or designed components of the Town's drinking water collection and treatment system, including but not limited to transmission, storage and filtration facilities and all wells, springs, aquifers, reservoirs, streams, trenches, pipes and drains used in and necessary for the operation and maintenance of the Town's water supply system.

Wetland means land that has a predominance of hydric soils and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of hydroponic vegetation typically adapted for life in saturated soil conditions. (Ord. 5-1999 §1; Ord. 16-2003 §1; Ord. 21 §3, 2012)

Sec. 13-25. Prohibited activity.

Unless exempted as provided for in this Article, it shall be prohibited and unlawful for any person to engage in or cause any of the following activities or conduct within the Buena Vista Water Supply Protection District unless such person has first obtained a permit:

(1) The construction, installation, expansion or removal of any ISDS or sewage disposal system, excepting a system connected to a municipal sewage treatment works.

(2) Excavating, grading, filling, blasting or surfacing, including road building.

(3) Timber harvesting, excluding the removal of dead or diseased trees for firewood or for noncommercial domestic purposes.

(4) Drilling operations of any kind.

(5) Altering or obstructing natural or historic water drainage courses.

(6) Surface and subsurface mining operations.

(7) The out-of-doors spraying or using of fertilizers, herbicides or pesticides, excepting noncommercial applications for domestic household or gardening purposes.

(8) Using, handling, storing or transporting toxic or hazardous substances, including, but not limited to, radioactive materials, except for noncommercial domestic household purposes as permitted by law.

(9) Using, handling, storing or transporting flammable or explosive materials, except for noncommercial domestic household purposes as permitted by law, or within vehicular fuel storage tanks.

(10) Moving, tampering, adjusting, impairing, obstructing or trespassing upon any Town waterwork.

(11) Increasing or decreasing any rate of stream flow or natural or existing drainage pattern or course, except as permitted pursuant to an adjudicated water right; increasing sediment deposition

in any stream; causing or increasing erosion on any slope or stream bank; or disturbing any wetland within the watershed.

(12) Any activity reasonably giving rise to a foreseeable risk of injury or pollution to the Town's sources of water supply or water supply system or waterworks. (Ord. 5-1999 §1; Ord. 16-2003 §1)

Sec. 13-26. Permit required.

No person shall engage in or cause any development, development activity or prohibited activity or conduct identified in this Article without first applying for and obtaining a duly authorized WSPD permit from the Town. Permits may be limited and/or subjected to expiration and renewal requirements. (Ord. 5-1999 §1)

Sec. 13-27. Permit application and review procedures; fee.

(a) All applications for a permit shall be initiated in writing and shall include, at a minimum, the information set forth in this Section. No application shall be accepted, processed or approved unless and until it is complete and all fees associated therewith have been paid. The application shall be accompanied by not less than three (3) copies. The Public Works Director may waive certain application information requirements if he or she deems the same to be unnecessary or overly burdensome with respect to a specific proposed activity. All costs incurred by the Town in processing an application, inclusive of the costs for outside professional services or consultants necessary to evaluate an application, shall be paid by the applicant, inclusive of testing, engineering, inspection and legal fees.

(1) The name, mailing address and telephone number of the applicant.

(2) The name, mailing address and telephone number of the owner(s) of the land upon which the development or activity subject to the permit is to occur if different from the applicant, and written authorization from the landowner(s) for the submission of the application.

(3) A legal description of the lot, tract, parcel or other land upon which the development is to occur.

(4) A written narrative describing the development activity for which the permit is being sought, including a general identification of the environmental characteristics of the subject land and surrounding area.

(5) A vicinity map showing the land on which the proposed development is to occur and all lots, tracts, parcels or other lands adjacent thereto, and illustrating any wetlands, lakes, ponds, springs, watercourses or other bodies of water and water wells.

(6) A boundary and improvements map or sketch of the land subject to the application containing sufficient detail and drawn at a scale to accurately illustrate, review and assess the location of all proposed development activity and existing structures, and illustrating the existing direction of slope (contours) and direction of surface runoff. A professionally prepared boundary

and improvements survey may be required if the Public Works Director deems the same necessary in order to adequately assess an application.

(7) A listing and copy of all federal, state or local permits or approvals required or obtained for implementation of the development activity.

(8) A detailed description of the impacts or potential impacts the development activity may have on any surface or subsurface water sources or courses, inclusive of wetlands.

(9) A detailed description of the impacts or potential impacts the development activity may have on existing vegetation, trees and groundcover.

(10) A detailed description of the impacts or potential impacts the development activity may have on soils, inclusive of a description of the nature and condition of existing soils and any planned grading, excavation, filling or surfacing.

(11) A detailed description of the impacts or potential impacts the development activity may have on existing drainage patterns and land contours, inclusive of comparative run-off and absorption calculations for the subject land and any impacted adjacent land, both pre- and post-development.

(12) A detailed description of any proposed wastewater or sewage disposal system to be installed and a copy of the design/engineered plans, including soils and percolation test results for same.

(13) A detailed description of any proposed water supply/delivery system to be installed, inclusive of water source and/or aquifer and anticipated consumptive use, and a copy of the design/engineered plans for the same.

(14) A detailed description and copy of any and all mitigation plans or measures addressing impacts resulting from the development activity to surface and subsurface water sources, wetlands, vegetation and trees, soils, drainage and slopes.

(15) The identification of any activity to be undertaken by the applicant as part of the development that presents, or may present, a foreseeable risk of pollution or injury to the Town's water sources, supply or waterworks, along with a specific description of the best management practices designed to eliminate or minimize such risk(s) to the maximum extent feasible.

(16) Such additional information as the applicant or Town may deem necessary to fully evaluate the proposed development and/or demonstrate or explain why a watershed permit should be issued.

(b) All applications for a permit shall be filed with the Public Works Director. The application and all supporting material shall be reviewed and evaluated by the Public Works Director to determine whether the application is complete and satisfies the requirements of this Article. Where appropriate and weather permitting, the Public Works Director may schedule a site visit to inspect the land on which the proposed development activity is to occur. Advance notice of the time and date of such site visit shall be provided to the applicant.

(c) Within ninety (90) days following receipt of a complete application, and weather permitting for any necessary site visits or inspections, the Public Works Director shall determine whether the permit application should be granted or denied. The issuance of a permit may be conditioned upon the applicant's compliance with such mitigation measures, financial security, performance standards or time deadlines, or such other terms and conditions as the Public Works Director may deem necessary to ensure protection of the Town's water supply sources, watershed and/or waterworks from pollution, disruption or damage. A failure by an applicant to accept or timely adhere to such terms and conditions shall constitute cause to deny or revoke a permit.

(d) Any applicant dissatisfied with a decision or order made by the Public Works Director under this Article may pursue an appeal of the same to the Board of Trustees by filing a written notice of appeal and appropriate fee with the Town Administrator within ten (10) days from the date of the decision or order appealed from. Upon receipt of a timely notice, the Town Administrator shall agendize the appeal for a hearing before the Board of Trustees to be conducted within forty-five (45) days from the date the notice of appeal was received. The hearing shall be conducted de novo, and written notice of the date, time and place for the hearing shall be sent by regular mail or personally delivered to the applicant not less than ten (10) days in advance thereof. A failure by the applicant to appear at the hearing without good cause shall constitute a waiver of the applicant's appeal rights, and the decision or order subject to the appeal may be automatically affirmed. The applicant shall carry the burden of persuasion with regard to all issues on appeal. Decisions of the Board of Trustees on appeal shall be entered within thirty (30) days from the conclusion of the hearing thereon and shall be reduced to writing, a copy of which shall be mailed to the applicant. The Board of Trustees may on appeal prescribe such conditions on the issuance of a permit as it may deem necessary to protect or implement the intent and purposes of this Article. (Ord. 5-1999 §1; Ord. 16-2003 §1; Ord. 21 §4, 2012)

Sec. 13-28. Permit issuance standards.

The following standards shall be applied in determining whether a WSPD permit should be issued under this Article:

(1) The compliance of the application with all application requirements set forth in this Article.

(2) The proximity of the proposed development activity to the Town's water supply sources and/or waterworks. No ISDS component shall be located within a 100-year floodplain. Additionally, no ISDS treatment or disposal component shall be located, at a minimum, within one hundred (100) feet from any water supply source or primary stream, and no ISDS absorption component shall be located, at a minimum, within two hundred (200) feet of any water supply source or primary stream, or fifty (50) feet from a secondary intermittent stream. Minimum setbacks may be increased if deemed necessary to protect a water supply source, primary stream or waterwork from pollution, disruption or contamination.

(3) The environmental suitability of the proposed development activity and proposed site therefor taking into consideration surface and subsurface water courses, soils, slopes, drainage patterns, geologic formations, existing vegetation and tree stands, wetlands, erosion and the intensity and impact of the proposed development activity.

(4) The likelihood or threat of pollution or injury to the Town's water supply sources, watershed or waterworks presented by the proposed development activity.

(5) The effectiveness of all protective or mitigation measures proposed by the applicant to eliminate or minimize pollution or injury to the Town's water supply sources, watershed and waterworks, and the availability of alternative protective and/or mitigation measures.

(6) The overall anticipated impact of the proposed development activity on the Town's water supply sources, watershed and waterworks. (Ord. 5-1999 §1; Ord. 16-2003 §1)

Sec. 13-29. Certificate of compliance.

(a) At or immediately prior to the completion of any development or activity performed under a permit, and in all events prior to the burying or covering up of any work or facility authorized under a permit, the permittee shall notify the Public Works Director and request inspection and the issuance of a certificate of compliance in order to establish and confirm the permittee's adherence with the provisions of this Article and with all terms and conditions as may have been imposed as part of the permit. As soon as reasonably practicable, and not more than fifteen (15) working days after receipt of the request, weather permitting, the Public Works Director, or his or her designee, shall inspect the subject development or activity to ascertain if there is conformance with the permit application and the plan and specifications submitted to the Town, and any conditions imposed as part of the permit. Alternatively, the Public Works Director may elect to allow a qualified permittee or third-party professional to submit a written inspection report certifying that the permittee has fully complied with all permit requirements, inclusive of all plans, specifications and conditions.

(b) All costs incurred by the Town in conducting inspections shall be paid by the permittee, inclusive of any costs for outside consultants. If the inspection determines that the development conforms to the provisions of this Article and to all applications, plans, specifications and conditions of the permit, a certificate of compliance shall be issued. However, if the inspection determines that the development or activity fails in any manner to comply as set forth above, a certificate of compliance shall not be issued. In such case, the permittee shall be informed in writing of the reason(s) why the certificate of compliance cannot be issued and the requirements to be met before issuance of the certificate may be obtained. All follow-up inspections shall be conducted in accordance with this Section.

(c) It shall be a violation of this Section for any person who is required to obtain a permit to use any land within the Buena Vista Water Supply Protection District without first having obtained a certificate of compliance. (Ord. 5-1999 §1; Ord. 16-2003 §1)

Sec. 13-30. Wastewater and sewage disposal facilities.

(a) Notwithstanding any other provision or requirement contained within this Article, all wastewater and/or sewage disposal facilities or systems within the Water Supply Protection District shall be designed by a licensed engineer and constructed, operated and maintained so as to eliminate and/or minimize to the maximum extent feasible any pollution or injury, or threat of pollution or injury, to the Town's water supply sources, watershed and waterworks. A WSPD permit shall be required for the installation of any new wastewater or sewage disposal facility. Additionally, no

existing wastewater or sewage disposal facility shall be expanded, repaired, replaced or abandoned without a permit having first been obtained.

(b) The Public Works Director, or his or her designated agent, may investigate and inspect any wastewater and sewage disposal facility located within the Water Supply Protection District to determine whether such facility is being properly constructed, operated or maintained. All owners and/or operators of a wastewater or sewage disposal facility shall maintain written service records on the site of said facility illustrating the age of the facility and the date(s) and service provider for all inspections, installations, repairs, cleanings or other maintenance performed on the facility. In order to ensure that a sewage disposal facility is constructed, performing or being maintained properly, the Public Works Director may order the owner or operator of such facility to install a monitoring well(s) or other monitoring device(s) as a condition for issuance of a WSPD permit, or as deemed reasonably necessary to determine the operational integrity of an existing facility. In the event any owner or operator refuses access to the Public Works Director to any wastewater or sewage disposal facility, or refuses to make available service records as required under this Section, the Town shall take such steps as necessary to secure the appropriate warrants or court orders to undertake such inspections or obtain the records and seek to recover the costs therefor, including attorney fees, against the nonconsenting owner and/or operator.

(c) Without limiting the circumstances under which a failure of an ISDS shall be found to have occurred, the occurrence or presence of the following factors shall be deemed sufficient to establish a failure in an ISDS:

(1) Ponding in a leach field or dispersal trench.

(2) Obstructed leaching pipes.

(3) The presence of unacceptable levels of nutrients or fecal coliform in soil or groundwater.

(d) All wastewater and sewage disposal systems shall, at a minimum, be designed, constructed and maintained in conformity with all applicable federal, state and local laws, standards and permits in addition to complying with the terms and conditions of this Article. In the event of a conflict between competing laws, standards or regulations, the most restrictive and/or protective of the Town's water supply and waterworks shall prevail.

(e) Minimum separation distances between ISDS components and protected structures or physical features as required by this Article shall be maintained at all times unless soil, geological or other conditions warrant greater distance separation. ISDS components that are not water tight should not extend into areas occupied by the root systems of nearby trees. Where repair or upgrading of an existing ISDS is involved, and the size of the lot or parcel precludes adherence to the distance separation standards prescribed in this Article, the repairs or repaired system components shall not be closer to protected structures or features than first existing.

(f) All owners or operators of substandard wastewater and sewage disposal systems existing within the watershed protection district on or before the effective date of this Article shall be provided notice and a reasonable period of time in which to correct any deficiency or noncompliance with respect to their system(s) and the requirements of this Article. (Ord. 5-1999 §1; Ord. 16-2003 §1)

Sec. 13-31. Water quality monitoring plans.

Notwithstanding any other provision or requirement contained within this Article, the Public Works Director may require the preparation and implementation by an applicant of a water quality monitoring plan and program as a condition for the issuance of a WSPD permit. Such plan may include the installation of monitoring devices, the regular collection of soil and water samples and the establishment of reporting requirements. The costs for the design, implementation and inspection of any water quality monitoring plan shall be borne by the applicant. (Ord. 5-1999 §1)

Sec. 13-32. Delegation of authority.

The Public Works Director may from time to time devise, adopt and enforce supplemental administrative, procedural or technical/engineering rules and regulations as he or she may deem necessary and advantageous to the successful implementation and enforcement of the provisions of this Article, inclusive of the preparation of standardized forms and fees associated with the evaluation and issuance of permits. All rules and regulations must be consistent with the terms of this Article and be approved by the Town Administrator. The Board of Trustees may review, amend or vacate such rules and regulations upon written complaint or appeal. (Ord. 5-1999 §1)

Sec. 13-33. Enforcement.

(a) Right of entry. When it is necessary to make an inspection to enforce the provisions of this Article or the terms and conditions of any permit, or where reasonable grounds exist to believe that a condition, activity or facility on any premises presents a threat of pollution or injury to any of the Town's water sources, supplies or waterworks, the Public Works Director, or his or her designee, may enter onto such premises at reasonable times to inspect and/or perform such investigation and duties as called for under this Article; provided that if the premises be occupied, proper identification be shown to the person(s) on the premises and a request for access be made. If the premises are unoccupied, reasonable efforts shall be made to locate and/or provide notice to the owner or operator of the land or facility in question of the desired access. If access is refused, a warrant to enter onto the premises shall be obtained ex parte from the Municipal Court.

(b) Stop work and cease and desist orders. Whenever any development or activity is being performed or continued in violation of the provisions of this Article or the terms and conditions of a permit, or where it is determined that a permit was issued in error or as the result of incorrect, inaccurate or misleading information, the Public Works Director may execute and issue a written stop work and/or cease and desist order commanding that the subject development or activity immediately cease and/or be corrected. A stop work and/or cease and desist order shall set forth in plain language the nature of any violation and shall be served on the permittee or person(s) engaged in the prohibited development or activity by personal service or by regular mail. A copy of the order shall also be posted at some conspicuous place on the subject premises. Appeals or challenges to a stop work or cease and desist order shall be heard by the Board of Trustees upon written request filed with the Town Clerk not less than five (5) working days after service of the order on the permittee or person contesting the same. The failure of a person to timely file an appeal or challenge, or to appear at the hearing thereon, shall constitute a waiver of their right to contest the order. Hearings shall be conducted by the Board of Trustees within thirty (30) days from the date on which the written notice of appeal or challenge was filed with the Town Clerk. Written notice of the hearing shall be sent by regular mail or personally served on the appellant not less than ten (10) days in advance thereof. The

continuation of any development or activity subject to a stop work or cease and desist order shall constitute a violation of this Article.

(c) Permit revocation.

(1) All WSPD permits shall be subject to revocation by the Public Works Director for violations of this Article or the rules and regulations adopted pursuant thereto, inclusive of stop work and cease and desist orders. Written notice of a proposed revocation shall be mailed to the permittee not less than fifteen (15) days prior to the effective date of the revocation and shall set forth in plain language the grounds justifying the revocation. A hearing on the revocation shall be conducted by the Board of Trustees upon the written request of the permittee filed with the Town Clerk prior to the effective date of the revocation. All hearings shall be promptly scheduled before the Board of Trustees by the Town Clerk and written notice thereof mailed to the permittee at least five (5) business days in advance thereof. The effectiveness of any order of revocation shall be stayed pending the decision of the Board of Trustees on appeal, except where the Public Works Director certifies in writing that a delay in revoking the permit will present a clear and immediate danger to public health, safety, welfare or property. All decisions on appeal shall be reduced to writing and a copy thereof provided to the permittee.

(2) Upon the revocation of a permit the Town may require the permittee to restore any land, facility or site to such condition as deemed necessary to prevent pollution or injury to the watershed or any water source, supply or waterwork. Upon the failure of the permittee to timely perform such restoration, the Town may, at its option, perform or have performed the restoration and assess the costs thereof against the permittee, inclusive of the imposition of a lien against the permittee's property on which such restoration work took place. (Ord. 5-1999 §1)

Sec. 13-34. Violations and penalties.

(a) It shall be unlawful for any person to engage in or cause a violation of any provision of this Article or of any term or condition of any WSPD permit, and such person or persons shall be fined upon conviction thereof in an amount up to one thousand dollars ($1,000.00), and/or imprisoned up to one (1) year in jail.

(b) Any development, activity, facility or structure which is continued, operated or maintained in violation of this Article or the terms and conditions of any permit shall be subject to injunction, abatement and/or other appropriate legal remedy as may be sought and obtained by the Town, in which event the Town shall be entitled to recover its reasonable costs and attorney fees from the offending party or parties.

(c) All penalties and remedies for violations of this Article shall be nonexclusive and cumulative, and the Town's pursuit and/or exercise of one (1) remedy or penalty shall not foreclose or prohibit the pursuit and exercise of alternative or other remedies. (Ord. 5-1999 §1)

Sec. 13-35. Certain de minimis activities exempted.

(a) The Public Works Director may determine upon written request that an activity or proposed schedule of activities to be undertaken within the Water Supply Protection District presents a de minimis risk of pollution to or disruption of the Town's water supply, watershed and/or waterworks

and may, thus, exempt or except such activity or activities from some or all of the application and/or permit requirements as contained in this Article. The burden will be upon the applicant seeking an exemption to supply sufficient information to demonstrate that the activity or activities in question will present no more than a de minimis threat or risk to the Town's water supply and/or water supply system. In no event shall the installation or repair of an ISDS be deemed an exempt activity, and in all events an applicant must provide the Public Works Director written notice of when and where any exempted activity is to occur.

(b) All exceptions or exemptions must be reduced to writing, specifically identify the activity or activities excepted hereunder and any conditions with regard thereto, and specify in detail the basis for such exception or exemption. In the event an excepted or exempted activity is not fully implemented or concluded in the manner as represented and authorized under this Section, then the Public Works Director shall order the cessation or correction of such activity in accordance with the enforcement procedures contained in this Chapter. (Ord. 16-2003 §1)

Sec. 13-36. Variances.

(a) In the event that any applicant under this Article is advised by any official for the Town that the application and/or the site that is the subject of the application fails to comply with one (1) or more of the requirements of this Chapter, the applicant may apply for a variance from one (1) or more of such requirements to the Board of Trustees. Approval of a variance under this Section will require a majority vote of the Board of Trustees.

(b) Prior to the rendering of a decision on any such variance request, the Board of Trustees must conduct a public hearing. The hearing shall be the subject of a public notice, or notice shall be sent by certified mail, with a minimum of a twenty-day reply time from the date of mailing to all adjacent property owners. The cost of mailing shall be paid by the applicant at the time of application.

(c) All applications for variances must be accompanied by:

(1) Site-specific request information which identifies the specific criteria from which a variance is being requested.

(2) Technical justification by a Colorado registered professional engineer or Colorado registered professional geologist experienced in ISDS or other experience acceptable to the Town which indicates the specific conditions which exist and/or the measures which will be taken to result in no greater risk than that associated with compliance with the requirements of the regulation. Examples of conditions which exist or measures which might be taken include, but are not limited to, the following:

a. Evidence of a natural or physical barrier to the movement of effluent to or toward the feature from which the variance is requested.

b. Placement of a man-made physical barrier to the movement of effluent to or toward the feature from which the variance is requested.

c. Soil amendment or replacement to reduce the infiltration rate of the effluent, such that the travel time of the effluent from the absorption field to the physical feature is no less than the travel time through the native soils at the prescribed setback.

d. Treatment to be provided equivalent to that required to meet National Sanitation Foundation (NSF) Standard 40.

(3) A discussion of alternatives considered in lieu of the requested variance.

(4) Technical support for the selected alternative, which may include a testing program which confirms that the variance does not increase the risk to public health and to the environment.

(5) A statement of the hardship which creates the necessity for the variance. No variance will be allowed solely for purposes of economic gain.

(6) All applications for variance shall be accompanied by a list of adjoining property owners with current mailing addresses.

(d) The applicant has the burden of proof that the variance is justified and that the variance will pose no greater risk to public health and the environment than would a system meeting the standard from which the applicant is seeking to obtain a variance.

(e) The Board of Trustees has the ability to impose any requirements and/or conditions on any variance granted pursuant to this Section which the Board of Trustees, in its sole and absolute discretion, deems necessary to achieve the objectives of this Chapter.

(f) The applicant shall be notified in writing of the decision regarding the application for a variance. The notice of denial of a variance shall include the reasons which form the basis for the denial. The notice of an approval for a variance application shall include any conditions or restrictions imposed on the approval. The variance, and any conditions thereof, shall be recorded on the deed to the real property in question, and any expenses associated with that recording shall be the responsibility of the applicant. The Board of Trustees shall either approve or deny an application for a variance, pursuant to this Section, through resolution.

(g) The following shall serve as prohibitions of the approval of any variance requests:

(1) No variance shall be issued to mitigate any error in construction involving any element of property improvements.

(2) No variance shall be issued where the property that is the subject of the application can accommodate a conforming ISDS.

(3) No variance shall be issued which will result in setbacks to an off-site physical feature which do not conform to the minimum setbacks set forth elsewhere in this Code.

(4) No variance shall be issued which reduces the four-foot separation to groundwater or bedrock. (Ord. 4-2007 §1)

Secs. 13-37—13-40. Reserved.

ARTICLE III

Conditions of Use

Sec. 13-41. Limitations on use.

(a) Water service may be furnished only to persons whose property is included within the boundaries of the Town and is subject to taxation by the Town, except as otherwise provided herein.

(b) No person shall connect to or use the Town's water system unless he or she complies with these rules and regulations. No water service may be obtained until the customer's deposits, as required hereunder, are made at the office of the Town. No water service shall be available until all back charges are paid. No occupant or owner of any building or premises who obtains water from the Town's water system shall supply water to other persons, families or premises. No water service shall be furnished outside the corporate limits of the Town unless and until a written contract authorizing such service is approved by the Board of Trustees. Any service provided outside the corporate limits of the Town pursuant to such contract may be terminated by the Board of Trustees, with or without cause; provided that any customer affected by such termination shall be given sixty (60) days' written notice prior to the date of termination.

(c) In the interest of water management and conservation, the Town may impose reasonable restrictions upon the use of water, or otherwise regulate water usage. Such restriction or regulation shall apply equally to all water users and shall be enacted by proclamation by the Mayor or resolution by the Board of Trustees. Public notice shall be given to water users prior to the implementation of any such restriction or regulation. (Prior code 13.08.010; Ord. 21 §5, 2012)

Sec. 13-42. Responsibilities of customer.

(a) Unless authorized by the Town by appropriate proclamation or resolution, no person shall discharge, or cause to be discharged, any bleeding water flows. Consumers shall prevent unnecessary waste of water and shall keep all water outlets closed when not in actual use. Hydrants, outside water taps, urinals, water closets, bathtubs and other fixtures shall not be left running for any purpose other than the one for which they are intended.

(b) On and after the effective date of the ordinance codified herein, any prior agreement entered into between the Town and an individual property owner which states that the maintenance and repair of the owner's water service lines are the responsibility of the Town is declared to be null and void, unless new agreements are entered into by the affected owner and the Town subsequent to the adoption of the ordinance codified herein.

(c) Each owner shall be responsible for the installation of the entire length of his or her water service line; except and to the extent provided in Subsections (d) and (e) below, each owner shall be responsible for the maintenance of the entire length of his or her water service line.

(d) It shall be the responsibility of the Town to maintain, repair and replace, if necessary, all water service line curb valves and curb boxes that lie within the street right-of-way. Water service line curb valves and curb boxes that are not within the street right-of-way shall be the responsibility of the owner. When curb valves and boxes are found to lie outside the right-of-way, or if no such

curb valve or box can be found, the Town shall have the right, but shall not be obligated, to install a curb valve and box on the customer's service line within the street right-of-way at the Town's expense.

(e) The Town shall maintain, repair and replace, if necessary, water service lines only as follows:

(1) Where there is a curb box located within the street right-of-way and the curb box is not more than seventy-five (75) feet from the water main, the Town shall be responsible from the water main to the curb box.

(2) Where there is no curb box, or the curb box lies outside the street right-of-way, the Town shall be responsible from the water main to the edge of the street right-of-way where the customer's service line enters the property; provided, however, that the Town's responsibility hereunder shall not extend except to the first seventy-five (75) feet of the water service line commencing at the water main.

(3) Responsibility for maintenance, repair and replacement of any water service line exceeding seventy-five (75) feet in length from the water main to the curb box or, if there is no curb box, from the water main to the edge of the right-of-way line where the service line enters the customer's property, shall be determined by the Board of Trustees on an individual basis at such time as the water service lines require maintenance, repair or replacement.

(4) Where a meter pit is installed in lieu of a curb valve and box, the Town shall maintain, repair and replace, if necessary, the water service line as provided above; except that the Town shall assume no responsibility for maintenance, repair or replacement of the meter pit and appurtenances within it except as otherwise provided in this Chapter.

(f) In the event of a Town-initiated change or repair of an installation located under the Town's right-of-way, the cost of such work, and the cost of any damage which might be done to the service line, shall be borne by the Town; provided, however, that a Town-initiated change or repair shall not be construed to apply to a change or repair required because of a customer's neglect or lack of action in performing required maintenance or repair.

(g) To the extent of the Town's maintenance responsibility as set forth in Subsections (d) and (e) above, leaks or breaks in the service line shall be repaired by the Town as soon as possible after notification of the leak or break. Leaks or breaks in the service line that are the owner's responsibility shall be repaired within seventy-two (72) hours after written notification by the Town. If such repairs have not been completed within such period, the Town shall have the authority to repair the leak or have it repaired, and recoup the actual cost from the owner.

(h) During all alarms of fire, the use of a hose or any other outlet where a constant flow of water is maintained is forbidden. (Prior code 13.08.020)

Sec. 13-43. Connection to water and sanitary sewer systems.

(a) No new building, structure or facility of any nature that uses water shall be constructed within the Town unless connected to the Town's water system and the sanitary sewer system unless the Buena Vista Sanitation District specifically grants an exception respectively.

(b) A property required to disconnect from a private water well as set forth in this Section may continue to utilize the well for outdoor irrigation use so long as such use is authorized by a valid well permit and there is no cross-connection between the well system and any water-using building or structure or indoor potable water system, inclusive of the Town's water system. (Prior code 13.08.030; Ord. 19-1997 §2; Ord. 1-2006 §1; Ord. 21 §6, 2012)

Sec. 13-44. No tampering or damage.

(a) No person shall knowingly, maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the public water system, nor make a connection to or draw water from the public water system without first having received a permit or authorization from the Town.

(b) It is unlawful for any person, except members of the Fire Department, Police Department or Public Works Department, to open any fire hydrant or Town-owned yard or park water spigot or faucet without prior authorization from the Town. The Public Works Director may designate and post individual Town-owned yard or park spigots and faucets for noncommercial use by the public. Persons wishing to draw water from a Town-owned spigot or faucet for use in a business or commercial enterprise must first obtain a permit from the Public Works Department. The Public Works Director may establish limits on the volume of water that may be drawn by the public from Town-owned spigots and faucets and may establish volume limits and impose and collect a fee as he or she deems reasonable and necessary for water taken from Town-owned spigots or faucets for business or commercial use.

(c) It is unlawful for any person to pollute or interfere in any manner with the reservoirs, streams, trenches, pipes and drains used in and necessary for the construction, maintenance and operation of the Town's water system. It is unlawful for any person to pollute or interfere in any manner with streams or sources of water for a distance of five (5) miles above the point from which said water is taken. (Prior code 13.08.040; Ord. 19-1997 §3; Ord. 21 §7, 2012)

Sec. 13-45. Water system.

The Town's water system, including water rights, has been planned and constructed to provide potable water for conventional domestic and commercial uses and fire protection. The system has also been designed for limited lawn irrigation for residential lawns, commercial landscaping and municipal lawns only. Application shall be in accordance with regulations established from time to time by the Town. Private well users and irrigation ditch users shall be identified by conspicuous signs posted on their properties. The Town shall provide such signs at the Town's expense. These users will not be subject to Town water restrictions and will be able to water outside at any time. Schools, golf courses and private recreational turfs that are irrigated from the municipal water system shall be metered. (Prior code 13.08.050)

Sec. 13-46. Cross-connections; customer plumbing.

No cross-connections between the Town water system and any other water supply line shall be permitted. All customer plumbing shall be in compliance with the Uniform Plumbing Code. (Prior code 13.08.060)

Sec. 13-47. Installation of water meters.

(a) All water service lines connected to the Town's water system and all water service delivered through the Town's system shall be metered, and every customer of the water system shall install and have a water meter operating for each water line serving his or her property, building, structure or water-using facility.

(b) The Public Works Director may, within his or her sole discretion, install a meter on any service line that has not been converted to metered service, and the full cost thereof shall be charged to the customer and added to the customer's monthly bill. (Prior code 13.08.080; Ord. 16-1990 §1; Ord. 25-1992 §3; Ord. 26-1992 §1; Ord. 20-1996 §1; Ord. 19-1997 §4; Ord. 21 §8, 2012)

Sec. 13-48. Waterline extension and installation cost reimbursement.

(a) When water mains are extended from existing mains for purposes of any real estate development, the Town and the developer may enter into a contract for partial recovery of costs associated with the developer's extension of the mains for a period not to exceed ten (10) years. The Town makes no representations that costs will be fully recovered within the ten-year time period allowed by this policy.

(b) The developer may petition the Town for annexation of property proposed for development, so that system investment fees and user charges shall be at in-Town rates.

(c) The developer shall certify to the Town the cost of extending the water mains to the development. Lateral lines within the development shall not be considered for reimbursement. The developer shall extend main lines to the boundary of the development.

(d) Prior to entering into a contract for recovery of costs, the developer shall submit all the information deemed necessary by the Town in order to allow the Town to make a determination as to the eligibility of the portion of the system to be constructed by the developer for reimbursement. All topographic, land survey, construction documents and other information necessary to determine the scope of the system extension, the possible service area and the area proposed for immediate service shall be provided to the Town.

(e) No connection to the Town's water system shall be permitted until the applicant has applied to be connected to the municipal water system and certification of the costs of the system have been presented to and accepted by the Town. The costs eligible for consideration for recovery are limited to the cost of construction of the system improvements, the cost of professional engineering services directly related to the design and construction documents for the extension system, and the cost of easements and/or rights-of-way to accommodate the construction of the extension system.

(f) The area eligible for reimbursement is that which is located between the existing infrastructure and the developer's property.

(g) Any subsequent customer that connects to the line built by the developer that is eligible for reimbursement shall pay the Town the appropriate system investment fee for the customer's use, an additional development reimbursement fee equal to one-fourth (¼) of the system investment fee, and an administrative fee in the amount of fifty dollars ($50.00) to the Town. The Town shall pay the

developer the development reimbursement fee, less an administrative fee in the amount of fifty dollars ($50.00).

(h) The contract between the Town and the developer for the payment of development fees shall be for a period not to exceed ten (10) years, or until the cost of extension of the water main has been paid to the developer, whichever period of time is shorter.

(i) The developer will submit the plans for the system extension to the Town prior to commencement of construction. Such plans shall be reviewed by the Town's engineer and accepted by the Town prior to the commencement of construction. The developer shall pay the Town's necessary legal and engineering costs incurred in arriving at an agreement under this policy.

(j) The developer shall comply with the Town's specifications and regulations and furnish the Town with copies of all existing and future surveys, as-built drawings and plans and specifications.

(k) The developer shall acquire and pay for any necessary easements. In the event that the Town agrees to use its powers of condemnation to assist in the acquisition of easements, the developer shall pay all legal fees, costs and other expenses of such action.

(l) The developer shall be required to record the contract on all affected deeds, with a copy of said recordings furnished to the Town.

(m) The Town shall not be obligated to accept the water extension or accept any connections until all terms and conditions of the contract between the Town and the developer have been met. (Ord. 2-2006; Ord. 21 §9, 2012)

Secs. 13-49—13-60. Reserved.

ARTICLE IV

Water Extension Policies

Sec. 13-61. General policies; extraterritorial service extensions and annexation.

(a) Where both a water service connection and all points of service are within the corporate limits of the Town, the water service shall be considered "water service within the corporate limits of the Town," and shall be provided as set forth in this Chapter and in accordance with the plans, policies and resolutions of the Board of Trustees relating to water service as such exist at the time of the request for connection.

(b) Where a water service connection or any point of consumption is outside the corporate limits of the Town, the water service shall be considered an "extraterritorial service extension" and shall only be made pursuant to a written water service agreement approved by written resolution of the Board of Trustees. Such water service agreement shall comply with all applicable water service ordinances and regulations. The Town shall not be obligated to extend water service outside its corporate limits and may do so only upon a determination that it is in the interests of the Town.

(c) Every application to annex property to the Town shall address the extension of the Town's water delivery system to serve the territory proposed to be annexed, utilizing the criteria set forth in this Article. Every ordinance annexing territory to the Town not already served by the Town's water delivery system shall be accompanied by and incorporate a water service agreement described in this Article, unless the extension of municipal water service to the annexation territory is adequately addressed and reflected in a subdivision, zoning or other land use development approval issued by the Town as part of the annexation approval process.

(d) The cost of all new or enlarged water mains and appurtenant facilities needed to extend service to areas within or without the Town's corporate limits shall be paid by the owner or developer of such area. Actual costs shall include, but not be limited to, the costs of design drawings and engineering review and all costs associated with the construction, inspection and testing of such mains and any related water service facilities required to be constructed in connection with the mains. In addition, the owner or developer shall pay the Town's costs for an engineering review of the preliminary and final design drawings prior to their approval by the Town and the cost of any legal services reasonably incurred by the Town in connection with the extension application and/or installation, as well as the cost of any inspections of the installation and/or construction of the mains and any attendant facilities deemed necessary by the Town. New mains shall be built to the standards set forth in this Article. Persons installing new water mains are required to follow all of the procedural steps set forth herein in order to properly complete any and all water main extension projects. (Prior code 13.16.010; Ord. 4-2004 §1; Ord. 21 §10, 11, 2012)

Sec. 13-62. Procedures for securing a water main extension.

The following steps shall be followed by persons wishing to secure a water main extension.

(1) Letter of official request. Any person seeking a water main extension shall make such request in writing directed to the Public Works Director. The following information shall be furnished along with the request, together with a deposit in an amount determined by the Public Works Director to be the approximate amount required to process and review the request, inclusive of all necessary engineering and legal reviews.

a. The legal description of the area to be served;

b. A description of the proposed development, including number of units, type of units, amount of planned outdoor irrigation and such other information regarding the proposed development as shall be deemed necessary by the Public Works Department to fully assess the request;

c. The proposed timing for the commencement and completion of the water delivery system and other infrastructure construction, as well as the timing schedule and anticipated completion date for build-out of the proposed development;

d. The estimated water flow requirements for the development at full build-out;

e. For extraterritorial water service applicants or applicants seeking annexation only, a description of the water rights, if any, to be conveyed to the Town pursuant to Subparagraph 13-62(5)c. below and an acknowledgment that all individual wells on the property to be served

must be abandoned upon the delivery of water service to the property. Extraterritorial water service applicants must also provide an acknowledgment that the Town may require the annexation to the Town, in whole or in part, of the property served by the water service extension at such time or times as the Town may deem appropriate, provided that the legally requisite contiguity is present.

(2) Review of service request; engineering feasibility report and water rights dedication requirement. The Board of Trustees will evaluate all letters of official request for a water main extension at a public meeting. Recommendations concerning the merits and acceptability of a request shall be provided to the Board of Trustees by the Public Works Director. If the Board of Trustees finds that the request is acceptable in concept, then the applicant shall be required to submit an engineering feasibility report prepared by a professional engineer registered in the State, and shall pay an engineering review fee to the Town. The feasibility report shall include, but not be limited to, the following:

a. Preliminary design drawings for all proposed water mains and system infrastructure, including a description of line sizes and lengths and all hydrants, storage facilities, pump stations, water treatment facilities and other planned infrastructure;

b. A listing or description of any and all easements deemed necessary for the installation of the proposed water system extension;

c. Preliminary cost estimates for the entire water system to be constructed, including connection charges and water distribution costs;

d. Hydraulic and functional analyses of the proposed water system which will show the effect of the added water service and service area on the Town's existing facilities;

e. Preliminary cost estimates for any required off-site water treatment, transmission, storage or pumping facilities;

f. Water flow requirements, including number of taps, anticipated average daily usage, peak flow requirements and fire demand;

g. For extraterritorial water main extensions, documented proof of the availability of water rights acceptable to the Town to be provided by the project owner or developer to meet the anticipated water service demand to be generated by the proposed development, and documented proof of approval, or the pending approval, of the proposed development project by the County. For the purposes of this Subparagraph, *water rights acceptable to the Town* shall mean such water rights as are determined by the Town, upon the expert advice of its water rights consultants and in its sole discretion, to be sufficient in quantity and seniority to reliably provide for the proposed demands of the project. The Town may waive, in whole or in part, the water rights dedication requirement if the Board of Trustees, in its sole discretion, determines that such a waiver would serve the Town's best interests.

(3) Review of engineering feasibility report. Recommendations concerning the merits and acceptability of the feasibility report shall be provided to the Board of Trustees by the Public Works Director. If a proposed water main extension is being applied for within the context of a

development application, review of the engineering feasibility report will be conducted as part of the development review called for under the provisions of Chapter 17 of this Code. For extraterritorial water main extensions, or other extensions not part of or requiring a development approval pursuant to Chapter 17, the engineering feasibility report will be separately reviewed and the project owner or developer will be notified in writing of the findings. If the extension is preliminarily approved, the project owner or developer shall submit to the Town final construction plans and final cost estimates, all of which shall be prepared by a professional engineer registered in the State.

(4) Review of final construction plans. The Public Works Department will review all final construction plans, contract documents and cost estimates. Recommendations concerning the merits and acceptability of the final plans, contract documents and cost estimates shall be provided to the Board of Trustees by the Public Works Director. If the proposed water main extension is being applied for within the context of a development application, the review will be conducted as part of the final development review process under Chapter 17 of this Code. For extraterritorial water main extensions and other extensions not part of or requiring a development approval pursuant to Chapter 17, the plans, contract documents and cost estimates will be reviewed separately and the project owner or developer will be notified in writing of the findings.

(5) Water service agreement; payment in lieu of water rights dedication.

a. Water main extensions authorized as part of a development approval shall be memorialized in and subject to the terms and conditions of a subdivision improvements agreement as required under Article VII of the Development Code.

b. Authorized nonextraterritorial water main extensions not involving a development approval shall be memorialized by a written water service agreement illustrating and incorporating the design and construction plans approved by the Public Works Director and such other terms and conditions deemed necessary by the Town Attorney, inclusive of bonding, inspections, the provision of easements and as-built surveys/drawings and construction scheduling.

c. Authorized extraterritorial water main extensions shall be memorialized by a written water service agreement illustrating and incorporating the design and construction plans approved by the Public Works Director and such other terms and conditions deemed necessary by the Town Attorney, inclusive of bonding, inspections, the provision of easements and as-built surveys/ drawings and construction scheduling. Additionally, all water service agreements for an extraterritorial water main extension shall include a provision requiring the developer to dedicate water rights to the Town of a quantity and seniority deemed reasonably necessary and acceptable to supply sufficient water to the property to be served, as determined by the Town upon the expert advice of its water rights consultants and in its sole discretion. Alternatively, and at the Town's option, the developer shall provide a cash payment to the Town in lieu of dedicating the necessary water rights, such payment to be in an amount determined by the Town upon the expert advice of its water rights consultants, and in its sole discretion, to be reasonably necessary to purchase water rights of sufficient quantity and seniority to reliably provide water satisfying the demands of the development or property to be served. The water service agreement shall also include a provision requiring the developer or owner of the property served to annex the property, in whole or in part, to the Town at such

time or times as the Town deems appropriate, provided that the legally requisite contiguity is present. Notwithstanding the foregoing, the Board of Trustees may, within its sole discretion, waive the water rights dedication requirement upon finding that the Town's best interests will be served thereby. (Prior code 13.16.020; Ord. 4-2004 §1; Ord. 21 §12, 2012)

Sec. 13-62.5. Extraterritorial service for individual service connection.

A single property located outside the Town's corporate limits may be connected by an individual service line to an existing Town water main that is within four hundred (400) feet of his or her property. Such connection shall be approved only upon the property owner's execution of a utility connection permit and water service agreement approved by the Board of Trustees which shall require, at a minimum, the following:

(1) Payment by the property owner of the cost for the connection and applicable System Investment and Development Fee;

(2) An abandonment of all wells on the property to be served;

(3) Unless specifically waived by the Board of Trustees, a dedication of water rights of a quantity and seniority acceptable to the Town, in its sole discretion, to provide sufficient water for service to the property or, alternatively, and at the Town's option, the payment of a cash-in-lieu fee in an amount equivalent to the value of such water rights;

(4) An agreement to annex the property served to the Town at such time as the Town may request, provided that the legally requisite contiguity is present; and

(5) The installation, at the owner's cost, of a meter pit at a location approved by the Public Works Director. (Ord. 4-2004 §1; Ord. 21 §13, 2012)

Sec. 13-63. Rebate agreement.

Rebate agreements pertaining to the reimbursement of water system installation and construction costs which were executed by the Town prior to January 1, 1997, under provisions of this Chapter now repealed and no longer effect, shall remain intact and be fully enforceable until the terms thereof have been satisfactorily performed, subject to the following:

(1) The amount of all rebate payments shall be based upon the fee structure in existence on the date upon which the rebate agreement was originally entered into; and

(2) The rebate agreement and any rights thereunder shall remain a personal right of the person or entity that originally executed the agreement with the Town, and such agreement and the rights thereunder shall not be assigned or transferred without the express written prior consent of the Town. The assignment, transfer or attempted assignment and transfer of a rebate agreement, or the rights and benefits thereunder, absent the prior consent of the Town, shall result in the automatic forfeiture of all rights and benefits therein. (Prior code 13.16.030; Ord. 20, 1996, §4)

Sec. 13-64. Water distribution system.

All construction of water mains and related appurtenances shall be completed in accordance with the following procedures and specifications:

(1) Inspection. All new water main construction which is to become a part of the Town water system shall be inspected by the Town. Inspection costs shall be the responsibility of the owner/developer. In the case of an extension of water service to a development which falls under the provisions of Chapter 17 of this Code, the inspection services shall be paid for as provided for in the subdivision improvements or development agreement associated with such development. In the case of the extension of water service to areas that do not fall under Chapter 17, the owner/ developer shall be required to deposit five percent (5%) of the estimated costs of all water line construction to cover the cost of inspection services. Payment shall be made to the Town in the form of a certified check or cash prior to commencement of construction of the extension. After completion and acceptance of the water line extension, the Town shall refund the remainder, if any, of the five-percent deposit to the owner/ developer. The Town shall have the authority to halt construction of any work which, in its opinion, is not in conformance with the specifications contained herein or the plans provided by the owner or developer.

(2) Materials. The following materials or their equivalents shall be used for the construction of the water distribution system:

a. Pipe. All distribution mains shall be Class 50 ductile iron pipe. The pipe shall be designed in accordance with AWWA Standard C150/A21.50-91, "American National Standard for the thickness design of ductile iron pipe," produced in accordance with AWWA Standard C151/A21.51-91, "American National Standard for ductile iron pipe, centrifugally cast, for water or other liquids," and cement-mortar lined in accordance with AWWA Standard C104/A21.4-90, "American National Standard for cement-mortar lining for ductile iron pipe and fittings for water." The ductile iron exterior of the pipe shall be coated with standard bituminous coating approximately one (1) mil thick.

b. Gate valves and boxes. The gate valves for pipelines two (2) inches and larger shall be iron body, bronze-mounted, double-disc, parallel-seat conforming to AWWA Standard No. C500-86, for buried service, open left, nonrising stem, two-inch operating nut, for a working pressure of one hundred fifty (150) psi. The joints for valves connected to the ductile-iron pipe shall be mechanical joints in accordance with ASA Specification A21.11. All gaskets shall be for standard water service. The valve box shall be installed over each buried valve. The valve boxes shall be of cast iron, complete with cover, and shall be of extension type with screw-on or slide-type adjustment, with flared base to fit the valve to which it is to be used. The cover shall have the word "WATER" cast on the top. Boxes shall have five-and-one-half-inch shafts.

c. Line valves and boxes.

1. The butterfly valves for pipeline sixteen (16) inches and larger shall be iron body, conforming to AWWA Standard No. C504-87, for buried service, open left, gear-operated two-inch operating nut, for a working pressure of one hundred fifty (150) psi. The valves shall be similar and equal to Pratt "Groundhog."

2. The joints for all valves shall be mechanical joints in accordance with ASA Specification A21.11. All gaskets shall be for standard water service. The contractor shall provide suitable adaptors for connection of the valve and pipe. The valve box shall be installed over each buried valve. The valve boxes shall be of cast iron, complete with cover, and shall be of extension type with screw-on or slide-type adjustment, with a flared base to fit the valve to which it is to be used. The cover shall have the word "WATER" cast on the top. Boxes shall have five-and-one-half-inch shafts.

d. Fittings for pipeline. The fittings shall be cast iron conforming to the requirements set forth in ASA Standard A21.10. Fittings twelve-inch size and smaller shall be Class 250, and fittings larger than twelve-inch shall be Class 150. The interior of the fittings shall be cement-lined, as is required for the pipe. The fittings shall have mechanical joints in accordance with ASA Specification A21.11.

e. Fire hydrants. Fire hydrants shall be Waterous "Pacer" or an equivalent approved by the Water Department with optional traffic flange including:

Valve	5¼ inch
Inlet	6 inch for mechanical joint
Trench depth	6 feet, 6 inches
Operating nut	1½ inch pentagon
Open	left
Nozzles	Two 2½ inch, one 4½ inch pumper nozzle
Threads	National standard

(3) Installation. All water mains and related appurtenances shall be installed in accordance with the following procedures:

a. Trench excavation and preparation.

1. The pipe trench shall be excavated as nearly to vertical as possible and to such depth that six (6) feet of minimum cover over the top of the pipe may be obtained after backfilling. Should sloping or benching of the trench be required, such sloping or benching shall terminate one (1) foot above the top of the pipe, and from the joint downward, the trench wall shall be vertical. The trench width at a point one (1) foot above the top of the pipe shall not be greater than shown in the following table:

Pipe Diameter (Inches)	*Maximum Trench (Inches)*
4	24
6	26
8	28
10	30
12	33
15	36
18	40

2. A clear area shall be maintained a sufficient distance back from the top edge of excavation to avoid overloading which may cause slides or caving of the trench walls. If needed to insure safe working conditions, trench walls shall be properly shored and braced; but such shoring shall be removed as work progresses. Should blasting be required, a permit shall be obtained from the Town and the services of a licensed explosives expert shall be enlisted.

3. Following excavation, the trench shall be completely drained to provide unwatered conditions. Then, the trench bottom shall be uniformly graded and shaped to provide uniform and continuous bearing on firm trench bottom. Bell hoses shall be provided at each joint to permit proper jointing.

b. Pipe laying and jointing.

1. Pipe shall be carefully lowered into the trench with bell ends facing in the direction of laying.

2. For mechanical joints, the last eight (8) inches of the pipe spigot and the inside of the bell of the mechanical joint shall be thoroughly cleaned to remove oil, grit, tar (other than standard coating) and other foreign matter from the joint, and then painted with a soap solution provided by the pipe manufacturer. The cast-iron gland shall then be slipped on the spigot end of the pipe with the lip extension of the gland toward the spigot end. The gasket shall be painted with the soap solution and placed on the spigot end of the pipe to be laid, with the thick edge toward the gland.

3. The entire section of the pipe being laid shall be pushed forward to seat in the spigot end of the bell of the pipe in place. The gasket shall then be pressed into place within the bell, being careful to have the gasket evenly located around the entire joint. The cast-iron gland shall be moved along the pipe into position for bolting, all of the bolts inserted and the nuts screwed up tightly with fingers. All nuts shall be then tightened with a suitable (preferably torque-limiting) wrench. The torque for various sizes of bolts shall be as follows:

Range of Torque	
Size (Inch)	***Ft.—Lb.***
$^{5}/_{8}$	40—60
¾	60—90

4. Nuts spaced one hundred eighty (180) degrees apart shall be tightened alternately in order to produce an equal pressure on all parts of the gland.

5. For push-on joints, the exterior four (4) inches of the pipe at the spigot end and the inside of the adjoining bell shall be thoroughly cleaned to remove oil, grit, tar (other than standard coating) and other foreign matter. The gasket shall be placed in the bell with the large round side of the gasket pointing inside the pipe so it will spring into its proper place inside the pipe bell. A thin film of the pipe manufacturer's joint lubricant shall be applied to the gasket over its entire exposed surface. The spigot end of the pipe shall then be wiped clean and then inserted into the bell to contact the gasket. Then the pipe shall be forced all the way into the bell by crowbar or by jack and choker slings. Pipe joint deflections shall not exceed one (1) inch per foot of pipe length for pipe twelve (12) inches in diameter or smaller. For pipe between fourteen (14) and eighteen (18) inches in diameter, pipe joint deflection shall not exceed five (5) degrees. These maximum deflections shall apply to both horizontal and vertical direction. When pipe laying is not in progress, the open ends of pipe shall be closed by a watertight plug.

6. The cutting of pipe for inserting valves, fittings or closure pieces shall be done in a neat and workmanlike manner without damage to the pipe or cement lining and so as to leave a smooth end at right angles to the axis of the pipe. The flame cutting of pipe by means of an oxyacetylene torch will not be permitted.

c. Installation of gate valves, fire hydrants and thrust blocks.

1. Gate valves shall be installed where shown on the plans and shall be set plumb. Valves shall have the interior cleaned of all foreign matter, stuffing boxes shall be tightened and valves shall be inspected and tested to ensure proper working condition prior to backfilling.

2. A valve box shall be provided for every gate valve. The box shall not transmit shock or stress to the valve and shall be centered and plumbed over the operating nut of the valve, with the box cover flush with the surface of the finished grade and adjusted to be flush with final pavement grade upon construction of the pavement (see Sections 13-177 and 13-178 of this Chapter for details).

3. Fire hydrants shall be installed where shown on the plans and in accordance with Section 13-178 of this Chapter. Fire hydrants shall be set plumb at the finished grade line. Gate valves and valve boxes shall be installed in conjunction with all fire hydrants to the specifications above.

4. Thrust blocks shall be installed behind all tees, wyes, bends, fire hydrants and where elsewhere required and shown on the plans. Thrust blocks shall be of such size and

configuration as shown in Section 13-177 of this Chapter. Concrete shall be placed so that pipe fittings and joints will be accessible for repair and so that fire hydrant weep holes remain free of obstruction.

(4) Sewer encasement. Whenever and wherever a sewer and water main are found to cross each other, the sewer main shall be encased in concrete in accordance with the requirements supplied by the Town Engineer.

(5) Pipeline conductivity. Conductivity of the pipeline is required and shall be provided at all joints as follows: For mechanical joints, all gaskets shall be lead-tipped gaskets. For push-on joints, the electrical conductivity across the joint shall be made with "Cadweld" CAHBA-IL welder and cartridge CA 25-XF19. The connection wire shall be No. 4 bare copper wire. After the entire connection has been completed, the connectors, wire and pipe adjacent to the connectors shall be thoroughly coated with hot coal-tar enamel.

(6) Bedding and backfilling.

a. For the purposes of this specification, *bedding* shall refer to material installed below the pipe invert, and *backfill* shall refer to material installed above the bedding.

b. Bedding, consisting of sand or crushed gravel compacted to ninety-five percent (95%) of maximum dry density, shall meet the following gradation requirements:

Sieve Size	***Percentage of Weight ~~Passing~~ Sieve***
1½ inch	100%
No. 10	80%
No. 200	0—7%

c. Backfill around the pipe and to an elevation six (6) inches above the top of the pipe shall be taken from the excavated trench stockpile or other suitable source and shall have no stones larger than two (2) inches in diameter for ductile iron pipe or one (1) inch in diameter for cast-iron pipe. The remainder of the trench shall be backfilled with material from the excavated trench stockpile, except that no boulders larger than twenty-four (24) inches in diameter, frozen material, organic material or debris shall be used. Within pavement areas, the top six (6) inches of trench shall be backfilled and the surface repaved as specified in Subsection 13-130(h) of this Chapter.

d. Backfill shall be brought first to the spring line of the pipe and compacted to ninety-five percent (95%) of maximum dry density with T-bars or other mechanical units. Backfill shall then be brought to the surface in eight-inch lifts, compacted at each lift to ninety-five percent (95%) of maximum dry density by mechanical tamping. For backfill outside of pavement areas, backfill above the spring line shall be brought up in lifts not to exceed two (2) feet and compacted as above. Should any backfill settle below the required surface, the settled area shall be refilled with required material and recompacted.

e. Excess trench materials shall immediately be removed from the right-of-way and transported to fill areas within the Town or to another approved site.

(7) Testing, flushing and disinfecting.

a. Upon completion of construction of a section of pipeline to be tested, such section shall be flushed with water to ensure that sand, rocks or other foreign matter are not left in the pipeline. If possible, the flushing shall be made through an open pipe end; otherwise, use of a fire hydrant may be permitted.

b. The section of the pipeline being tested shall then be slowly filled with water from the lowest point of elevation of the pipeline while provision for removing air from the pipeline is made at a point of high elevation. Water test pressure of one hundred fifty (150) psi shall then be applied by means of a pump and meter connected to the pipe; provision for air removal shall be maintained. Test pressure of one hundred fifty (150) psi shall be maintained for two (2) hours, during which time leakage shall not exceed the following limits:

Pipe Size (Inches)	***Maximum Allowable Leakage Per 1,000 Feet***
4"	1.48 gallons
6"	2.20 gallons
8"	2.94 gallons
10"	3.68 gallons
12"	4.40 gallons
14"	5.16 gallons
16"	5.92 gallons
18"	6.66 gallons

c. For a section of pipeline under test containing less than one thousand (1,000) feet, the allowable leakage will be reduced proportionately, as determined by the Town Engineer.

d. All installed pipelines shall be disinfected following completion of construction work. Chlorine shall be added to the water at necessary locations so that a fifty-ppm free chlorine residual results. The chlorine solution shall be kept in the pipes for at least twenty-four (24) hours, at which time the line shall be flushed, as specified below, so that a free chlorine residual equal to the flushing water results. Flushed water must be dechlorinated by an approved method until the chlorine residual reaches the level of the flushing water.

e. The contractor shall furnish the pump, pipe, connections, meter and all other necessary testing apparatus and shall furnish all necessary labor to conduct the test. A representative of the Town shall be present during the entire duration of such testing and shall verify all test results in writing. Should any test of pipe laid disclose leakage greater than that specified above, the contractor shall, at his or her own expense, locate and repair the points of leakage until the leakage is within the specified allowance.

(8) Final acceptance. After completion of installation and pressure testing of the water main extension, the owner/developer shall submit to the Town as-constructed (as-built) drawings in the form of one (1) digital set of original reproducible copies and two (2) sets of prints of the new water main. After all of the provisions of this Article have been satisfied, the Town shall formally

accept the water main extension as part of the Town water system, assume ownership and maintenance responsibilities for the same and officially authorize charging (filling with water) of the main. (Prior code 13.16.040; Ord. 26-1992 §1; Ord. 4-2004 §1; Ord. 21 §14, 2012)

Secs. 13-65—13-80. Reserved.

ARTICLE V

Water Rates and Charges

Sec. 13-81. Water service rate schedule; service availability fee; extraterritorial service; fire suppression and low-income senior citizen rates.

(a) The fees, rates and/or charges for water service delivered through the Town's municipal water system shall be established and adjusted from time to time by written resolution adopted by the Board of Trustees at a public meeting. All rates and charges shall be published in a fee schedule posted and kept on file by the Town Clerk in Town Hall.

(b) Any property connected to the municipal water delivery system during any given month shall pay a service availability fee equal to the base monthly water service charge regardless as to whether water service was actually used during said month.

(c) Unless otherwise provided for by written service contract approved by the Board of Trustees, the charge or rate for all metered water service delivered outside of the Town's corporate boundaries shall be assessed at one and one-half (1.5) times the metered rate for similar service within the Town.

(d) Notwithstanding any other provision contained in this Section, water service delivered through a service line dedicated to serve a fire-suppression system shall be charged at twenty-five percent (25%) of the base monthly water service charge.

(e) Residential water service customers sixty (60) years of age and older, and who have a total household income at or below one hundred and thirty percent (130%) of the Gross Federal Poverty Level as reported annually in October by the Chaffee County Department of Social Services, shall be entitled upon application to and approval by the Town Administrator of a discount in their monthly water service charge or rate equal to twenty-five percent (25%). The discount provided in this Subsection shall apply only to an owner-occupied residence and not to any other property owned by a qualified customer. Applications for the discount rate must be made annually in writing to the Town Administrator prior to April 1 in each year in which the discount is sought. (Prior code 13.20.010; Ord. 25-1992 §2; Ord 19-1997 §1; Ord. 15-2002 §1)

Sec. 13-82. Flat rate billing.

All water service delivered to customers by the municipal water system shall be metered. In the event a customer has failed or refused to install a water meter on any service line serving said customer, the monthly flat rate charge for water service for each unmetered service line shall be seventy-five dollars ($75.00). (Ord. 19-1997 §1; Ord. 21 §15, 2012)

Sec. 13-83. Billing and payment; late charges and fees.

(a) Statements for all charges shall be rendered monthly. Charges for late payments, service line repair and other appropriate charges shall be added to the statements. There will be a charge for all checks returned by a customer's bank for insufficient funds. Such charge will be set in the Town Fee Schedule.

(b) Bills shall be mailed monthly and shall be fully paid by the twenty-first day of the month following the statement date. Customers will be charged a late fee of five dollars ($5.00) per month for payments submitted after the payment due date.

(c) A monthly surcharge of seventy-five dollars ($75.00) per service line shall be added to the billing statement of any customer who has failed or refused to install a water meter as required by this Chapter. The imposition and payment of such surcharge shall not relieve a customer from the requirement of installing a water meter nor limit the remedies or penalties available to the Town to obtain the customer's compliance with meter installation requirements.

(d) Invoices for water service materials (e.g., corporation cocks, curb stops, curb boxes, meters, etc.) not paid within thirty (30) days of receipt of the invoice shall be added to the next monthly billing statement.

(e) Until paid, all rates, tolls, charges and fees shall constitute a first and perpetual lien on and against the lots, land, buildings and property served by the water system, and, in the event said charges and fees are not paid when due, the Town may certify the same to the County Treasurer, to be collected and paid over in the same manner as taxes, together with the costs of collection. (Prior code 13.20.030; Ord. 20-1996 §3; Ord. 19-1997 §1; Ord. 21 §16, 2012)

Sec. 13-84. Water system connection fee.

(a) Basic connection fee. A basic connection fee, also known as the System Investment and Development Fee (SIDF), shall be established and amended from time to time by the Board of Trustees by written resolution and published in the Fee Schedule. Such fee shall be based on meter size. No water meter greater than six (6) inches shall be connected to the municipal water system unless authorized in advance by the Public Works Director, in which event the fee for such meter shall be negotiated using the basic fee for a six-inch meter and adding thereto an incremental amount deemed necessary and reasonable in consideration of the then-current demands on the municipal water system.

(b) Payment schedule. Prior to the connection of new or upgraded water service to any lot, property or structure, the then-current connection fee based on meter size as set forth in the Town's Fee Schedule shall be paid. A fixture count form is required to be submitted to the Public Works Director by the applicant for determination of the meter size prior to payment of the connection fee. Such connection fee shall be paid prior to the tapping of the water main. (Prior code 13.20.040; Ord. 16, 1994 §1; Ord. 29, 1994 §4; Ord. 8, 1996 §1; Ord. 20-1996 §5; Ord 19-1997 §1; Ord. 15-2002 §2; Ord. 4-2004 §2; Ord. 9-2010 §1; Ord. 21 §17, 2012)

Sec. 13-85. Noncontinuous service.

(a) Water service charges are based, in part, on the availability of water to the customer and are made on a year-round basis. Property temporarily unoccupied must pay for service continuously. If a property is to be vacated permanently, the owner shall be required to sign a tap abandonment form in order to have the Town discontinue service. A service charge of ten dollars ($10.00) shall be paid to abandon a tap. Service may later be reinstated only upon payment by the owner to the Town of the then applicable connection fee.

(b) If the property is to be vacated for a period in excess of three (3) months without the abandonment of the tap, the owner may notify the Town to temporarily suspend service after which water service and the base service fee shall be discontinued. Service may later be reinstated only upon payment of a fee of ten dollars ($10.00), plus an amount equal to one hundred percent (100%) of the total base water service charges which the customer would have otherwise incurred from the date service was suspended to the date of service reinstatement. (Prior code 13.20.050; Ord. 19-1997 §1)

Secs. 13-86—13-100. Reserved.

ARTICLE VI

Water Fines and Enforcement

Sec. 13-101. Noncompliance with regulations and restrictions.

(a) Water users failing or refusing to comply with water management and conservation regulations and restrictions which have been duly established by proclamation of the Mayor or duly enacted by resolution of the Board of Trustees shall be subject to fines and penalties established in Chapter 1, Article IV of this Code.

(b) Water users shall not waste water in any manner. Any violation shall be subject to penalty under this Code. (Prior code 13.24.010)

Sec. 13-102. Failure to comply.

(a) Any person found to be in violation of the provisions of this Chapter may be served with a written notice or correction order by the Town. Such notice or order shall state the nature of the violation, the date of such violation, the approximate location of the violation and the compliance required, and provide a reasonable time within which to comply. The time for compliance shall not exceed thirty (30) days. The notice or order may be mailed by certified mail to the owner or served upon the persons in possession of the premises cited or, if neither the owner nor the person in possession may be located after diligent search, such notice or order may be posted conspicuously upon the premises for a period of ten (10) days.

(b) In the event of failure to comply with the notice, the Town may take action as required in its sole discretion to prevent or abate actual or anticipated damage or danger to the Town's system, and such costs shall be charged against the property served and shall constitute a lien thereon.

(c) It is unlawful for any person to fail or refuse to comply with any notice given pursuant to Subsection (a) of this Section. Any person who fails to comply with such notice shall be guilty of a separate offense for each and every day or portion thereof during which any such failure is committed, continued or permitted, and upon conviction of the same as a misdemeanor, such person shall be punishable as set forth in Section 1-72 of this Code.

(d) Neither the issuance of a notice or correction order, nor a customer's compliance therewith, shall bar or be a prerequisite to the commencement of a prosecution in the Municipal Court for a violation of this Chapter, or to the initiation of any other proceeding to abate or remedy a violation. (Prior code 13.24.020; Ord. 19-1997 §5)

Sec. 13-103. Disconnection of service.

(a) In addition to and notwithstanding any other provisions and regulations, the Town may, at its option, discontinue water service to property owned by any person violating any of the provisions of these rules and regulations and fees from the facilities of the Town. The costs of such discontinuance and severance shall be charged against the property formerly served by the Town and, until paid, shall constitute a lien which shall be collected in the same manner as provided herein for the collection of rates, tolls, fees and charges, or as otherwise provided by law.

(b) Noncompliance with the provisions of this Chapter shall be grounds for disconnecting or discontinuing water service to a customer, property, premises or building and may, additionally, be subject to prosecution and penalty in the Municipal Court. A service charge of ten dollars ($10.00) shall be assessed to discontinue or disconnect water service.

(c) The service of water to any building, property or premises may be discontinued by the Town upon not less than ten (10) days' written notification if an unprotected cross-connection is found to exist on the premises, if any defect is found in an installed backflow protection device, or if a backflow prevention device has been removed or bypassed. Water service shall not be restored until such condition or defect is corrected.

(d) Notwithstanding the provisions of Subsection (c) above, the Town may summarily discontinue water service to a building, property or premises without advance written notice where, in the opinion of the Director of Public Works, such action is necessary to protect the purity of the Town's public water supply or the Town's public water system.

(e) Water service that has been disconnected or discontinued as the result of noncompliance with the provisions of this Chapter shall not be restored or reinstated absent the payment of a reconnection fee of fifty dollars ($50.00), plus an amount equal to the total base water service charges which the customer would have otherwise incurred from the date service was discontinued or disconnected to the date of service reinstatement, and the cost of any materials or labor necessary to restore service. (Prior code 13.24.030; Ord. 4-1990 §1; Ord. 19-1997 §6)

Secs. 13-104—13-120. Reserved.

ARTICLE VII

Water Service Installations

Sec. 13-121. Water service line connections.

An applicant for a water service permit shall obtain an application form from the Town. The applicant shall complete the application form and deliver it and the appropriate fee to the Town, which will set the date for tapping the main. It is the customer's responsibility to expose the main and provide sufficient excavated area for tapping. Pipes shall be cleared all around for tapping. (Prior code 13.12.010; Ord. 20-1996 §7)

Sec. 13-122. Cost responsibility.

(a) All cost and expense of the installation and connection of water service lines shall be borne by the customer. All tap fees shall be paid by the owner and shall be paid prior to the installation of the water tap.

(b) It shall be the owner's responsibility to protect so much of the service line as he or she is responsible for maintaining, as set forth in Subsections 13-42(c), (d) and (e) of this Chapter, along with the water meter, if used, and appurtenances from freezing or other physical damage. If a water meter or any portion of a water meter must be replaced due to freezing or some other form of physical damage for which the owner, by the terms of this Article, is responsible, then the actual cost of replacing the meter or portion thereof shall be paid by the owner. The Town shall have the same responsibility with respect to the portion of the water service line that is its responsibility to maintain.

(c) Upon acceptance by the Town of service line construction, the Town shall assume ownership of any water meter installed as well as responsibility for such meter's calibration and normal maintenance, excluding full replacement of the meter or any portion thereof, which cost shall be the responsibility of the customer.

(d) Customers shall purchase corporation cocks, curb valves, curb boxes, plastic sheeting and meters from the Town. (Prior code 13.12.020; Ord. 21 §18, 2012)

Sec. 13-123. Connection permits and charges for service lines; no refunds upon expiration of permit.

(a) All persons connecting a water service line to a building, structure, lot or property shall pay a nonrefundable connection fee, also known as the System Investment and Development Fee (SDIF), as described in Article V of this Chapter, prior to making such connection.

(b) No person may apply for or receive a water tap absent the possession of a corresponding current building or excavation permit for the building or property to be served by the service connection.

(c) Fees for water service shall be billed and paid monthly in accordance with the fees and rate structure set forth in this Chapter. Monthly fees shall commence on the date a water connection is made. A monthly service availability fee equal to the base monthly charge shall be imposed and

collected for every water service connection (water tap) regardless as to whether any water is actually used.

(d) A connection permit shall automatically expire one (1) year from the date of its issuance unless the service line connection authorized thereunder has been installed, inspected and approved as required in this Article.

(e) Absent an extension authorized by the Town for good cause upon application by a permittee, water taps or connection permits paid for and/or issued prior to the enactment of this Section shall automatically expire one (1) year from the effective date hereof unless the service line connection authorized thereunder has been installed, inspected and approved as required in this Article. Any fee previously paid for on an expired water tap or connection permit as described in this Subsection, inclusive of any previously paid monthly water service availability charges, shall be credited upon application for the purchase of a new permit. (Prior code 13.12.030; Ord. 15-2002 §1; Ord. 9 §2, 2010; Ord. 21 §19, 2012)

Sec. 13-124. Service lines.

For multi-unit structures, service lines shall be installed in accordance with the tables in Section 13-128. Any variance from this requirement shall require written approval in advance of installation of such lines from the Board of Trustees. (Prior code 13.12.040)

Sec. 13-125. General specifications.

All water service line construction shall be installed in accordance with the specifications contained in this Chapter. (Prior code 13.12.050; Ord. 15-2002 §4; Ord. 21 §20, 2012)

Sec. 13-126. Permits required.

(a) A permit for service line installation shall be secured from the Town by the water customer and the appropriate fee paid in accordance with Section 13-84 of this Chapter. The customer's contractor shall familiarize himself or herself with the service line installation standards and specifications, select and obtain approval of the appropriate water service installation materials for the building or facility and inform Town personnel of the intended schedule for construction. A permit shall normally not be issued until the servicing main has been accepted by the Town; however, in the case of a water extension, taps for service lines may, with the prior approval of the Public Works Director, be made to a new main at the time of the main's construction. All taps to a main for a service line and the installation of corporation cocks shall be performed by the Town.

(b) Where a street cut is required for a water service, the contractor shall obtain a Town ROW Construction/Excavation permit and shall rebuild the road base and surface in accordance with the applicable specifications called for in Chapter 11 of this Code. (Prior code 13.12.060; Ord. 20, 1996 §8; Ord. 21 §21, 2012)

Sec. 13-127. Inspection.

All work shall be inspected by a representative of the Public Works Department, who shall have the authority to halt construction when, in his or her opinion, the specifications contained herein or

proper construction practices are not being followed. Whenever any portion of the specifications contained herein are violated, the Town's representative shall, in writing, order further construction to cease until all deficiencies are corrected. No pipe or other installation shall be backfilled without the Town Inspector's prior approval. (Prior code 13.12.070; Ord. 21 §22, 2013)

Sec. 13-128. Minimum sizing criteria for service lines and meters in residential areas.

Note: The tables below give minimum size permitted by the Town; lines may have to be oversized for low pressure areas or for other specific reasons as determined by the Town Engineer:

Step 1: Find the required flow from the following table:

Number of Units Served	*Flow Per Unit (GPM)*	*Total Flow (GPM)*
1	15.00	15.00
2	8.65	17.50
3	6.67	20.00
4	5.63	22.50
5	5.00	25.00
6	4.58	27.50
8	4.06	32.50
10	4.00	40.00
20	3.33	66.67
30	3.00	90.00

Step 2: Determine the distance from the main to the structure.

Step 3: With the GPM and length of service line, refer to the following table and determine the minimum size of service line and meter size.

Flow Required	*Length of Service Line (Feet)*											
	25		*50*		*75*		*100*		*150*		*200*	
GPM	*Line*	*Meter*	*Line*	*Meter*	*Line*	*Meter*	*Line*	*Meter*	*Line*	*Meter*	*Line*	*Meter*
15	¾	¾	¾ *	¾	1	¾	1	¾	1½	¾	1½	¾
20	¾	¾	1	¾	1	¾	1½	¾	1½	¾	1½	¾
25	1	¾	1½	¾	1½	¾	1½	¾	1½	¾	1½	¾
30	1	1	1½	1	1½	1	1½	1	1½	1	1½	1
35	1	1	1½	1	1½	1	1½	1	1½	1	1½	1
40	1½	1	1½	1	1½	1	1½	1	1½	1	2	1
45	1½	1	1½	1	1½	1	1½	1	2	1	2	1
50	1½	1½	1½	1½	1½	1½	1½	1½	2	1½	2	1½
75	2	1½	2	1½	2	1½	2	1½	3	1½	3	1½
100	2	2	2	2	2	2	3	2	3	2	3	2

* Use one-inch line where static pressure is less than 50 psi.

(Prior code 13.12.080; Ord. 21 §23, 2012)

Sec. 13-129. Materials.

(a) As noted in Section 13-122 of this Article, the Town shall supply corporation cocks, curb stops, curb boxes and meters for purchase by its customers. The Public Works Department shall maintain a water distribution system catalogue containing specifications and ordering information for various makes and models of materials required for service line installations. All such materials which are to be used to make service line connections to the Town's water distribution system must have been approved for use by the American Water Works Association. The Public Works Department shall maintain an adequate stock of these materials on hand and shall update the materials catalogue as required.

(b) Service line pipe shall be Type K copper (ASTM B251) with flared or pack-joint connections and shall be provided by the customer. Polyethylene pipe SDR-9 200 psi for one and one-half (1½) inch and two (2) inch sizes can be used, in accordance with AWWA Standard C901-88 "Polyethylene (PE) pressure pipe and tubing, ½inch through 3 inch for water service." A number six (6) solid copper wire must also be installed for a tracer line. (Prior code 13.12.090; Ord. 26-1992 §1; Ord. 21 §24, 2012)

Sec. 13-130. Installation of service connection.

(a) Location and alignment of service. Water service lines shall be located so as to take the shortest, most direct path (preferably perpendicular to the main) between the main and the building. The water line shall not be located under any paved or concrete driveway or service road. If curbs exist, the curb shall be marked with a chiseled "V" at the point where the line crosses under the curb. Water service will not be allowed across property other than that being served, without proper easement, provided by the property owner, reviewed by the Town Engineer, approved by the Board of Trustees and recorded with the County Clerk and Recorder.

(b) Service line installation. An approved corporation cock will be installed into the existing main. Curb stops and curb boxes are required for all service installations. The curb box shall be located on Town property. One (1) continuous length of copper pipe shall be run from the main to the curb stop, and a second continuous length of copper pipe will run from the curb stop to the building.

(c) Water meters. Meters, when used, shall be installed in the presence of the Town Inspector in accordance with Section 13-47 of this Chapter. The operational testing of the meter and its readout shall be demonstrated at the time of installation.

(d) Remote readout installation. Where water meters are to be installed, a remote readout shall be installed in a location adjacent to the power and gas service meter installations which service the subject property. The readout unit shall be installed on the building at a height of approximately five (5) feet above the ground. The maximum distance from the remote readout to the meter shall be one hundred twenty-five (125) feet, and the remote readout signal cable shall be installed in the shortest path from the meter location to the remote readout location. In the case of an exterior (pit-type) meter installation, the remote readout cable shall be laid underground with a minimum of eighteen (18) inches of cover and be laid in the shortest path from the meter to the building on which the readout is to be placed. Exterior (pit-type) meter installations shall be allowed only with prior written permission of the Public Works Director.

(e) Maintenance of traffic. All construction operations within the Town right-of-way shall be carried on in such a manner as to cause the least possible interruption of traffic. Adequate barricades, signs and warning devices will be provided by the customer or owner. All traffic-control devices shall conform to the *Manual on Uniform Traffic Control Devices for Streets and Highways* published by the U.S. Department of Transportation. No portion of any Town right-of-way shall be closed or blocked, except during regular working hours, without specific written permission of the Public Works Director.

(f) Excavation. Excavation of the trench shall be done in a workmanlike manner providing a trench that is straight and true with a flat bottom containing no rock or other deleterious material that would damage the pipe. A minimum of six and one-half (6½) feet of cover over the pipe shall be provided from the main to the building. After completion of the excavation and before the pipe or bedding is laid, the Public Works Department shall inspect the trench for line, grade, rock or other deleterious material and cover, and either accept or reject the trench.

(g) Bedding. All service lines shall be bedded from two (2) inches under the pipe to twelve (12) inches over the pipe with sand, free of frozen, organic or other deleterious materials. The bedding shall be thoroughly compacted with hand tampers or mechanical equipment so that a firm base results. Compaction must be accomplished with equipment specifically designed for earthwork compaction.

(h) Backfill.

(1) Backfill material within the right-of-way shall consist of material meeting the requirements of "Class 1 Structure Backfill Material," as designated in Section 703.08 of the Standard Specifications for Road and Bridge Construction of the State Department of Highways, Division of Highways, and meeting the following graduation:

Sieve Designation	*Percent by Weight Passing Lab Sieves*
2 inch	100
No. 4	30—100
No. 50	10—60
No. 200	5—20

(2) Backfill shall be placed in two-foot layers thoroughly compacted with rollers or vibration tampers. Compaction must be accomplished with equipment specifically designed for earthwork compaction. Beneath paved streets, backfill shall be placed to within six (6) inches of final surface grade. A four-inch layer of Class VI base course material, as designated in Section 703.03 of the Colorado Standard Specifications, shall then be placed and thoroughly compacted. The street shall then be resurfaced with prime coat and three-inch asphalt concrete surface course as specified in Chapter 17 of this Code.

(3) Curb and gutters, sidewalks and other street improvements altered, damaged or destroyed during service line installation shall be restored to their original condition.

(4) Backfill material outside the right-of-way shall consist of materials from the excavated trench free of frozen, organic or other deleterious material and less than twelve (12) inches in diameter. The backfill shall be mounded over final surface grade to allow for settlement. (Prior code 13.12.100; Ord. 21 §25, 2012; Ord. 9 §4, 2013)

Secs. 13-131—13-150. Reserved.

ARTICLE VIII

Water Line Connections

Sec. 13-151. Definitions.

Terms used in this Article shall be defined as follows:

Air gap means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, other device or vessel and the flood level rim of said vessel.

Approved means accepted by the Public Works Department as meeting the applicable specification or procedures as stated or cited in this Article.

Approved backflow prevention device (assembly) means a device listed in the latest University of Southern California Foundation for Cross-Connection Control and Hydraulic Research "List of Approved Backflow Prevention Assemblies."

Auxiliary water supply means any water supply on or available to the premises other than the water purveyor's approved potable water supply. These auxiliary water supplies may include, but

are not limited to, water from another purveyor's potable water supply or any natural source such as a well, spring, river, stream, pond, lake, etc., or "used waters" or "industrial fluids." These waters may be polluted or contaminated, or may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

Backflow means the undesirable reversal of the direction of flow the water or mixtures of water and other liquid, gases or other substances into the distribution pipes of the potable water supply from any source or sources caused by back pressure and back siphonage acting together.

Backflow prevention device (also referred to as a *backflow preventer)* means a device or means designed to prevent backflow created by back pressure, back siphonage or back pressure and back siphonage acting together.

Back pressure means backflow caused by a pump, elevated tank, boiler or "head" in pipe, or any means that could create greater pressure within a piping system than that which exists within the potable water supply.

Back siphonage means the reverse flow of water or other liquids, mixtures, gases or substances into the distribution pipes of a potable water supply system caused by negative or subatmospheric pressure in the potable water supply system.

Certified cross-connection control technician means a person who has shown his or her competency and has passed the cross-connection control technician certification examination given by the Water Distribution and Wastewater Collection Systems Council. This person shall be familiar with appropriate laws, rules and regulations which address cross-connection control. He or she shall be able to make competent tests and repairs on all approved backflow prevention devices, and stay abreast of all new products and information on the subject. The technician shall be listed by the State Department of Health.

Check valve means a self-closing device which is designed to permit the flow of fluids in one (1) direction. A single check valve is not an approved backflow prevention device.

Colorado Department of Health Cross-Connection Control Manual means a manual that has been published by the State addressing cross-connection control practices which shall be used as a guidance document for the water purveyor in implementing a Cross-Connection Control Program.

Containment, prevention by shall mean the installation of an approved backflow prevention device, or method, on the water service line serving any premises, location, facility or area.

Containment, protection by shall be used when the potable water system may be contaminated or polluted by substances used or stored within a building or premises.

Contamination means an impairment of the quality of the potable water by sewage, industrial fluids or waste liquids, compounds or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.

Critical level means the critical level or C/L marking on a backflow prevention device or vacuum breaker which is a point conforming to approved standards and established by a testing

laboratory, which determines the minimum elevation above the flood-level rim of the fixture, highest point of usage or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve or the bottom of any such approved device shall constitute the critical level.

Cross-connection means any physical arrangement whereby a potable water supply is connected, directly or indirectly, with any other water supply system, sewer, drain, conduit, tank, plumbing fixture or other device which contains, or may contain, contaminated water, sewage or other waste, liquid or gas of unknown or unsafe quality which may be capable of imparting contamination or pollution to the potable water supply as a result of backflow. Bypass arrangements, jumper connections, removable spools, swivel or changeover devices, four (4) way valve connections and other temporary or permanent devices through which, or because of which, backflow could occur are considered to be cross-connections.

Cross-connection, controlled means a connection made between a potable water system and a nonpotable water system with an approved backflow prevention device, properly installed and tested in accordance with this manual, and that will continuously afford the protection commensurate with the degree of hazard.

Double check valve assembly means an assembly of two (2) independently operating approved check valves between two (2) tightly closed (resilient seated) shut-off valves, plus four (4) properly located test cocks for the testing of each check valve. The entire assembly shall be an approved backflow prevention device.

Hazard, degree of means the term is derived from an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

Hazard, health means any condition, device or practice in the water supply system and its operation which could create, or in the judgment of the water purveyor may create, a danger to the health and well-being of the water consumer. An example of a health hazard is a structural defect, including cross-connections, in a water supply system, or a direct connection of a potable water supply line to a sanitary sewer.

Hazard, plumbing means a plumbing type cross-connection in a potable water system that has not been properly protected by an air-gap separation or an approved backflow prevention device. Unprotected plumbing type cross-connections are considered to be a health hazard.

Hazard, pollution means an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system but which would constitute a nuisance or be aesthetically objectionable, or could cause damage to the system of its appurtenances, but would not be a threat to life or be dangerous to health.

Hazard, system means an actual or potential threat of severe damage to the physical properties of the potable water system or the consumer's potable water system or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system caused by a cross-connection.

Industrial fluids system means any system containing a fluid or solution which may be chemically, biologically, radiologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollutional or plumbing hazard if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated waters; all types of process waters and "used waters" originated from the potable water system which may have deteriorated in sanitary quality; chemicals in fluid form; plated acids and alkalis; circulated cooling waters connected to an open cooling tower and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, rivers, lakes, dams, ponds, retention pits, irrigation canals or systems, etc.; oils, gases, glycerine, glycols, paraffins, caustic and acid solutions and other liquid and gaseous fluids used in industrial or other purposes or for fire-fighting purposes.

Isolation means the control of cross-connections within a building's plumbing system by the installation of approved backflow prevention devices or methods at or near the potential sources of pollution or contamination.

Nonpotable water means water that is not safe for human consumption or that does not meet the requirements set forth in the State Primary Drinking Water Regulations.

Pollution means the presence of any foreign substance (organic, inorganic, radiological or biological) in the water that may degrade the water quality so as to constitute a nonhealth type hazard or impair its usefulness.

Potable water means water free from impurities in amounts sufficient to cause disease or harmful physiological effects. The bacteriological, chemical and radiological quality shall conform with the State Primary Drinking Water Regulations.

Public Works Director means the Public Works Director of the Town, or his or her designated representative.

Reduced pressure principle device means an assembly of two (2) independently operating approved check valves with a hydraulic automatic operating differential relief valve between the two (2) check valves. The assembly shall be located between two (2) tightly closing (resilient seated) shut-off valves, and have four (4) properly located test cocks for the testing of the check and relief valves. The entire assembly shall be an approved backflow prevention device.

Submerged inlet means a water pipe or extension thereof from a potable water supply terminating below the flood level rim of a tank, vessel, fixture or appliance which may contain water of questionable quality, waste or other contaminant or pollutant.

Vacuum means any pressure less than atmospheric pressure.

Vacuum breaker, atmospheric nonpressure type means a vacuum breaker consisting of an air inlet opening and a nonloaded floating check disk valve designed to prevent back siphonage only. The device shall not be subjected to continuous static line pressure or back pressure, or be installed where it would be under pressure for more than twelve (12) continuous hours.

Vacuum breaker, pressure type means a vacuum breaker designed to prevent back siphonage only, consisting of a spring-loaded check valve, a spring-loaded air inlet opening, a tightly closing shut-off valve on each side of the device and two (2) appropriately located test cocks. The device shall not be subjected to back pressure. The entire assembly shall be an approved backflow prevention device.

Water Distribution and Wastewater Collection Systems Certification Council means the group which has been designated by the State Department of Health to administer and maintain the Cross-Connection Control Technician certification program.

Water-service connection means the terminal end of the water purveyor's service connection from the potable water distribution system; i.e., where the water purveyor loses jurisdiction and sanitary control over the water at its point of delivery to the customer's stop box or shut-off valve or meter, whichever comes first from the water main. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter. There shall be no unprotected takeoffs from the service line ahead of any meter or backflow prevention device located at the point of delivery to the customer's water system. This shall include irrigation systems and fire sprinkler systems. Service connection shall also include water service connection from a fire hydrant and all other temporary or emergency water service connections from the potable water system. For customers outside the water purveyor limits, water service connection shall mean the terminal end of the water purveyor's service connection from the potable water system to the customer's corporation stop. (Ord. 4-1990 §1; Ord. 21 §26, 2012)

Sec. 13-152. Building plans; submission; approval.

(a) All building plans submitted to the Town pursuant to the Town's Building Codes shall, in addition to such other requirements as may be imposed by law, be reviewed and approved by the Public Works Director to assure compliance with the provisions of this Article.

(b) In addition to other requirements imposed by law, all building plans submitted to the Town shall include:

(1) Water service connection size and location;

(2) Water meter size and location;

(3) Size, type and location of backflow prevention devices; and

(4) Size and type of any backflow prevention devices used on service lines of fire sprinkling systems. (Ord. 4-1990 §1; Ord. 21 §27, 2012)

Sec. 13-153. Required inspections.

(a) No backflow prevention device shall be installed within the Town until such device has been inspected by the Water Department and approved as being in compliance with the provisions of this Article. The Water Department shall inspect all backflow protection devices to ensure that such

devices have been properly installed in accordance with the provisions of this Article and to further ensure that such devices are operating properly after installation.

(b) Final inspections on new or retrofit installations shall be performed by the Town only after the backflow prevention device has been tested. The test results, plumbing permit and test permit number shall be supplied to the Water Department at the time of the final inspection. (Ord. 4-1990 §1; Ord. 21 §28, 2012)

Sec. 13-154. Required testing and maintenance.

(a) All backflow prevention devices shall be tested and properly maintained so that such devices shall operate at all times in accordance with the applicable technical specification for such device.

(b) At least once each calendar year, the Town shall cause a certified test to be performed on each such device to determine if such device is operating properly. The Water Department shall have the authority to require more frequent inspections if, in its determination, there is a substantial existing or potential hazard from a particular backflow protection device. All inspections and testing provided for in this Subsection shall be performed at the expense of the owner.

(c) All costs for the design, installation, maintenance and repair of a backflow protection device shall be borne by the owner of the property where the backflow protection device is located. (Ord. 4-1990 §1; Ord. 21 §29, 2012)

Sec. 13-155. Approved backflow prevention devices required.

(a) The owner of each building, property or premises connected to the Town's public water system shall cause to be installed a backflow prevention device in accordance with the requirements of this Article so as to prevent a cross-connection.

(b) Any backflow prevention device required by this Article shall be of a model and size approved by the Water Department.

(c) Only approved backflow prevention devices, as described in this Article, shall be used within the Town; provided, however, that residential containment may be accomplished with a backflow prevention device approved by the American Society of Sanitary and Mechanical Engineers and designated by the Water Department.

(d) Backflow prevention devices installed prior to the effective date of the ordinance codified in this Article shall be replaced with an approved backflow prevention device at such time as the unapproved device fails an operational test. (Ord. 4-1990 §1; Ord. 21 §30, 2012; Ord. 9 §5, 2013)

Sec. 13-156. Backflow prevention devices; technical specifications and requirements.

(a) All backflow prevention devices installed within the Town shall comply with the specifications contained in the following publications:

(1) "Manual of Cross-Connection Control," Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California;

(2) Cross-Connection Control Manual, Colorado Department of Health;

(3) Cross-Connection Control Committee, Pacific Northwest Section AWWA Manual of Accepted Procedures and Practices; and

(4) Recommended Practice for Backflow Prevention and Cross-Connection Control, AWWA Manual M14.

Without limiting the generality of the provisions of this Subsection, all backflow prevention devices used within the Town shall also comply with the provisions of Subsections (b) through (f) of this Section.

(b) Backflow prevention devices used on fire lines shall have O. S. & Y. valves and be listed by the National Fire Protection Association.

(c) All fire sprinkling lines shall have a minimum protection of an approved double check valve for containment of the system.

(d) All glycol (ethylene or propylene), or antifreeze systems, shall have an approved reduced pressure principle device for containment.

(e) Dry fire systems shall have an approved double check valve installed upstream of the air pressure valve.

(f) Single-family residences with a fire sprinkler system and domestic water combined shall have a double check valve when no chemicals are used.

(g) All underground fire sprinkler systems shall conform to the following sections of the National Fire Protection Association Pamphlet No. 13: Section 1-11.2 (hydrostatic testing) and Sections 1-1.2.2 (allowable leakage); and to Pamphlet No. 24, "Private Fire Service Mains and Their Appurtenances," Sections 8.4, 8.5, 8.6, 8.7 and 8.8. Copies of these publications shall be made available for inspection and copying at the office of the Town Clerk during normal business hours. (Ord. 4-1990 §1)

Sec. 13-157. Backflow prevention devices; installation requirements.

(a) All backflow prevention devices shall be installed in accordance with the provisions of the following reference manuals:

(1) "Manual of Cross-Connection Control," Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California;

(2) Cross-Connection Control Manual, Colorado Department of Health;

(3) Cross-Connection Control Committee, Pacific Northwest Section AWWA Manual of Accepted Procedures and Practices; and

(4) Recommended Practice for Backflow Prevention and Cross-Connection Control, AWWA Manual M14.

(b) All backflow protection devices shall be installed in the horizontal position. Variances may be granted only for retrofit fire systems.

(c) Backflow prevention devices shall be installed in an accessible location to facilitate maintenance, testing and repair.

(d) All backflow prevention devices shall be installed immediately downstream of the water meter.

(e) Before installing a backflow prevention device, pipelines shall be thoroughly flushed to remove foreign material.

(f) It is impermissible to have connections or tees between the water meter and the service line backflow prevention device.

(g) It is impermissible to connect the relief valve discharge on the reduced pressure device into a sump, drainage ditch or similar facility.

(h) Backflow prevention valves are not to be used as the inlet or outlet valve on the water meter. Test cocks are not to be used as supply connections.

(i) A pressure vacuum breaker may be used where the device is never subjected to back pressure and is installed a minimum of twelve (12) inches above the highest piping or outlet downstream of the device in a manner to preclude back pressure.

(j) An atmospheric nonpressure type vacuum breaker may be used only where the device is:

(1) Never subject to more than twelve (12) hours of continuous pressure;

(2) Installed with the air inlet in a level position and at a minimum of six (6) inches above the highest piping or outlet it is protecting; and

(3) No such valve may be placed downstream of the device.

(k) A single check valve shall not be considered to be a backflow prevention device.

(l) Double check valve assemblies may be installed in below-grade vaults when those vaults are properly constructed.

(m) Reduced pressure backflow preventers shall be installed above ground. The unit should be placed at least twelve (12) inches above the finished grade to allow clearance for repair work. A concrete slab at finished grade is recommended. Proper drainage should be provided for the relief valve and may be piped away from the location, provided that it is readily visible from above grade and the relief valve is separated from the drainline by a minimum of double the diameter of the supply line. A modified vault installation may be used if constructed with ample side clearances. Precautions should be taken to protect aboveground installations from freezing.

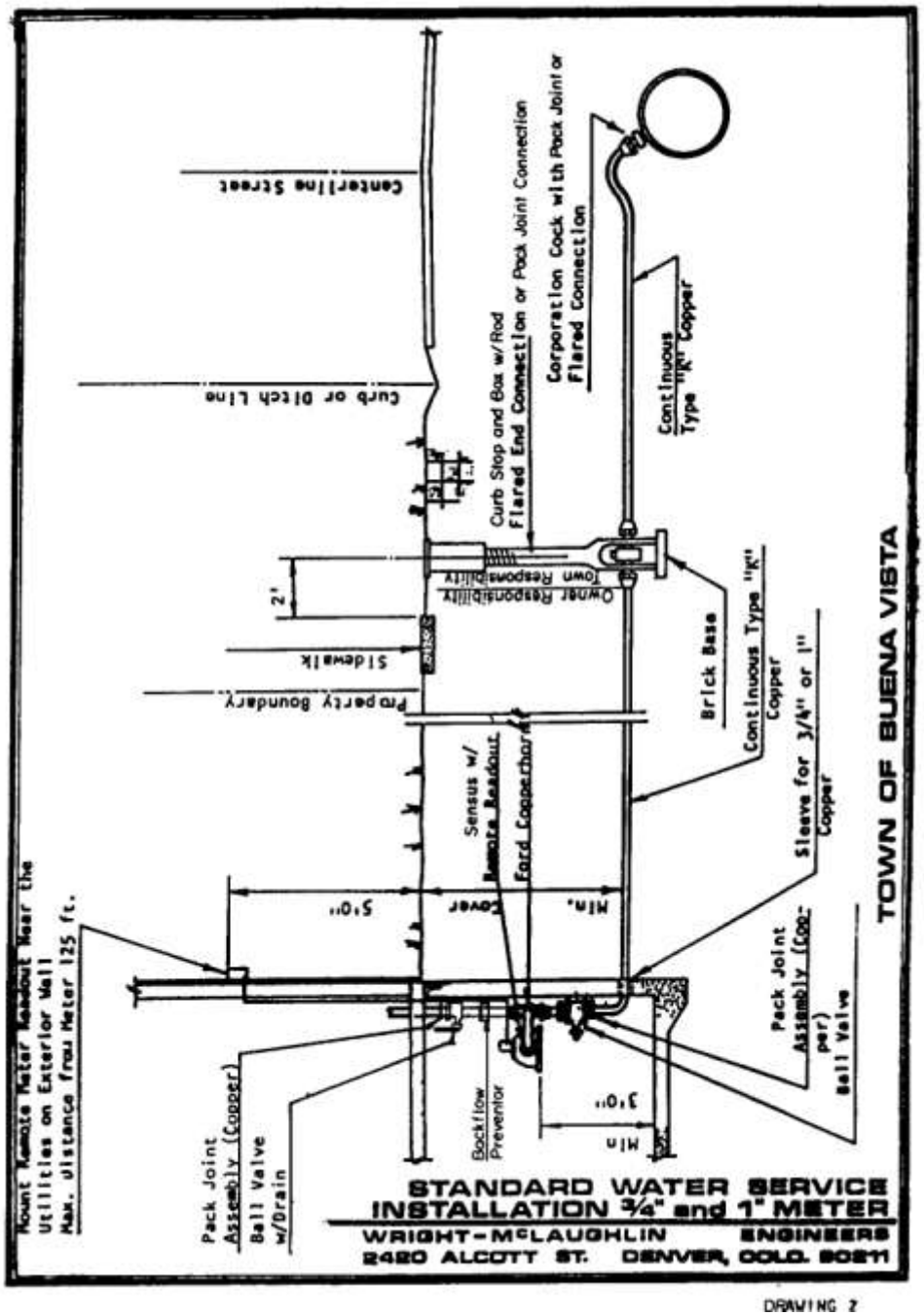
(n) A reduced pressure principle backflow preventer may be installed in a basement provided with an adequate drain which has an effective opening of twice the diameter of the device. (Ord. 4-1990 §1; Ord. 21 §31, 2012)

Secs. 13-158—13-170. Reserved.

ARTICLE IX

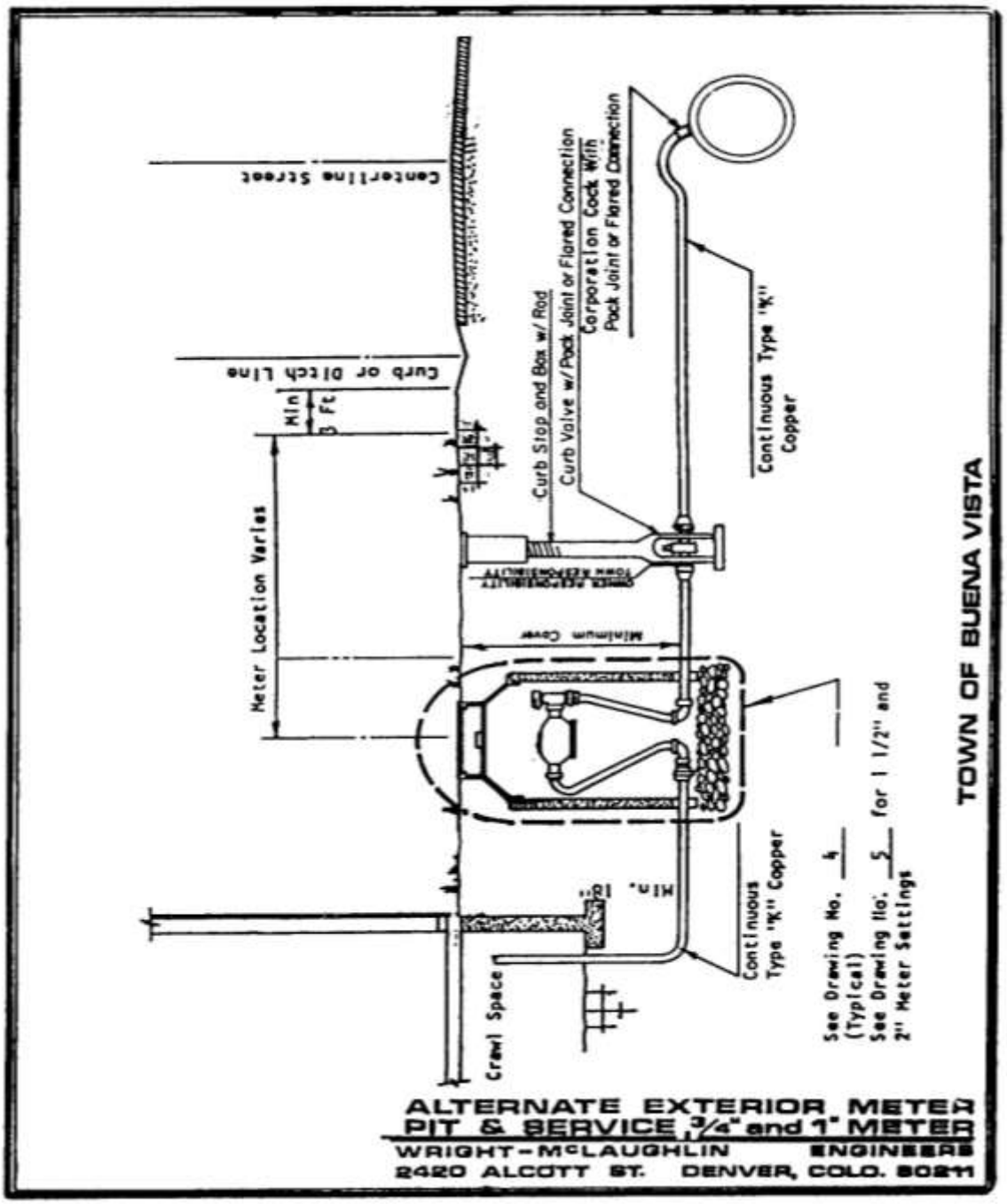
Water Meters and Design Standards

Sec. 13-171. Standard water service installation ¾" and 1" meter.



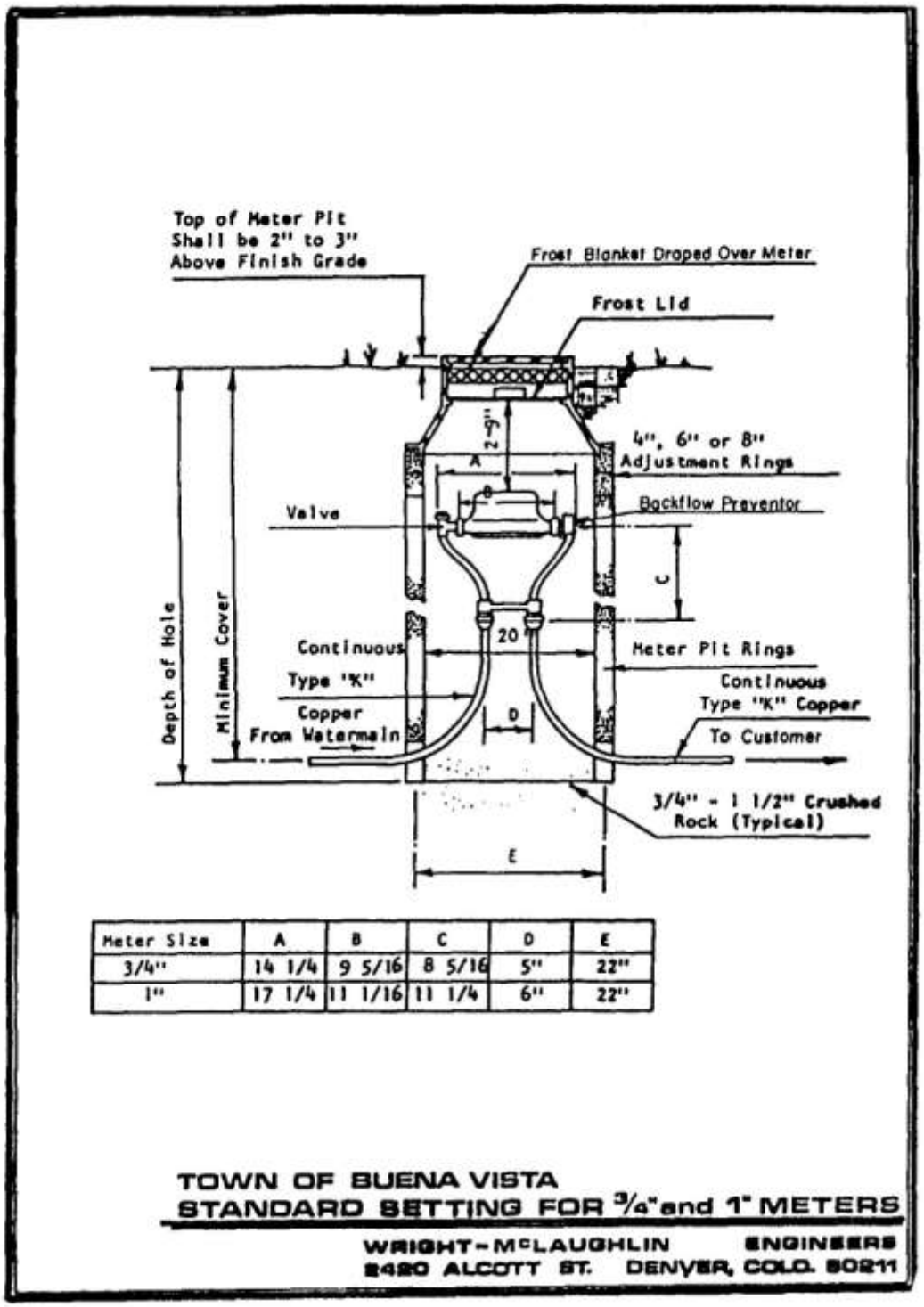
(Ord. 26-1992 §1)

Sec. 13-172. Alternate exterior meter pit and service ¾" and 1" meter.



(Ord. 26-1992 §1)

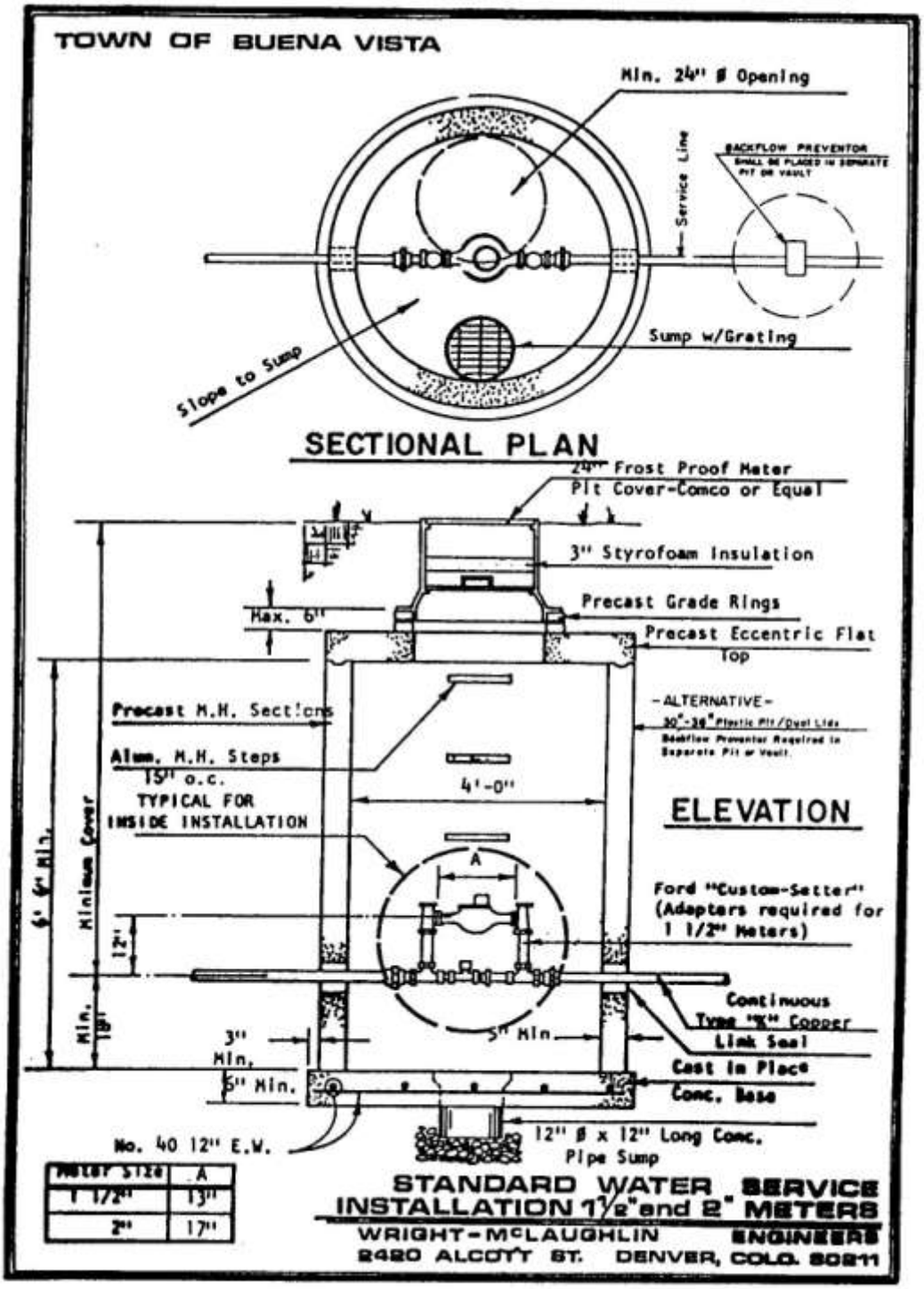
Sec. 13-173. Standard setting for ¾" and 1" meters.



Meter Size	A	B	C	D	E
3/4"	14 1/4	9 5/16	8 5/16	5"	22"
1"	17 1/4	11 1/16	11 1/4	6"	22"

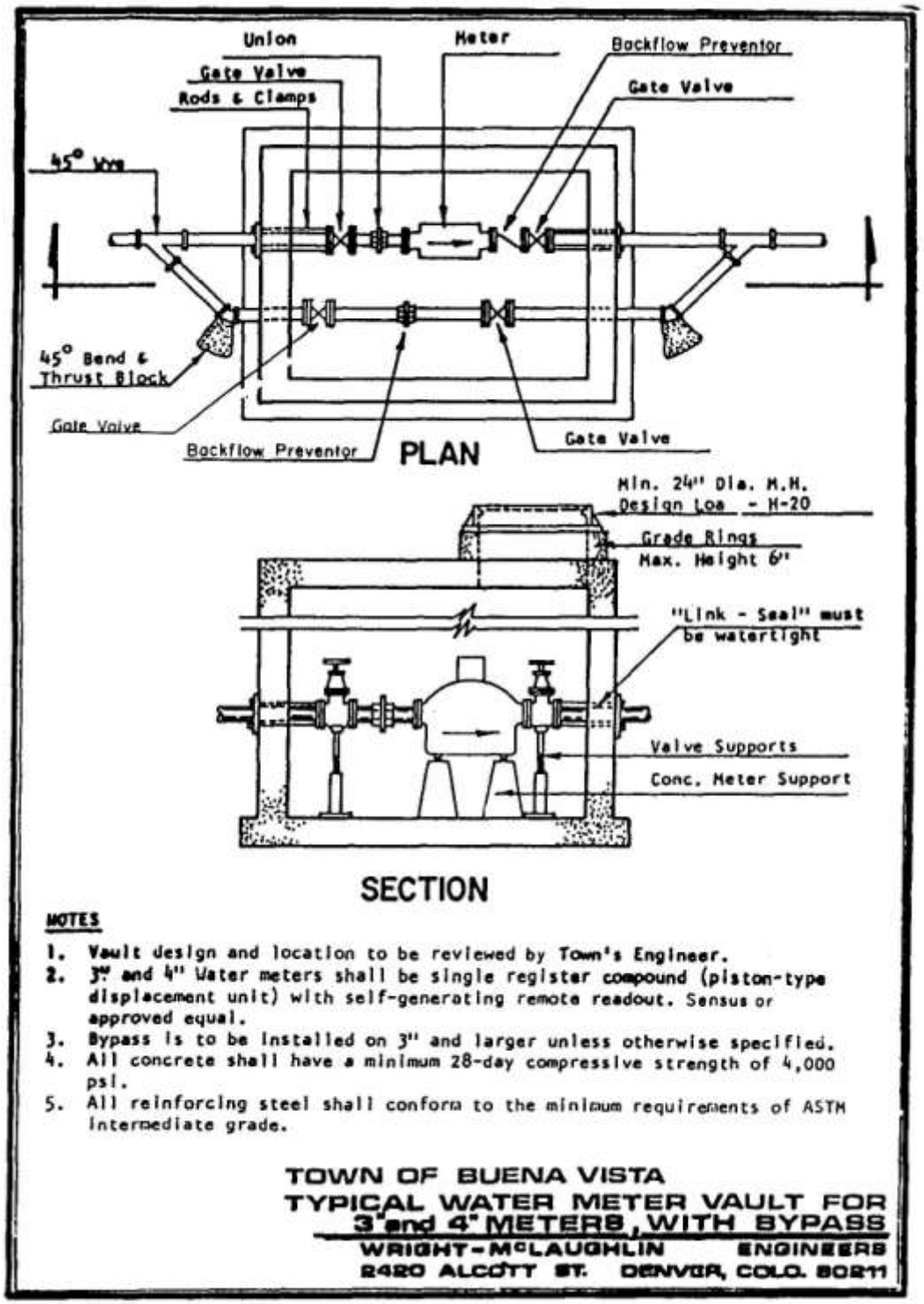
(Ord. 26-1992 §1)

Sec. 13-174. Standard water service installation 1½" and 2" meters.



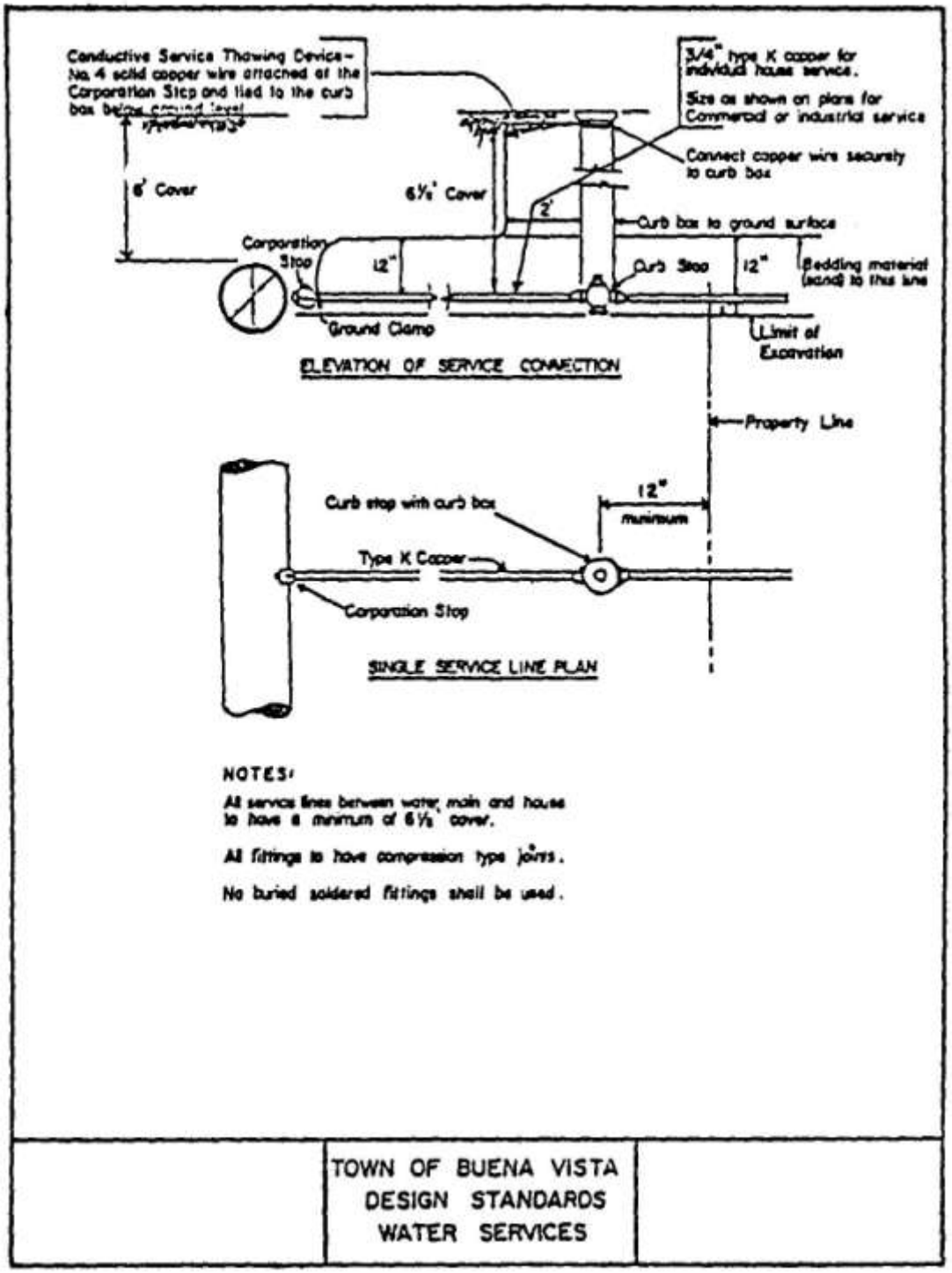
(Ord. 26-1992 §1)

Sec. 13-175. Typical water meter vault for 3" and 4" meters, with bypass.



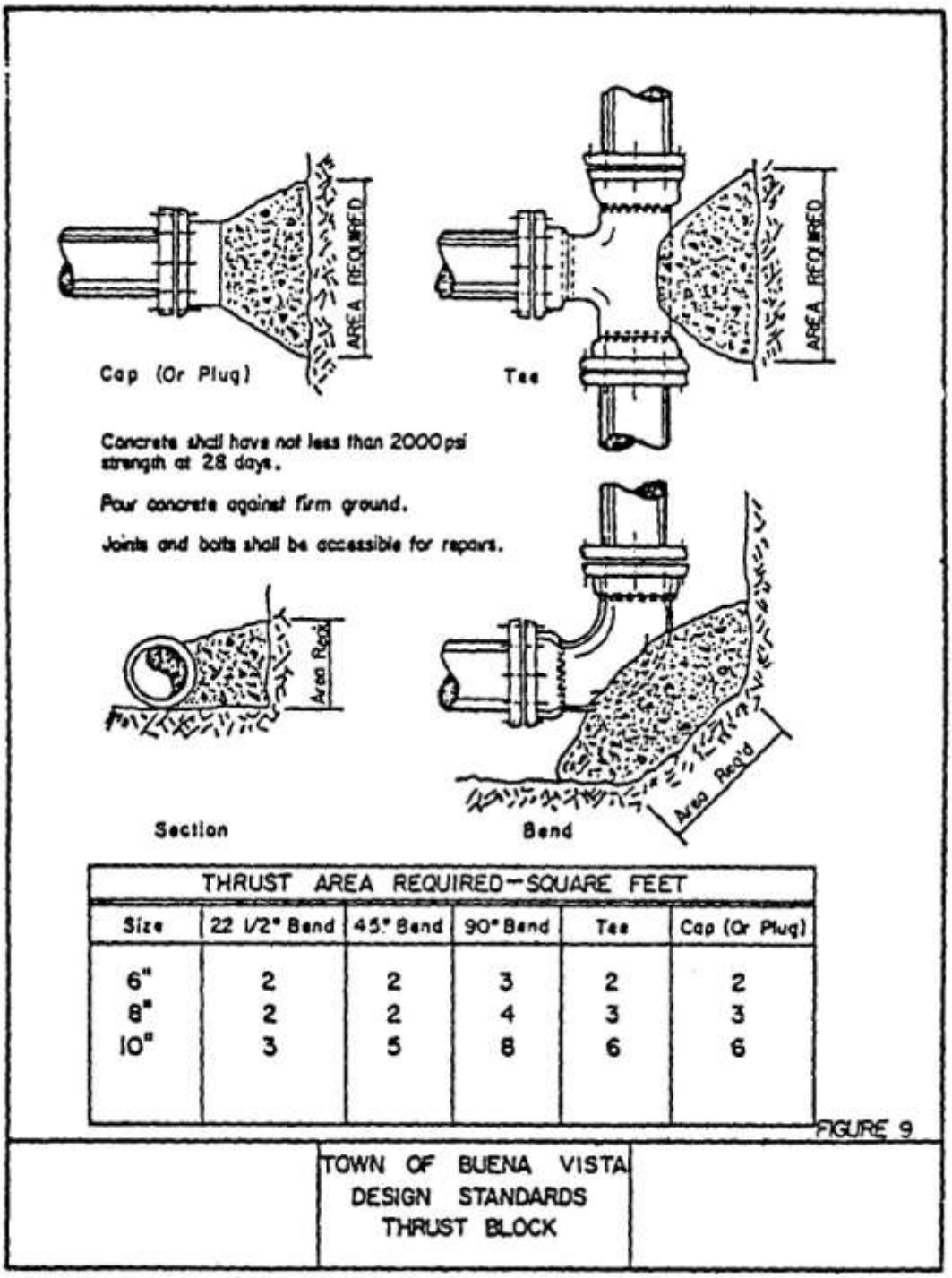
(Ord. 26-1992 §1)

Sec. 13-176. Design standards water services.



(Ord. 26-1992 §1)

Sec. 13-177. Design standards thrust block.



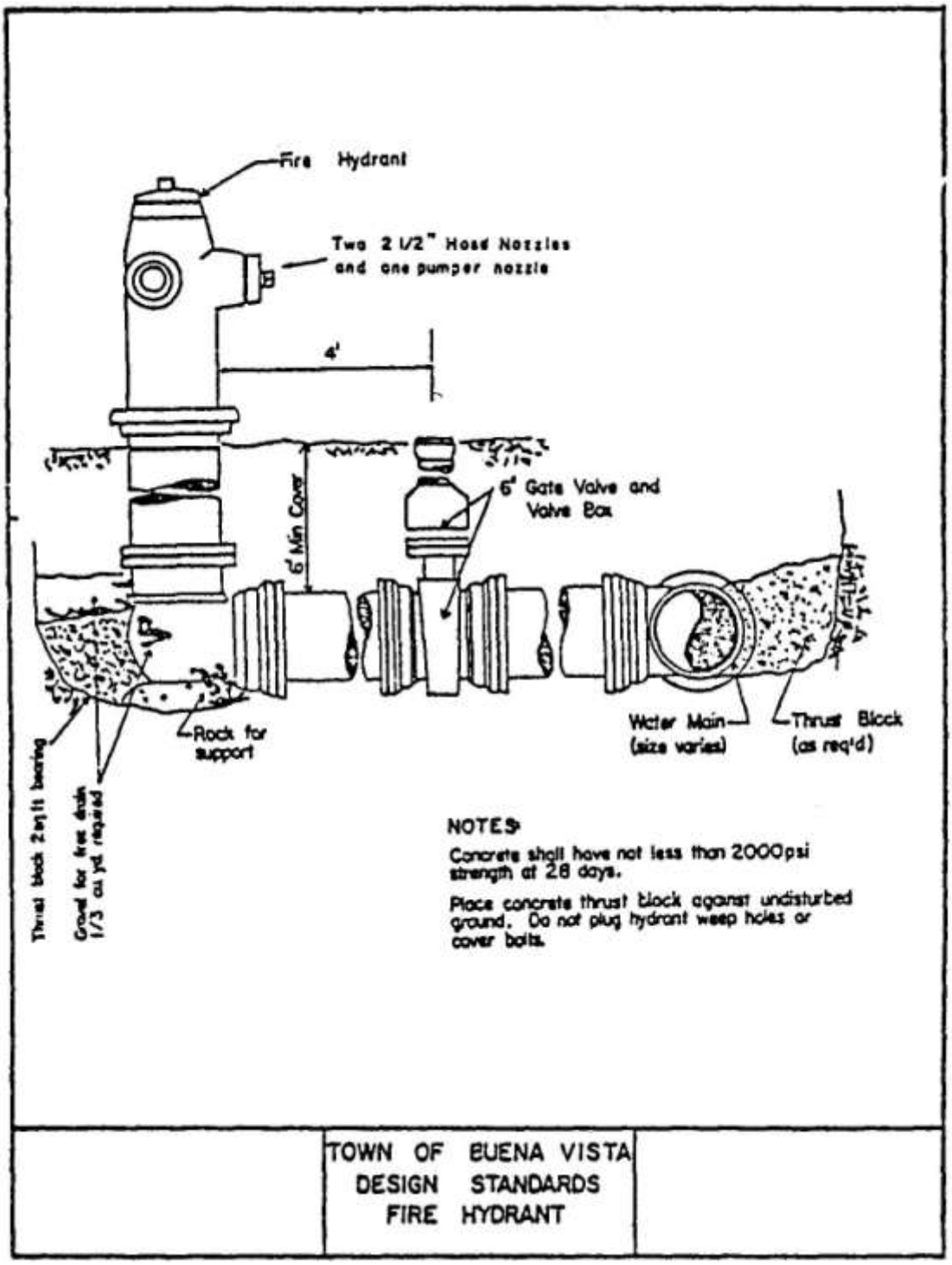
THRUST AREA REQUIRED – SQUARE FEET					
Size	22 1/2° Bend	45° Bend	90° Bend	Tee	Cap (Or Plug)
6"	2	2	3	2	2
8"	2	2	4	3	3
10"	3	5	8	6	6

FIGURE 9

TOWN OF BUENA VISTA
DESIGN STANDARDS
THRUST BLOCK

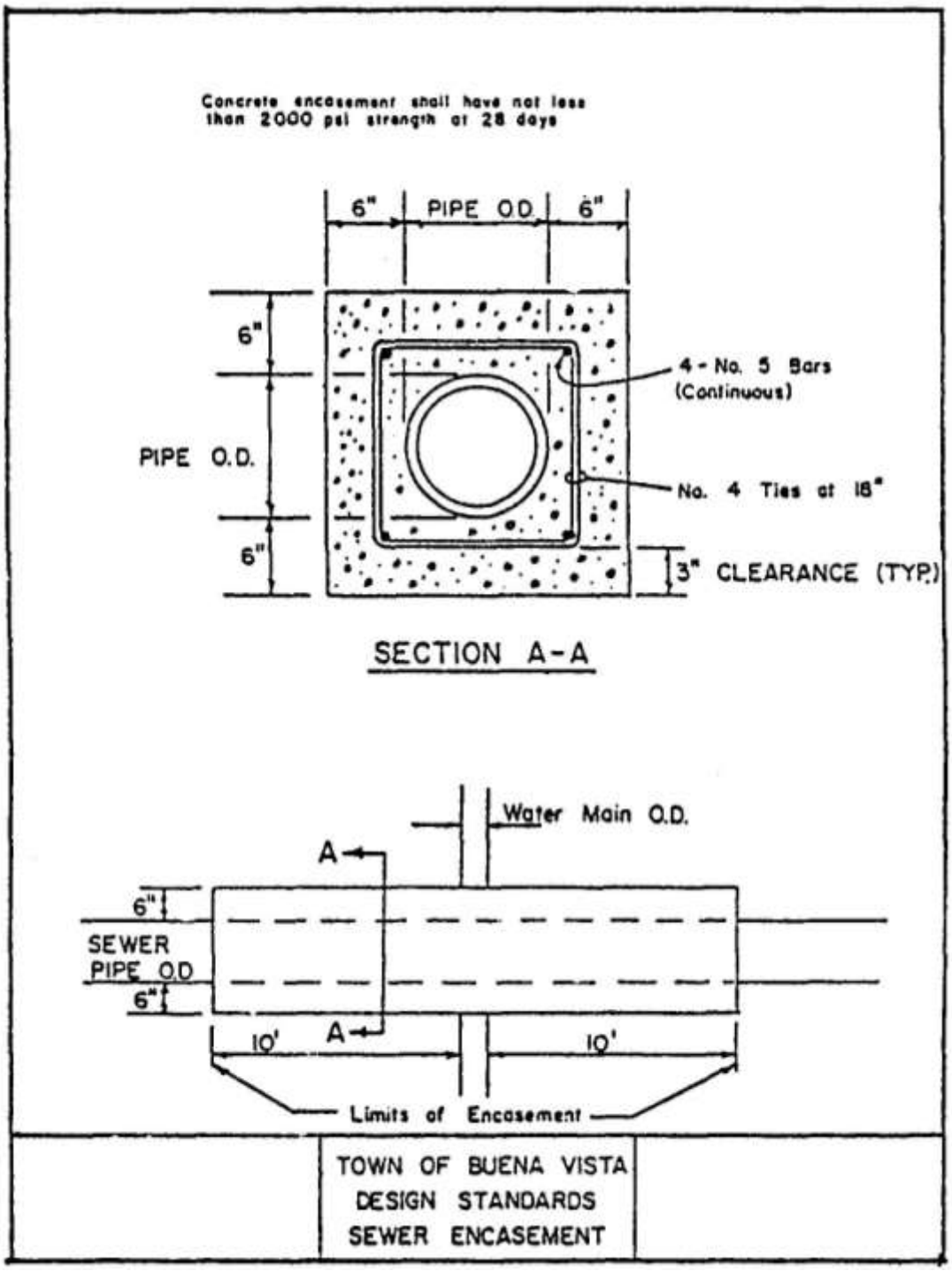
(Ord. 26-1992 §1)

Sec. 13-178. Design standards fire hydrant.



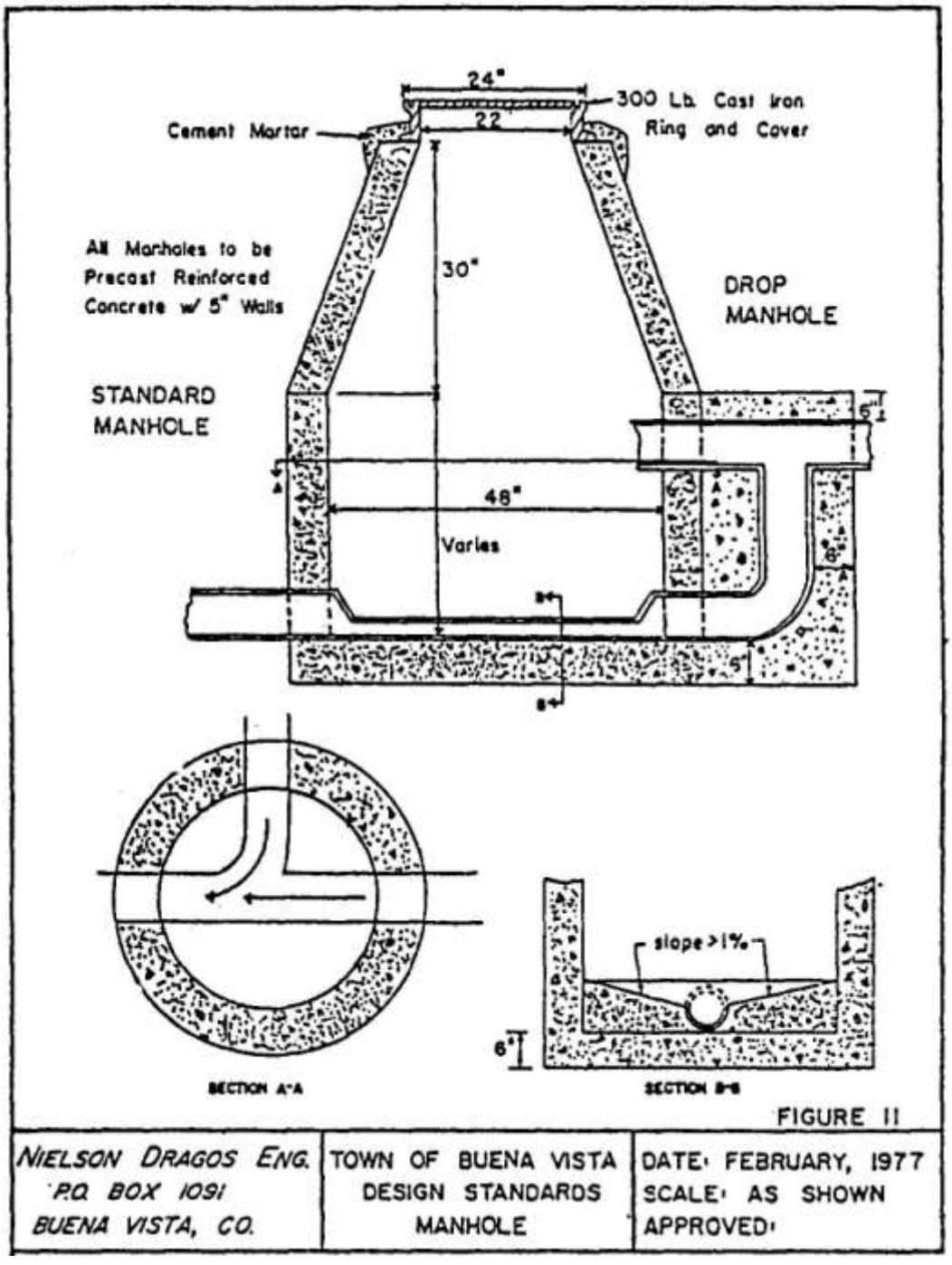
(Ord. 26-1992 §1)

Sec. 13-179. Design standards sewer encasement.



(Ord. 26-1992 §1)

Sec. 13-180. Design standards manhole.



(Ord. 26-1992 §1)

Secs. 13-181—13-200. Reserved.

ARTICLE X

Water Activity Enterprise

Sec. 13-201. Reestablishment of Enterprise.

There is hereby reestablished, pursuant to the terms and provisions of the Water Activity Law, Title 37, Article 45.1, C.R.S., the "Town of Buena Vista Water Activity Enterprise" (the "Enterprise"). The Enterprise shall consist of the business represented by all of the Town's water facilities and properties, now owned or hereafter acquired, whether situated within or without the Town boundaries, including all present or future improvements, extensions, enlargements, betterments, replacements or additions thereof or thereto (the "System"). The Enterprise shall have all of the authority, powers, rights, obligations and duties as may be provided or permitted by the Water Activity Law, and the Colorado Constitution, and as may be further prescribed by ordinance or resolution of the Town. (Ord. 3, 1995 §1)

Sec. 13-202. Governing body.

The governing body of the Enterprise (the "governing body") shall be the Board of Trustees of the Town, and shall be subject to all of the applicable laws, rules and regulations pertaining to the Board of Trustees. Whenever the Board of Trustees is in session, the governing body shall also be deemed to be in session. It shall not be necessary for the governing body to meet separately from the regular and special meetings of the Board of Trustees, nor shall it be necessary for the governing body to specifically announce or acknowledge that actions taken thereby are taken by the governing body of the Enterprise. The governing body may conduct its affairs in the same manner and subject to the same laws which apply to the Board of Trustees for the same or similar matters; provided that in accordance with Section 37-45.1-104(2), C.R.S., the governing body may authorize the issuance of bonds by adoption of a resolution. (Ord. 3, 1995 §2)

Sec. 13-203. Maintenance of enterprise status.

The Enterprise shall at all times and in all ways conduct its affairs so as to continue to qualify as a "water activity enterprise" within the meaning of Section 37-45.1-102, C.R.S., and as an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution. Specifically, but not by way of limitation, the Enterprise is not authorized, and shall not, receive ten percent (10%) or more of its annual revenue in grants from all Colorado state and local governments combined. (Ord. 3, 1995 §3)

Sec. 13-204. Issuance of bonds.

The Enterprise is authorized to issue bonds, notes or other obligations payable from the revenues derived or to be derived from the System, in accordance with the Water Activity Law. The Board of Trustees may also authorize the issuance of such bonds, notes or other obligations in accordance with law, and in so doing shall be deemed to be acting as both the governing body and the Board of Trustees. (Ord. 3, 1995 §4)

Sec. 13-205. Ratification and approval of prior actions.

All actions heretofore taken by the officers of the Town and the members of the Board, not inconsistent with the provisions of this Article, relating to the operation or creation of the Enterprise, are hereby ratified, approved and confirmed. (Ord. 3, 1995 §5)

Secs. 13-206—13-220. Reserved.

CHAPTER 15

Annexation

ARTICLE I

Annexation Procedures

Sec. 15-1. Purpose.

The purpose of this Chapter is to establish a procedure to bring land under the jurisdiction of the Town in compliance with the Colorado Municipal Annexation Act of 1965, as amended. (Ord. 26-1992 §1)

Sec. 15-2. Responsibilities of applicant.

In addition to other duties imposed upon all applicants by this Code and the Colorado Municipal Annexation Act of 1965, as amended, all applicants shall have the following responsibilities:

(1) The applicant is responsible for having a representative at all meetings where the request is reviewed. Failure to have a representative present will be cause to have the item withdrawn from the agenda of that meeting.

(2) The applicant shall consult with the Town Administrator to discuss any special conditions pertaining to the annexation and to obtain an annexation petition. (Ord. 26-1992 §1)

Sec. 15-3. Preliminary steps.

(a) Procedure. At least fifteen (15) days prior to the presentation of any annexation petition to the Board of Trustees, the applicant shall submit to the Town the annexation petition, the annexation fee of three hundred dollars ($300.00), a minimum of fifteen (15) copies of the master plan and the annexation map and a minimum of five (5) copies of all required supportive information.

(1) The Town Administrator shall review all documents submitted for completeness and accuracy. If all documents are complete and accurate, the Town Administrator shall submit the annexation petition to the Town Clerk. The Town Administrator may waive one (1) or more of the requirements described in this Section regarding the submission of a master plan or supporting information when such information is deemed unnecessary or inappropriate given the nature of the proposed annexation. While waived for purposes of initially processing the annexation application, information deleted or missing may be subsequently requested and required if determined necessary by either the Planning and Zoning Commission or the Board of Trustees in the performance of their respective annexation review and approval responsibilities.

(2) The Town Clerk shall present the annexation petition and a resolution initiating annexation proceedings to the Board of Trustees who shall thereafter establish a date for a public hearing. Upon the establishment of a public hearing date, the Town Clerk shall give appropriate notice in accordance with the Colorado Municipal Annexation Act of 1965, as amended, and shall specifically direct copies of the annexation petition and the resolution initiating the annexation procedure by certified mail to the Clerk of the Board of County Commissioners and to the County Attorney of the county wherein the territory is located. Copies of the annexation petition and the resolution initiating the annexation procedure shall also be sent by certified mail to any school

district or special district having territory within the annexed area. These copies shall be sent at least twenty-five (25) days prior to the public hearing.

(3) Upon acceptance of the annexation petition by the Board of Trustees, the Town Administrator shall furnish to the following entities copies of the annexation map and the master plan. The Town Administrator may submit copies of the annexation map and the master plan to additional interested entities as determined by the Town Administrator in its sole discretion. Such entities shall be advised by the Town Administrator of the scheduled hearing date and shall further be notified that any objections to the annexation and master plan must be submitted to the Town in writing no later than seven (7) days after receipt of the annexation map and master plan:

a. Telephone company.

b. Franchise utility companies.

c. Town Engineer.

d. Fire Department.

e. Town Public Works Department.

f. State Highway Department.

(4) The Planning Commission shall review the annexation map, master plan and zoning request at a public hearing and shall submit a written recommendation to the Board of Trustees.

(b) Annexation map. All annexation maps shall be made with an engineer's scale, minimum scale to be one (1) inch represents one hundred (100) feet, and shall be on a reproducible medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. The annexation map shall contain the following information:

(1) The date of preparation, the scale and a symbol designating true north.

(2) The name of the annexation.

(3) The names, addresses and phone numbers of the applicant and the firm or person responsible for preparing the annexation map.

(4) The legal description.

(5) Distinction of the boundary that is contiguous to the Town and the length of same.

(6) Lot and block numbers if the area is already platted.

(7) Existing and proposed easements and rights-of-way.

(8) Existing and requested zoning and acreage of each requested zone.

(9) Ownership of all parcels within and adjacent to the annexation.

(10) Appropriate certification blocks as directed by the Town Administrator.

(c) Master plan. Every application for annexation shall be accompanied by a master plan which shall reasonably describe the existing and proposed future development of the annexation territory. In the event an applicant desires to obtain zoning, subdivision or other land development approval for the annexation territory concurrently with the annexation application as permitted under Section 31-12-115, C.R.S., then the applicant shall timely submit the appropriate applications and plats in accordance with the criteria set out in Chapters 16 and/or 17 of this Code. All master plans shall be presented on a reproducible medium not less than twenty-four (24) by thirty-six (36) inches in size, shall be drawn at a scale not more than one (1) inch equals one hundred (100) feet and shall contain the following information. The master plan may contain more than one (1) sheet.

(1) The name, address and telephone number of the person who prepared the master plan, along with the date of preparation, the scale and a symbol designating true north.

(2) The name of the proposed annexation.

(3) The name, address and telephone number of the annexation applicant.

(4) All existing and proposed vehicular and pedestrian rights-of-way and easements within or serving the annexation territory.

(5) The boundaries, dimensions and numbers of any existing or proposed lots or blocks.

(6) All existing and proposed residential and nonresidential densities.

(7) All existing and proposed zoning for the annexation territory.

(8) All existing and proposed public utility easements, and all sites reserved or dedicated for public facilities or uses, including parks.

(9) All watercourses and drainage easements, and a surface grade map utilizing two-foot contours.

(d) Supportive information. The following supportive information shall be submitted with the annexation map and master plan:

(1) Soils description and limitation.

(2) A preliminary utility plan, including a description of the anticipated need and proposed timing for the extension of the municipal water system to serve the annexation territory. Unless specifically waived in whole or in part by the Board of Trustees during the annexation review and approval process upon a finding that such waiver would serve the best interests of the Town, every applicant for annexation shall, as a condition of annexation approval, be required to dedicate water rights to the Town of a quantity and seniority determined by the Town, upon the expert advice of its water rights consultants and in its sole discretion, to be reasonably necessary and acceptable to supply sufficient water for the current and/or reasonably anticipated land uses within the annexation territory. Alternatively, and at the Town's option, the annexation applicant shall provide a cash payment to the Town in lieu of dedicating the required water rights, such payment

to be in an amount determined by the Town, upon the expert advice of its water rights consultants and in its sole discretion, to be reasonably necessary to purchase water rights of sufficient quantity and seniority to reliably provide water satisfying the water service demand, or anticipated demand, of the annexation territory.

(3) Mailing addresses of all property owners within three hundred (300) feet of the annexation.

(4) An identification and documented description of any water rights associated with the territory proposed to be annexed and the water rights to be dedicated to the Town as a condition of annexation approval.

(5) Vicinity map with one and one-half (1½) mile radius, at a minimum scale of one (1) inch represents two thousand (2,000) feet.

(6) Statement on community need for proposed annexation and zoning.

(7) For all annexations in excess of ten (10) acres, the applicant shall obtain from the school district governing the area to be annexed a statement of the effect of the annexation upon the school district, including an estimate of the number of students generated by the proposed annexation and the capital construction required to educate such students. (Ord. 26-1992 §1; Ord. 14-1998, §1; Ord. 5-2004 §§1, 2)

Sec. 15-4. Annexation impact report.

(a) For all annexations in excess of ten (10) acres, the Town shall prepare an impact report regarding the proposed annexation not less than twenty-five (25) days before the date of the annexation hearing. One (1) copy of the impact report shall be filed with the Board of County Commissioners governing the area proposed to be annexed within five (5) days thereafter. The preparation and filing of the annexation impact report may be waived upon approval of the Board of County Commissioners governing the area proposed to be annexed.

(b) The annexation impact report shall include the following:

(1) A map or maps of the Town and adjacent territory showing the following information:

a. The present and proposed boundaries of the Town in the vicinity of the proposed annexation.

b. The present streets, major trunk water lines, sewer interceptors and outfalls, other utility lines and ditches and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation.

c. The existing and proposed land use pattern in the areas to be annexed.

(2) A copy of any draft or final pre-annexation agreement, if available.

(3) A statement of the Town's plans for extending or providing for municipal services within the area to be annexed.

(4) A statement of the Town's plans for the financing of municipal services to be extended into the area to be annexed.

(5) A statement identifying all existing districts within the area to be annexed.

(6) A statement of the effect of the annexation upon the school district governing the area to be annexed, as is more fully set forth in Section 15-3(d)(7) of this Chapter. (Ord. 26-1992 §1)

Sec. 15-5. Consideration of annexation ordinance.

Upon the submission of documentation in accordance with this Chapter and upon compliance with the notice and hearing requirements set forth in the Colorado Municipal Annexation Act of 1965, as amended, the Board of Trustees may consider the approval of an ordinance annexing the subject property to the Town unless an annexation election is required under Section 31-12-112, C.R.S. In the event the Board of Trustees considers and disapproves such ordinance, no similar ordinance annexing the subject property may be heard for a period of one (1) year from the date of such disapproval. (Ord. 26-1992 §1; Reso. 46-1999; Ord. 5-2004 §3; Ord. 10-2004)

Sec. 15-6. Final submission.

In the event the Board of Trustees approves an annexation ordinance as set forth in Section 15-5 above, the applicant shall submit to the Town Administrator two (2) Mylars of the final annexation map and two (2) Mylars of the master plan within ten (10) days of the effective date of the ordinance. (Ord. 26-1992 §1; Reso. 46-1999; Ord. 10-2004)

Secs. 15-7—15-20. Reserved.

CHAPTER 16

Zoning

ARTICLE I

General Provisions

Sec. 16-1. Title.

This Chapter shall be known and may be cited as "The Town of Buena Vista Zoning Code," or simply, "The Zoning Code." (Prior code 17.01.010; Ord. 11-2001 §1)

Sec. 16-2. Authority and application.

This Chapter has been adopted pursuant to the authority vested in the Town under Article 23, Part 3, of Title 31, C.R.S., and is intended to promote and protect the health, safety and welfare of the citizens and territory of the Town. The provisions of this Chapter shall apply to all land within the Town and shall be liberally construed in order to implement and serve the purposes and goals set forth herein. Unless specifically exempted from its terms, all regulations contained in this Chapter shall apply to the lands and activities of all governmental agencies, whether federal, state, county or municipal, to the extent permitted by law. (Ord. 11-2001 §1)

Sec. 16-3. Enforcement and penalties.

(a) It shall be unlawful for any person, including an owner, occupant, builder or agent, to develop or use, or to attempt to develop or use, any real property in violation of the provisions of this Chapter, and violations of this Chapter shall be punishable upon conviction for each separate offense by a fine or imprisonment, or both, as set forth in Article IV of Chapter 1 of this Code.

(b) No building permit, water system connection permit, access permit or other permit shall be issued for any building, development, structure, lot or parcel created, used, sold or conveyed in violation of this Chapter.

(c) All persons are presumed to know the terms and requirements of this Chapter and the extent of the legal authority of the Town and its employees, boards and commissions to issue zoning approvals or permits. Any permit or approval issued in error, or otherwise not in conformity with the requirements of this Chapter, shall be void. Similarly, any permit or approval issued in reliance upon or as a result of a materially false statement or representation made in the process of obtaining a permit or development approval shall, likewise, be void. Any person having received a void or voidable permit or approval shall not be relieved from having to comply with all applicable terms and conditions of the Chapter, and the Town shall not be estopped from fully enforcing same. (Ord. 11-2001 §1)

Sec. 16-4. Definitions.

As used in this Chapter, the following terms shall have the meanings provided below:

Accessory dwelling unit (ADU) means an attached or detached dwelling unit that is accessory and subordinate in size and character to a principal building situated on the same lot or parcel, and that otherwise satisfies the requirements contained in this Chapter.

Alley means a minor public thoroughfare set aside or dedicated for vehicular traffic, or entering or going through a city block and generally used for service purposes.

Antique vehicle means a motor vehicle valued principally for its early date of manufacture or historical character or design, and which if not operable is substantially intact. A *junked vehicle* shall not qualify as an *antique vehicle.*

Apartment means a room or suite of rooms in a multiple dwelling used or designed for occupancy by a single family.

Bed-and-breakfast means a portion of an owner-occupied residence made available to paying guests for short-term lodging.

Building means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or property of any kind.

Building, accessory means a detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building but not for residential purposes and located on the same lot therewith.

Building coverage means that portion of the surface of a lot or other unit of land covered, or permitted to be covered, by buildings measured on a horizontal plane from the exterior foundation walls of all buildings at ground level, and sometimes known as *lot coverage* or *site coverage.*

Building line means the line established by the vertical wall of a building facing and closest to the street providing access to the lot or land upon which the building is located.

Building, principal means a building in which is conducted the principal use of the lot on which the building is located.

Child care center means a state-licensed facility, by whatever name known, that is operated for the whole or part of a day for the care of five (5) or more children eighteen (18) years of age or younger who are not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and/or with or without stated educational purposes. The term shall not include any dwelling licensed as a foster care home by the State or other government agency, but does include, without limitation, facilities commonly known as day care centers, before- and after-school centers/homes and preschools.

Civic structure means a structure of, relating to or belonging to a city or a nonprofit organization, including schools, parks, churches, governmental buildings, etc., where the sales of goods or services are incidental in nature.

Clear sight triangle means the area at the intersection of any two (2) streets that is to be kept clear of any shrubs, groundcovers, berms, signs, structures or other materials greater than two (2) feet in height above the street centerline grade. A clear sight triangle is measured at the intersection of any two (2) streets. A triangle measuring fifteen (15) feet for alleys, fifteen (15) feet for local streets, thirty (30) feet for collector streets and fifty (50) feet for arterial streets along

each curb or edge of roadway/pavement from their point of intersection, the third side being a diagonal line connecting the first two (2).

Clinic, office, laboratory, dental or *medical* means a building or group of buildings in which the primary use is the provision of health care services to patients or clients. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, massage therapy, mental health professional, physical and/or occupational therapy, related medical services, vocational training, placement service and social and recreational activities suitable for disabled adults and children or similar service, or a laboratory which provides bacteriological, biological, medical, X-ray, pathological and similar analytical or diagnostic services to doctors or dentists. No fabricating is conducted on the premises, except the custom fabrication of dentures or similar dental appliances. This definition excludes in-patient or overnight care, animal hospitals, veterinarians or other similar services.

Commercial use means a business or activity involving the sale or exchange of services, goods or commodities at retail or otherwise, and includes offices and office uses.

Common open space means a parcel of land, an area of water, or a combination of land and water, within the site designated for a planned unit development, designed and intended primarily for the use or enjoyment of residents, occupants and owners of the planned unit development. Areas included in driveways or otherwise required to move cars in or out of parking spaces shall not be considered as common open space.

Condominium means a common interest community in which portions of the real estate are designated for separate ownership (e.g., units) and the remainder of which is designated for common ownership solely by the owners of the separate ownership portions. A common interest community is not a *condominium* unless the undivided interests in the common elements are vested in the unit owners.

Condominium unit means an individual air-space unit together with the interest in the common elements appurtenant to such unit.

Conference rooms or centers means a room or building primarily used for assembly purposes.

Customary incidental home occupation, or simply *home occupation,* means a business conducted within a dwelling, or within an accessory building attached or associated with a dwelling, by a full-time resident of the dwelling, and which use is clearly incidental and secondary to the residential use of the dwelling and complies with the operational standards set forth in this Chapter; excepting what are commonly known as "garage sales" or "rummage sales" conducted on an occasional basis (not more than four (4) times per year).

Day care home means a state-licensed dwelling or residence providing less than twenty-four-hour care to groups of five (5) or more children under the age of eighteen (18) years, or five (5) or more developmentally disabled or mentally ill adults, or five (5) or more adults sixty (60) years of age or older, who are not related to the owner, operator or manager of the dwelling.

Deck means an open, unroofed platform twelve (12) inches or more above finished grade and supported on the ground, extending from a house or other building.

Dormitory means a building, oftentimes associated with an educational facility, providing housing for a number of unrelated persons utilizing common entrances and hallways, single or group sleeping accommodations and shared bath and toilet facilities.

Dwelling or *dwelling unit* means a building, or a portion thereof, designed and intended to be used by a person or family for private residential purposes and which has its own separate entrance and is equipped with facilities for sleeping, bathing and cooking and has permanent plumbing.

Dwelling, multifamily means a building designed and constructed to contain three (3) or more dwelling units.

Dwelling, single-family means a detached building containing only one (1) dwelling unit.

Dwelling, two-family or *duplex* means a detached building designed and constructed to contain two (2) dwelling units separated by a fire-resistant common wall in a side-by-side configuration, or an over-under stacked configuration.

Equivalent performance engineering basis means that by using engineering calculations or testing, following commonly accepted engineering practices, all components and subsystems will perform to meet health, safety and functional requirements to the same extent as required for other single-family housing units.

Family means any individual, or two (2) or more persons related by blood or marriage or between whom there is a legally recognized relationship, or a group of not more than six (6) unrelated persons occupying the same dwelling unit.

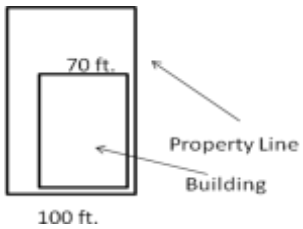
Fence means a man-made barrier constructed or installed to demarcate or create a boundary, partition or enclosure, whether solid or otherwise, and/or used to protect, confine, screen or conceal, and includes, without limitation, freestanding walls and retaining walls.

Floor area/space, gross means the sum of all horizontal floor areas within a building measured from the interior faces of the exterior building walls or from the interior faces of common walls separating buildings.

Floor area/space, net means the total floor area within the perimeter of the inside walls of the building exclusive of areas for hallways, stairs, closets, storage and restrooms.

Foster care home means a residence that is certified by the county department of human services or a child placement agency for the purpose of providing twenty-four-hour family care for one (1) or more children under the age of eighteen (18) years who are not related to the head of such home, except in the case of relative care.

Frontage buildout means the total lineal footage of the front wall of a building and planted components over fifteen (15) feet tall with a continuous canopy facing the public right-of-way, divided by the lot width.



Gasoline or filling stations means a place where gasoline and petroleum products are sold.

Height means the distance measured on a vertical plane from the average preconstruction or postconstruction grade around the perimeter of a building or structure, whichever is lower, to the highest point on the roof surface of the building or structure.

High intensity office means a room, set of rooms or building used as a place for commercial, professional or bureaucratic work, which exceeds a cumulative area of two thousand five hundred (2,500) square feet.

High intensity retail means a business engaged in sales of goods and services, which exceeds a cumulative area of two thousand five hundred (2,500) square feet.

High water use zones means areas requiring watering more than twice per week or turf grass. Edible gardens are not considered high water zones.

Hotel or *motel* means an establishment that provides lodging and usually meals and other services for travelers and other paying guests.

Inoperable or *wrecked* means in a state of disrepair or disassembly; does not work and/or has value only for parts, salvage or junk.

Junk means, without limitation, scrap, waste material, disassembled or inoperable machinery, equipment or motor vehicles, discarded machinery or motor vehicle parts and similar materials or items.

Junked vehicle shall have the same definition as described in Section 8-41(3) of this Code.

Junkyard means any lot, land or structure used in whole or in part for the collection, storage and/or sale of waste paper, rags, scrap, used wood and nonrecyclable metal or other discarded materials, and includes the collection, storage and salvaging of inoperable machinery, equipment, vehicles (excluding antique vehicles) and vehicle parts, whether or not for sale; but excluding *recycling facilities, recycling collection centers* or enclosed recycling bins made available to the public for the collection of commercially recyclable glass, aluminum, metals, plastic or newspaper.

Landscape area, minimum means an area which has been improved through the planting and maintenance of living plants such as trees, shrubs, plants, vegetative groundcover, turf grasses or other natural nonliving elements such as rock, stone and bark.

Lodging unit means a room intended for occupancy by a paying guest or guests on a temporary or transient basis, usually not exceeding thirty (30) days, and where no kitchen or other food preparation facilities are provided. A *lodging unit* is normally part of a larger building containing two (2) or more lodging units, e.g., a motel or lodge.

Lot means one (1) of the following:

a. A defined single unit of land created under the Town or County subdivision regulatory process as reflected on a duly approved plat recorded in the office of the County Clerk and Recorder;

b. If created and recorded prior to adoption by the Town or County of subdivision regulations, a single unit of land designated by a separate and distinct number or letter on a plat recorded in the office of the County Clerk and Recorder;

c. A single unit of land created and designated by number or letter on the original Town site or a Town site addition map for the Town, or on any annexation map or plat duly approved by the Town and recorded in the records of the County Clerk and Recorder;

d. A single unit of land created and designated in one (1) of the manners described in Subparagraph a, b or c above to which, through a lot line adjustment or otherwise, additional land has been added, resulting in a single unit of land of greater size than originally indicated or described on the plat or map referred to in Subparagraph a, b or c above;

e. If created other than by the Town or County subdivision process and not designated and identified on a recorded plat duly executed by the Town or County, a unit of land held under separate ownership conforming with the minimum lot size requirements for the applicable zone district and abutting upon at least one (1) public street or right-of-way; or

f. A single unit of land conforming with the minimum lot size requirements for the applicable zone district that is created through the merger of nonconforming lots or tracts as provided in Section 16-125.5 of this Code.

Lot shall not mean a single unit of land created and designated in one (1) of the manners described in Subparagraph a, b or c above to which, through a lot line adjustment or otherwise, land has been removed or subtracted, resulting in a single unit of land of smaller size than originally indicated or described on the plat or map referred to in Subparagraph a, b or c above and that does not meet the minimum lot size requirements for the applicable zone district

Lot area means the total horizontal area within the lot lines of a lot or other parcel of land.

Lot depth means the average distance measured on a horizontal plane between the front and rear lot lines.

Lot, double-frontage means a lot having frontage on two (2) parallel or almost parallel streets.

Lot, duplex conversion means a lot resulting from the subdivision of an existing duplex and the land upon which it is located for the purpose of creating two (2) separate dwelling units and lots under separate ownership.

Lot line, front means the property line closest to and normally dividing a lot or other unit of land from the street or street right-of-way upon which the lot or land abuts, and which street or street right-of-way is used and referenced in assigning a street number or address for the subject lot or land.

Lot line, rear means the lot line opposite the front lot line, or in the case of an irregularly shaped lot, that lot line which is determined by the Town from the lot's orientation and any existing structures to be the rear lot line.

Lot line, side means the lot lines defining a lot other than the front and rear lot lines.

Lot of record means a lot which is part of a legally authorized subdivision recorded in the records of the County Clerk and Recorder, or a lot that was legally created and/or defined and illustrated on a plat, map or deed that was recorded in the records of the County Clerk and Recorder prior to the adoption by the Town or County of subdivision regulations.

Lot, reverse-corner means a corner lot which abuts three (3) streets.

Lot width means the distance between the side lot lines measured on a horizontal plane along the front yard setback line or building line, whichever is longer.

Low intensity office means a room, set of rooms or building used as a place for commercial, professional or bureaucratic work, which does not exceed a cumulative area of two thousand five hundred (2,500) square feet.

Low intensity retail means a business engaged in sales of goods and services, which does not exceed a cumulative area of two thousand five hundred (2,500) square feet.

Manufactured home means a single-family dwelling which:

a. Is partially or entirely manufactured in a factory;

b. Is not less than twenty-four (24) feet in width and thirty-six (36) feet in length;

c. Is installed on an engineered permanent foundation;

d. Has brick, wood or cosmetically equivalent exterior siding and a pitched roof; and

e. Is certified pursuant to the "National Manufactured Housing Construction and Safety Standards Act of 1974," 42 U.S.C. §5401 *et seq.*, as amended.

Mobile home (trailer) means any wheeled vehicle, exceeding either eight (8) feet in width or thirty-two (32) feet in length, excluding towing gear and bumpers, without motive power, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may be drawn over the public highways by a motor vehicle (Section 42-1-102, C.R.S.).

Mobile home park means any premises one (1) or more acres in size used or set apart for the purpose of supplying to the public parking space for mobile homes for living or sleeping purposes, and which includes any buildings, structures, vehicles or enclosure used or intended for use as part of such mobile home park (includes trailer coaches).

Mobile home site means a plot of ground within a mobile home park designated for the accommodation and use of one (1) trailer or mobile home and containing all improvements and

utility connections required under this Chapter and other applicable Town codes (includes trailer coaches).

Open sales lot or *yard* means an accessory use consisting of a defined area or site used exclusively for the retail display and sale of new or used motor vehicles, trailers, agricultural or other mechanized equipment or machinery, boats and recreational vehicles or equipment utilized in association with a principal retail commercial use, but excluding the display, stockpiling or keeping of junk or junked vehicles.

Overlay Zoning District means an area where certain additional requirements are superimposed upon the underlying zoning district where the requirements of the underlying district may or may not be altered.

Parking space means a paved or other all-weather hard-surface area which is designated and reserved exclusively for the parking of vehicles and which has unobstructed access to a street or alley.

Parking space, off-street means a parking space not within a public street or public right-of-way.

Patio means an area, cement or other hard surface such as stone, adjoining a house and used as an area for outdoor lounging, dining, etc.

Plan means the provisions for development of a planned unit development, which may include but need not be limited to easements, covenants and restrictions relating to use, location and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets, ways, roads, pedestrian areas, parking facilities, common open space and other public facilities. *Provisions of the plan* means the written and graphic materials referred to in this definition.

Planned unit development (PUD) means 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 dwelling units, residential, commercial, educational, recreational or industrial uses, or any combination of the foregoing, the plan for which does not correspond in lot size, bulk or type of use, density, lot coverage, open space or other restriction to the existing land use regulations.

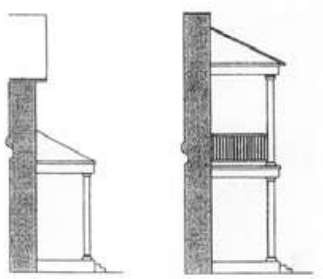
Planned unit development zoning means a zoning district or zoning district overlay designation which when applied to a defined area of land allows for the modification of zoning and subdivision requirements and regulations so as to provide for and promote flexible and innovative land planning, uses and development pursuant to a unified plan.

Plat means a printed instrument drawn to scale by a professional land surveyor registered or licensed under the laws of the State which accurately depicts, at a minimum, the location, dimensions and boundaries of lots or other units of land, along with adjacent public streets and rights-of-way and easements, and which is to be signed by Town or county officials and recorded in the offices of the County Clerk and Recorder.

Porch means a covered structure attached to a building forming a covered entrance to a vestibule or doorway. It is external to the walls of the main building proper but may be enclosed

by screen, latticework, broad windows or other light frame walls extending from the main structure. For the purpose of measuring setback, the porch may be counted as the start of the building edge.

Front Porches:



Primary building frontage means the longest horizontal linear dimension of a building that is adjacent to or fronts on a public street. The building wall fronting on a public street that includes or is closest to the main entrance of the structure shall be the primary building frontage for a square building situated on the corner of two (2) public streets.

Recyclable material means reusable residential, commercial and industrial materials that are intended for remanufacturing or reconstitution including, but not limited to, metals, glass, plastic, wood and newspaper. Recyclable materials do not include yard waste, junk, rubbish, refuse, tires, waste paper, liquids or hazardous waste.

Recycling collection center means a facility or container for the drop-off and temporary holding of nonliquid recyclable materials originally designed and utilized in household or consumer uses such as paper, cardboard, glass, recyclable metal or plastic.

Recycling facility means a building or an enclosed area where the primary activity is the collection and/or separation of nonliquid recyclable materials (including household recyclables) and the temporary storage of recyclable material prior to shipment to others for reuse and/or processing into new products. A recycling facility may include a recycling collection center.

Restaurant means a business establishment where meals and/or refreshments may be purchased. This also includes pubs, bars, breweries and taverns.

Retail display means the on-site outdoor exhibition of products or merchandise for retail sale by a retail business. For purposes of this definition, *on-site* means the lot, lots or land on which the retail business is operating, but excluding abutting public land or rights-of-way in the absence of an encroachment license or permit issued by the Town or other public entity owning said abutting public land or right-of-way.

Rowhouse or *townhouse* means an attached single-family dwelling unit located on land owned by the unit owner and situated in a row of three (3) or more similar horizontally attached dwelling units, each unit having its own separate access to the outdoors and its own separate water, sanitary sewer, ventilation and heating system, inclusive of separate utility service lines and meters, and

which is separated from attached adjacent dwelling units by a fire-resistant common wall constructed in conformity with the Town's uniform fire and building codes.

Setback means the minimum horizontal distance required, in any given zone district, to be maintained free of man-made structures between a lot line or property line (projected vertically) and the nearest point along or on an exterior wall or surface of a building or other structure.

Setback line means a line running parallel to a lot line or property line defining the boundary of a setback which is projected on a vertical plane from the ground skyward.

Sign means a structure or part thereof displayed for the purpose of conveying some information, knowledge or idea to the public.

Sign, advertising means a sign which directs attention to a business, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidentally on the premises if at all.

Sign, business means a sign which directs attention to the business, profession or principal use conducted on the premises.

Sign, incidental or *accessory* means:

a. Nonilluminated professional or announcement sign not exceeding two (2) square feet in area and attached wholly to a building;

b. A sign pertaining only to the rent, lease or sale of the premises upon which displayed and which does not exceed eight (8) square feet in area;

c. A sign or bulletin board not exceeding twelve (12) square feet in area upon the premises of a church or other institution or business;

d. A nonilluminated sign indicating the name and purpose of a building and the name of its management, not exceeding three (3) square feet in area;

e. Nonilluminated signs for the control of traffic and parking, not exceeding four (4) square feet in area; or

f. Nonilluminated or indirectly illuminated signs indicating names of residents and house numbers, not exceeding one (1) square foot in area.

Sign, nonilluminated means a sign which is not illuminated, either directly or indirectly.

Sign, outdoor advertising means a freestanding or attached poster-panel sign or painted bulletin or fabricated sign.

Sign, temporary construction means a nonilluminated sign of persons or firms connected with work on buildings under actual construction, not exceeding twelve (12) square feet in area.

Special use permit means a permit for a use that is not appropriate generally or without restriction throughout a zone district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare. Such uses may be permitted in a zoning district by special use permits, if specific provision for granting such special use permits is made in this Chapter.

State-licensed group home means an owner-occupied or nonprofit residential facility operated or licensed by the State to provide housing and services for up to eight (8) developmentally disabled or mentally ill persons, or up to eight (8) persons sixty (60) years of age or older, along with one (1) or more resident professional staff persons; but excluding halfway houses or other facilities for persons transitioning from a jail or prison back into the community, and excluding facilities for sex offenders and substance abuse treatment/rehabilitation facilities.

Storage means the stockpiling or keeping of materials, products, equipment or goods on a lot or other parcel of land in association with a principal commercial or other nonresidential use, but excluding retail display.

Storage, enclosed means the stockpiling or keeping of materials, products, equipment or goods within a fully enclosed building utilized in association with a principal commercial or other nonresidential use.

Storage, outdoor means a principal or accessory use consisting of the open-air and unscreened stockpiling or keeping of materials, products, equipment or goods utilized in association with a principal commercial or other nonresidential use, but excepting the retail display of motor vehicles, trailers, agricultural equipment or machinery, boats, recreational vehicles or equipment and mechanized equipment in an open sales yard or sales lot, and further excluding the outdoor parking of motor vehicles in designated off-street parking areas or spaces.

Storage, screened means the stockpiling or keeping of materials, products, equipment or goods within an area enclosed by a fence, wall or other physical barrier designed to screen and obstruct the visual observation of the enclosed material by a person standing at ground level utilized in association with a principal commercial or other nonresidential use.

Storage space means a commercial facility in which customers can rent space to store possessions.

Storage, unenclosed means the unscreened stockpiling or keeping of materials, products, equipment or goods beyond or outside the confines of a fully enclosed building utilized in association with a principal commercial or other nonresidential use.

Street means a public thoroughfare which affords a principal means of access to abutting property.

Street tree means a tree planted in the public right-of-way adjacent to a street.

Structure means anything constructed or erected six (6) inches or more above grade, or anything attached to something having a permanent foundation or location on the ground; excepting fences, pole-mounted or pedestal bird feeders, moveable yard ornaments, portable child

play/recreational equipment, sidewalks, attached stairways, driveways and utility boxes or appurtenant fixtures serving public utilities. Trees, shrubs, gardens and other live vegetation shall also not constitute *structures*. Disputes or interpretations regarding whether a particular item or structure constitutes a *structure* within the scope of this definition shall be resolved in accordance with Subsection 16-21(a) of this Chapter.

Structure, nonconforming means a building or other structure that was lawfully established and conforming prior to the adoption or subsequent amendment of this Chapter, but which currently does not comply with the size, location, dimensional or other requirements for the zone district in which it is located.

Structure, temporary means a building or other structure that is not constructed on a permanent foundation and which may or may not be equipped with permanently installed utility lines or plumbing, including, by way of example, tents, trailers, vending carts, huts, portable buildings or seasonal structures.

Temporary use means a use that may or may not be permitted under the regulations for a given zone district, but which may be allowed on a nonpermanent and temporary basis following site specific review and a hearing.

Townhouse means the same as *rowhouse.*

Tract means a defined parcel of land that is not a lot.

Trailer coach means any wheeled vehicle having an overall width not exceeding eight (8) feet and an overall length, excluding towing gear and bumpers, of not less than twenty-six (26) feet and not more than thirty-two (32) feet, without motive power, which is designed and generally and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which may occasionally be drawn over the public highways by a motor vehicle, Section 42-1-102, C.R.S.

Travel trailer or *motor home* means a wheeled, vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and/or recreational purposes, or having a body width not exceeding eight (8) feet. This is also intended to include structures mounted on auto or truck bodies that are referred to as "campers."

Use means any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, accessory means a use located on the same lot with a principal use and clearly incidental or subordinate to and customary in connection with the principal use.

Use, nonconforming means any use or activity that was lawfully established and conforming prior to the adoption or subsequent amendment of this Chapter and which has been continuously maintained since that time, but which currently is not allowed and/or does not conform and comply with the requirements of the zone district in which it is located.

Use, permitted means a specific use of land, buildings or structures authorized and allowed by right in a given zone district.

Use, principal means the main use on a lot.

Use, special means a specifically identified use of land, buildings or structures which may only be allowed in a particular zone district in accordance with specific terms and conditions following review and public hearing.

Vacation rental means a dwelling occupied by a paying guest on a temporary or transient basis, not exceeding thirty (30) days, where kitchen and other food preparation facilities may be provided, and which is not owner occupied. A vacation rental does not include owner-occupied bed-and-breakfast establishments, but does include cabins and similar structures designed and intended to be occupied by the traveling public for less than thirty (30) consecutive days.

Variance means a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary hardships or practical difficulties.

Waste, hazardous means any refuse or discarded material or combinations of refuse or discarded materials in solid, semisolid, liquid or gaseous form which cannot be handled by routine waste management techniques because they pose an actual or potential hazard to human health or to the health of other living organisms or the natural environment because of their chemical, biological or physical properties. Categories of hazardous waste include, but are not limited to, explosives, flammables, oxidizers, solvents, herbicides, liquid petroleum by-products and waste oils, poisons, irritants and corrosives.

Wholesale or *manufacturing* means the processing of goods and services in large quantity to be retailed by others, where customers are incidental in nature.

Wrecked vehicle shall have the same definition as described in Paragraph 8-41(3) of this Code.

Yard means an open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery or as otherwise provided herein.

Yard, front means a yard across the full width of the lot extending from the front line of the building to the front line of the lot.

Yard, rear means a yard extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, side means an open, unoccupied space on the same lot with a building between the building and the side line of the lot extending through from the front of the building line to the rear of the building. (Prior code 17.12.015, 17.12.020, 17.12.025, 17.12.030, 17.12.035, 17.12.040, 17.12.045, 17.12.050, 17.12.055, 17.12.060, 17.12.065, 17.12.070, 17.12.075, 17.12.076, 17.12.080, 17.12.085, 17.12.090, 17.12.095, 17.12.100, 17.12.105, 17.12.110, 17.12.115, 17.12.116, 17.12.120, 17.12.125, 17.12.130, 17.12.135, 17.12.140, 17.12.145, 17.12.150,

17.12.155, 17.12.160, 17.12.165, 17.12.170, 17.12.175, 17.12.180, 17.12.185, 17.12.190, 17.12.195, 17.12.200, 17.12.205, 17.12.210, 17.12.215, 17.12.220, 17.12.225, 17.12.230, 17.12.235, 17.12.240, 17.12.245, 17.12.250, 17.12.255, 17.13.011, 17.13.012, 17.13.013; Ord. 5-2000 §4; Ord. 13-2000 §2; Ord. 11-2001 §1; Ord. 2-2002 §1; Ord. 12-2002 §1; Ord. 3-2003 §1; Ord. 6-2003 §1; Ord. 12-2003 §1; Ord. 9-2004 §2; Ord. 3-2005 §1; Ord. 16-2005 §1; Ord. 10-2008 §4; Ord. §4, 2010; Ord. 14 §2, 2010; Ord. 30 §1, 2010; Ord. 5 §2, 2011; Ord. 5 §1, 2012; Ord. 13 §1, 2012)

Sec. 16-5. Conflicting regulations.

The provisions and standards contained in this Chapter set forth the minimum requirements necessary to enhance and protect the public health, safety and welfare and shall be liberally interpreted and applied to serve such purposes. Notwithstanding the foregoing, whenever the requirements of the Zoning Code are at variance or pose a conflict with the requirements of other provisions of the Municipal Code, or any other lawfully adopted rules, regulations, resolutions or ordinances of the Town, the requirements which are the most restrictive upon property use or development rights, or which require compliance with the more stringent standards, shall apply to the extent of such variance or conflict. Additionally, while the Town shall not be bound by or limited in the exercise of its authority under this Chapter by any restrictive covenant or deed restriction on the use of land to which it is not a signatory, the provisions of this Chapter shall not supersede any private contract or covenant limiting or making more restrictive the use of any land, building or structure. (Prior code 17.14.010; Ord. 11-2001 §1)

Sec. 16-6. Amendments to this Chapter or the Town's zone district boundaries or map.

(a) This Chapter, including the official zoning map and the zone district boundaries, may be amended from time to time, but no amendment shall become effective unless it shall have been first submitted to the Town's Planning and Zoning Commission for review and recommendation. The Commission shall have forty-five (45) days within which to submit its report to the Board of Trustees. If the Commission fails to submit a report within the forty-five-day period, it shall be deemed to have approved the proposed amendment.

(b) No amendment to the zoning map or to the text of this Chapter shall be effective unless voted upon by the Board of Trustees after a public hearing thereon at which citizens and parties in interest shall have had an opportunity to be heard. Notice of a public hearing on a map or text amendment shall be provided by publication in a newspaper of general circulation within the Town not less than fifteen (15) days prior to the hearing. Additionally, proposed site specific map amendments involving only a single lot or parcel, or only separately identified lots or parcels under single ownership, shall require that the lots or parcels subject to the proposed amendment be posted with notice of the amendment not less than ten (10) days before the public hearing thereon; and individual written notice shall be mailed by regular first-class U.S. mail to all owners of property abutting the lot or parcel subject to the proposed map amendment, disregarding intervening public streets or other public rights-of-way, not less than ten (10) days before the hearing, or hand delivered not less than five (5) days prior thereto.

(c) Zone district changes approved by the Planning and Zoning Commission and Board of Trustees shall be considered immediately binding and reflected on the Town Zoning Map.

(d) Posted notices shall not be less than twenty-two (22) inches wide and twenty-six (26) inches long, shall be constructed of waterproof/weather-resistant materials, shall utilize print not less than one (1) inch in height and shall be placed facing the street at a conspicuous place on the subject property.

(e) All notices as required by this Section shall contain, at a minimum, the name of the applicant seeking the amendment, if any; a plain and brief description of the proposed amendment, inclusive of a concise description of the text or map designation sought to be amended; the place, date and time of the public hearing and the name of the body conducting same; a concise description of the property subject to any map amendment; and the address/telephone number where additional information concerning the proposed amendment can be obtained, e.g., the Town Clerk's office.

(f) For purposes of this Section, the names and addresses of the owners of abutting properties shall be those as listed in the real property tax records for the County as of the date the subject application was filed with the Town.

(g) The accurate and timely noticing by posting and mail regarding an amendment to the zoning map shall be the responsibility of the applicant, while the Town shall be responsible for the noticing by newspaper publication.

(h) In the event a written protest is filed with the Town Clerk against proposed changes to the text of this Chapter, or against amendments to the zoning map or to the boundaries of a zone district applicable to particular land, at least twenty-four (24) hours prior to the vote of the Board of Trustees thereon, and such protest is signed by the owners of not less than twenty percent (20%) of the land area surrounding and extending one hundred (100) feet from the land area which is the subject of the proposed change, disregarding intervening streets and other public rights-of-way, such change shall not be adopted or become effective except upon the favorable vote of two-thirds (⅔) of all of the members of the Board of Trustees. (Prior code 17.11.010; Ord. 11-2001 §1; Ord. 15-2005 §1)

Secs. 16-7—16-20. Reserved.

ARTICLE II

Administration and Enforcement

Sec. 16-21. Intent.

(a) It is the intent of this Chapter that all questions arising in connection with the enforcement or the interpretation of this Chapter shall first be presented to the Town Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Town Administrator; and that from the decision of the Board of Adjustment, recourse shall be taken to the courts as provided by law.

(b) It is further the intent of this Chapter that the duties of the Board of Trustees in connection with this Chapter shall be limited to those specifically set forth within this Chapter for the Board of Trustees, acting in its capacity as the Board of Adjustment. (Prior code 17.09.010; Ord. 16 §1, 2012)

Sec. 16-22. Enforcement officer.

The Town Administrator, or such subordinate officer as he or she may designate and authorize, shall enforce and administer the provisions of this Chapter. (Prior code 17.09.020; Ord. 11-2001, §2)

Secs. 16-23—16-40. Reserved.

ARTICLE III

Board of Adjustment

Sec. 16-41. Membership and meetings.

(a) The Board of Trustees shall act as the Board of Adjustment. Four (4) Board members must be present at any meeting to constitute a quorum and conduct business. Should any member of the Board of Adjustment cease to be a Trustee, his or her membership on the Board of Adjustment shall immediately terminate.

(b) The Mayor shall act as the Chair of the Board of Adjustment, and the Board of Adjustment shall elect from its membership such other officers as it may deem necessary during its first meeting of each calendar year and adopt such rules as may be necessary for conducting its business.

(c) Meetings of the Board of Adjustment shall be held at the call of the Mayor. All meetings shall be open to the public. Members of the Board of Adjustment shall be notified at least twenty-four (24) hours prior to the time of the meetings. The Board of Adjustment shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Town Clerk and shall be a public record. (Prior code 17.10.010; Ord. 11-2001 §3; Ord. 16 §2, 2012)

Sec. 16-42. Decisions of Board of Adjustment.

The concurring vote of a majority of the members of the Board of Adjustment present shall be necessary to reverse any order, requirement, decision or determination of the Town Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter. All decisions of the Board of Adjustment shall be reduced to writing, set forth a plain statement of the grounds and reasons therefor and be delivered to the appellant and all other interested persons who have so requested. (Prior code 17.10.020; Ord. 11-2001 §3; Ord. 16 §3, 2012)

Sec. 16-43. Appeals from decisions of Town Administrator.

(a) Appeals to the Board of Adjustment may be taken by any person subject to and aggrieved by a decision of the Town Administrator or other zoning enforcement official made under this Chapter. Such appeal shall be taken within ten (10) days from the date of the decision sought to be appealed by filing with both the Town Administrator and Town Clerk a written notice specifying the grounds thereof. All appeals shall be accompanied by the appropriate fee. The Town Administrator shall promptly transmit to the Board of Adjustment all papers constituting the record upon which the action or decision being appealed was taken. A timely appeal shall stay all proceedings in furtherance of the

action appealed from unless the Town Administrator certifies to the Board of Adjustment that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction for good cause shown on notice to the Town Administrator.

(b) The Board of Adjustment shall fix a reasonable time and place for a hearing on an appeal not more than forty-five (45) days after the date of receipt of the notice of appeal, and send notice thereof in writing by regular mail to the appellant not less than fifteen (15) days in advance. The appellant shall appear in person or by an agent or attorney at the hearing and be heard. Absent good and just cause, the failure of an appellant or his or her agent or attorney to attend the hearing on appeal shall constitute an abandonment of the appeal and no further proceedings shall be had thereon. Appeals shall be heard and determined in a reasonably prompt fashion. Final decisions of the Board of Adjustment shall be reduced to writing and signed by the chairperson and shall be provided to the applicant. (Prior code 17.10.030; Ord. 11-2001 §3)

Sec. 16-44. Appeals from Board of Adjustment.

Any person or persons aggrieved by a decision of the Board of Adjustment, including any officer of the Town, may within thirty (30) days after the date upon which the Board of Adjustment renders its decision, but not thereafter, present to a court of competent jurisdiction a petition for review of such decision by certiorari in the manner prescribed by law. (Prior code 17.10.050; Ord. 11-2001 §3; Ord. 16 §5, 2012)

Secs. 16-45—16-60. Reserved.

ARTICLE IV

Variances and Special and Temporary Use Permits

Sec. 16-61. Special use permits.

(a) A use that is not allowed as a matter of right or without restriction in a zone district may be authorized by special use permit granted by the Board of Trustees. Only uses identified as a special use within a particular zone district may be approved.

(b) Special use permits may or may not run with the land and shall be issued subject to safeguards, terms and conditions as deemed necessary and appropriate by the Board of Trustees to protect and preserve the intent and purposes of this Chapter. Violations of the terms and conditions imposed on a special use permit shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.

(c) Applications for a special use permit (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.

(d) All applications for a special use permit shall be initially reviewed by town staff for completeness and recommendation and then referred to the Planning and Zoning Commission for review. The permit applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held as required by Subsection (e) below. If the Commission fails to submit its recommendation at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of the application.

(e) A public hearing shall be held by the Board of Trustees on each application for a special use permit. Not less than fifteen (15) days prior to the hearing, written notice describing the requested special use and the time and place for the hearing shall be prominently posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).

(f) Special use permits shall be granted by the Board of Trustees by written resolution, but only after finding that the proposed special use will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a permit, the Board of Trustees shall consider, as applicable, the following factors:

(1) Ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and control and access in case of fire or catastrophe;

(2) The need and/or adequacy of off-street parking and loading areas and the economic, noise, glare or odor effects of the special use on adjoining properties and the neighborhood generally;

(3) Refuse and service areas;

(4) Utilities, with reference to location, availability and compatibility;

(5) Screening and buffering, with reference to type, dimensions and character;

(6) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety and compatibility and harmony with properties in the neighborhood;

(7) Required yards and other open spaces; and

(8) General compatibility with adjacent property and other property in the neighborhood.

(g) A special use permit in and of itself shall not constitute a site specific development plan for purposes of vesting a property right; however, a special use permit may be incorporated into a site specific development plan as part of a larger or different land use approval. Unless substantially acted upon within one (1) year from date of approval as illustrated by actual construction or other objectively measurable development activity, or such shorter time period as specified by the Board of

Trustees, the permit shall expire and become void. (Prior code 17.16.010; Ord. 15-1993 §1; Ord. 4-2001 §1)

Sec. 16-62. Variances.

(a) The Board of Trustees shall have the power to authorize variances from the terms of this Chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this Chapter will in an individual case result in practical difficulty or unnecessary hardship.

(b) Applications for a variance (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.

(c) All applications for a variance shall be initially reviewed by Town staff for completeness and recommendation and then referred to the Planning and Zoning Commission for review. The variance applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held as required by Subsection (d) below. If the Commission fails to submit its recommendation at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of the application.

(d) A public hearing shall be held by the Board of Trustees on each application for a variance. Not less than fifteen (15) days prior to the hearing, written notice describing the requested variance and the time and place for the hearing shall be prominently posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).

(e) Variances shall be granted by written resolution, but only to the extent that the variance requested: (i) is the minimum variance needed to make possible the reasonable use of the subject land, building or structure; (ii) is necessary to relieve hardship or practical difficulty imposed by the strict application of the subject regulation; (iii) is not a request to permit a use of land, building or structure that is not permitted by right or by special use permit in the district involved; and (iv) two (2) of the following three (3) standards have been substantially met:

(1) There are extraordinary or exceptional conditions pertaining to the particular structure, place or property in question that are not applicable to other lands or structures in the same district;

(2) The requested variance will be in harmony with the purpose and intent of this Chapter and will not adversely impact adjacent properties, the neighborhood or the general welfare; and

(3) The extraordinary and exceptional circumstances are not the result of the actions of the applicant.

(f) In granting a variance, the Board of Trustees may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violations of conditions and safeguards made part of the terms under which a variance is granted shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.

(g) The existence of nonconforming land, buildings or structures in the same neighborhood or district, or of permitted or nonconforming uses in other districts, shall not constitute a reason for granting of a requested variance.

(h) A variance in and of itself shall not constitute a site specific development plan for purposes of vesting a property right; however, a variance may be incorporated into a site specific development plan as part of larger or different land use approval. Unless substantially acted upon within one (1) year from the date of approval as illustrated by actual construction or other objectively measurable development activity, or such shorter time period as specified by the Board of Trustees, a variance shall expire and become void. (Prior code 17.16.020; Ord. 15-1993 §2, Ord. 4-2001 §1; Ord. 1-2003 §1)

Sec. 16-63. Temporary use permits.

Temporary uses and structures are those uses and structures that may or may not be permitted in a given zone district, but which may be allowed on a nonpermanent and temporary basis upon review of their proposed nature, location and duration, and their compatibility with surrounding uses and structures within an underlying zone district; excepting outdoor commercial merchandising or retail uses or displays located in residential zone districts, which shall not be permitted as temporary uses.

(1) Except as otherwise provided in this Section, no temporary use or structure shall be used, located or permitted in any residential zone district except upon review and approval of the Board of Trustees in accordance with the procedures, standards and limitations set forth in this Section. Likewise, no temporary use or structure shall be used, located or permitted in any nonresidential (e.g., business, commercial or industrial) zone district except upon review and approval by the Town Administrator in accordance with the procedures, standards and limitations set forth in this Section. Notwithstanding the foregoing, the following temporary uses or structures shall be exempt from the provisions of this Section:

a. Construction project offices or trailers erected pursuant to an approved construction project, not to exceed six (6) months.

b. Display booths, gazebos, vending carts or similar structures or devices erected pursuant to a permit authorizing the use of publicly owned property for a festival, carnival, nonprofit fundraiser or other civic or entertainment event.

c. Nonprofit fundraising events such as church bazaars, farmers markets, seasonal festivals or substantially similar events in residential zone districts, inclusive of the use of tents, gazebos, carts and similar temporary structures.

d. The use of party tents for weddings or similar private functions in any zone district for not more than seventy-two (72) hours, and nonrecurring garage, yard or estate sales in residential zone districts; except the holding of four (4) or more garage, yard or estate sales, or

any combination thereof, at the same location or property in a residential zone district in any one (1) calendar year shall be deemed the operation of a business and shall be governed under Section 16-254 of this Code.

(2) Temporary use permits shall be issued subject to such safeguards, terms and conditions as may be deemed necessary and appropriate by the Board of Trustees or Town Administrator to protect and preserve the intent and purposes of this Chapter. Violations of any of the terms and conditions imposed on a temporary use permit shall be deemed to be violations of this Section and shall be punishable under the general penalty provisions of this Code.

(3) Applications for a temporary use permit (with appropriate copies and supporting materials) shall be made to the Town Administrator on forms provided therefor. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information as deemed necessary by the Town Administrator may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.

(4) All applications for a temporary use permit in a residential zone district shall be initially reviewed by Town staff for completeness and recommendation, and then referred to the Planning and Zoning Commission for review. The permit applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's review and shall be allowed to attend and participate therein. The Planning and Zoning Commission shall, in writing, recommend approval, denial or conditional approval of the application. The written recommendation shall be submitted to the Board of Trustees not later than the time of the public hearing which is to be held upon the request as required by Paragraph (5) below. If the Commission fails to submit its recommendation concerning a request at or prior to the public hearing, the Commission shall be deemed to have recommended to the Board of Trustees the unconditional approval of such request.

(5) A public hearing shall be held by the Board of Trustees on each application for a temporary use permit in a residential zone district. Not less than five (5) business days prior to the hearing, written notice describing the requested temporary use and the time and place for the hearing shall be prominently posted on the property subject to the application, and sent by regular mail to the applicant and the owners of all properties that abut or adjoin the subject property (excluding public rights-of-way).

(6) All applications for a temporary use permit in a nonresidential zone district shall be reviewed by the Town Administrator for completeness and compliance with the permit approval criteria set forth in this Section. Except for applications for a temporary use or structure that will have a duration of not more than seventy-two (72) hours, prior to rendering a decision on a permit application, the Town Administrator shall require that a written notice be prominently posted on the property subject to the application stating that an application for a temporary use permit has been submitted to the Town Administrator for approval, describing the proposed temporary use and/or structure, and informing all interested persons that any objections or comments concerning the permit application and/or proposed permit must be submitted in writing and received by the Town Administrator by a specified date certain, such date being not less than two (2) business days prior to the date of any decision on the permit application. In addition to the posted notice, written notice of the proposed temporary use, excepting temporary uses not to exceed seventy-two (72) hours in duration, shall be sent by regular mail to the owners of all properties that abut or

adjoin the subject property (excluding public rights-of-way) not less than five (5) business days prior to the date of any decision rendered by the Town Administrator on the permit application. Such written notice shall contain the same information as required for the posted notice described above. Should no objections be timely filed with the Town Administrator, then the Town Administrator shall grant or deny the permit application as he or she deems necessary and appropriate. In the event that the Town Administrator receives a timely written objection to an application, the application shall be promptly referred to the Board of Trustees for review and determination at a public hearing in the manner described in Paragraph (5) above, such hearing to be preceded by posted and written notice as provided for in said subsection. Applications for a permit involving a temporary use not to exceed seventy-two (72) hours in duration will be acted upon promptly by the Town Administrator absent any posting or mailing of notice as otherwise provided for in this Subsection.

(7) Appeals from a decision of the Town Administrator approving or denying an application for a temporary use permit shall be made to the Board of Trustees in writing by filing the same with the Town Clerk within ten (10) days from the date of the decision appealed from. All appeals shall be heard by the Board of Trustees *de novo* and shall be conducted at a public meeting within thirty (30) days from the filing of the appeal, or as soon thereafter as can be accommodated. The Town Clerk shall notify the appellant and, if different, the permit applicant by certified mail, return receipt requested, of the date the appeal shall be heard at least seven (7) days in advance of the hearing. The decision of the Board of Trustees on appeal may be issued orally, but shall thereafter be reduced to writing within a reasonable period of time after the conclusion of the hearing and mailed to the appellant and, if different, the permit applicant.

(8) Temporary use permits shall be granted, as applicable, by the Board of Trustees by written resolution and by the Town Administrator by written order, but only after finding that the proposed temporary use or structure will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a permit, the Board of Trustees and Town Administrator shall consider, as applicable, the following factors:

a. The location, size, design, operating characteristics and visual impacts of the proposed use or structure;

b. The compatibility of the proposed temporary use or structure with the character, density and use of structures and uses in the immediate vicinity;

c. Ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and control, and access in case of fire or catastrophe;

d. Off-street parking and loading areas where required, and the economic, noise, glare or odor effects of the temporary use or structure on adjoining properties and the neighborhood generally;

e. Refuse and service areas;

f. Utilities, with reference to location, availability and compatibility;

g. Signs, lighting, screening and buffering, with reference to type, dimensions and character;

h. The duration of the proposed temporary use or structure and whether a temporary use or structure has previously been approved for the structure, parcel, property or location as proposed in the application; and

i. The purposes and intent of the underlying zone district in which the temporary use or structure is proposed.

(9) A temporary use permit shall not constitute a site specific development plan for purposes of vesting a property right, and the failure of an applicant to adhere to any condition of approval allowing a temporary use or structure shall result in the forfeiture of the approval, and shall be deemed a violation of this Section and punishable under the general penalty provisions of this Code.

(10) Permits for temporary uses and structures may be granted for a period not to exceed one hundred eighty (180) days from the date upon which they were initially granted, unless a shorter period is specified in the approval. Requests for extensions may only be granted by the Board of Trustees, except for requests for an extension of a permit issued by the Town Administrator, who may, at his or her discretion, grant such extension. Only one (1) extension may be granted per permit. Requests for an extension must be submitted in writing to the Town Administrator not less than thirty (30) days prior to the expiration of the initial permit period. All proposed extensions of a permit shall be evaluated under the same criteria as set forth in Paragraph (8) above. Extension requests made to the Board of Trustees shall be heard and ruled upon at a public meeting. Requests for extensions made to the Town Administrator shall be ruled upon administratively without need for a hearing. A timely and properly filed request for an extension shall allow the continuation of an existing temporary use or structure until such time as the Trustees or, as appropriate, the Town Administrator, have ruled on the extension request. (Ord. 4-2001 §1; Ord. 5-2003 §1; Ord. 6-2004 §1)

Sec. 16-64. Temporary vendors.

(a) Temporary vendors are those activities and associated structures that may be allowed pursuant to this Section on a nonpermanent and temporary basis upon review of their proposed nature, location and duration and their compatibility with surrounding uses and structures within an underlying zone district.

(b) Except as otherwise provided in this Section, no temporary vendor shall be located or permitted in any residential zone district except upon review and approval of the Board of Trustees in accordance with the procedures, standards and limitations set forth in this Section. Likewise, no temporary vendor shall be located or permitted in any nonresidential zone district except upon review and approval by the Town Administrator in accordance with the procedures, standards and limitations set forth in this Section.

(c) No person shall conduct business as a temporary vendor without first obtaining a permit from the Town and paying the required fee. It shall be unlawful for any person to sell any goods or services on a temporary basis within the Town except as provided by this Section.

(d) Temporary vendor permits shall be issued subject to such safeguards, terms and conditions as deemed necessary and appropriate by the Board of Trustees or the Town Administrator to protect and preserve the intent and purpose of this Chapter. Violations of any of the terms and conditions imposed on a temporary vendor shall be deemed to be violations of this Section and shall be punishable under the general penalty provisions of this Code.

(e) Applications for a temporary vendor permit shall be made to the Town on forms provided therefor. A reasonable fee shall be charged for each application as set by the Board of Trustees, and a site plan and other drawings and information as deemed necessary by the Town Administrator shall be required as part of the application.

(f) All applications for a temporary vendor permit in a residential zone district shall follow the process set forth in Paragraphs 16-63(4) and (5) of this Article.

(g) Temporary vendor permits shall be granted by written order, but only after finding that the proposed temporary vendor will not adversely impact the neighborhood or the public safety and welfare. In determining whether to grant a temporary vendor permit, the following factors shall be considered:

(1) The location, size, design, operating characteristics and visual impacts of the proposed use or structure.

(2) The ingress and egress to the property and proposed structures, with particular reference to automotive and pedestrian safety, convenience, traffic flow and access in case of fire or other catastrophe. The location of the temporary vendor may not cause congestion of vehicular or pedestrian traffic and shall not be placed in right-of-way sight triangles as determined by the Public Works Department.

(3) Off-street parking and loading areas and the noise, glare or odor effects of the temporary vendor on adjoining properties and the neighborhood generally.

(4) Refuse and service areas.

(5) Utilities, with reference to location, availability and compatibility.

(6) Signs, lighting, screening and buffering with reference to type, dimensions and character. Each vendor may have two (2) signs; no one (1) sign shall exceed twelve (12) square feet in size. Signs must be constructed of durable materials. Temporary banner signs shall only be allowed as provided for in Subsection 16-242(g) of this Code (relating to temporary signs). Proposals for signs exceeding the maximum size requirements of this Section shall be reviewed under the Comprehensive Sign Plan process as outlined in Subsection 16-242(e) of this Code.

(7) The use of a Town-owned parcel or park may be permitted, denied or limited by the number of days by the Town Administrator based on the number of existing vendors already using the area, compatibility with existing uses or users of the space, permitted special events or any of the factors as set forth by Paragraphs (1) through (6) above.

(h) Permits for temporary vendors shall be granted for a period not to exceed more than one hundred eighty (180) total days in one (1) calendar year, in increments of seven (7), thirty (30), ninety (90) and one hundred eighty (180) days.

(i) The Town may require temporary vendors to move their facility offsite for the purposes of managing sanitation requirements prior to returning their facility to that location.

(j) No temporary vendor shall occupy one (1) location (*location* for this purpose shall mean a legally defined lot or parcel of property) for a period longer than thirty (30) days in aggregate in any single calendar year without prior Town approval. Approval shall be provided if the temporary vendor demonstrates satisfactory maintenance and sanitation of the vendor's site and no unreasonably negative impacts to the site and surrounding area. (Ord. 12 §1, 2012)

Sec. 16-65. Appeals from decisions of Board of Trustees.

All appeals from the decisions of the Board of Trustees made pursuant to this Article shall be taken in the manner and within the time period provided by law. (Prior code 17.16.030; Ord. 4-2001 §1; Ord. 4 §1, 2010)

Secs. 16-66—16-80. Reserved.

ARTICLE V

Establishment of Districts

Sec. 16-81. Use districts.

For the purpose of this Chapter, the Town is divided into twelve (12) zone districts, designated as follows:

R-1 Low-Density Residential District;

R-1 OT Low-Density Residential Overlay District, Original Town site;

R-2 General Residential District;

R-2 OT General Residential Overlay District, Original Town site;

R-3 High-Density Residential District;

R-3 OT High-Density Residential Overlay District, Original Town site.

PUD Planned Unit Development District;

B-1 General Business District;

B-2 Highway Business District;

I-1 Light Industrial District;

S-1 Special Recreational District;

APO Airport Protection Overlay District.

(Prior code 17.03.010; Ord. 3-1991 §1; Ord. 3-2005 §2; Ord. 13-2005 §1; Ord. 16-2005 §2)

Sec. 16-82. District boundaries.

The boundaries of such zone districts are established as shown on the map entitled "Official Zoning Map, Town of Buena Vista, Colorado" adopted by the Board of Trustees and certified by the Town Clerk. The map and all explanatory matter thereon accompanies and is made a part of this Chapter as if fully written herein. The map shall be retained in the Town Hall. (Prior code 17.03.020)

Sec. 16-83. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Official Zoning Map, the following rules shall apply:

(1) Where district boundaries are indicated as approximately following the centerlines of streets, alleys, highways, streams, irrigation ditches, rivers, street or railroad right-of-way lines or such lines extended, such lines shall be construed to be such boundaries.

(2) Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be the boundaries.

(3) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, alleys, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Zoning Map.

(4) Where a district boundary line divides a lot in single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line.

(5) Where physical or cultural features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstances not covered previously in this Section, the Board of Adjustment shall interpret the district boundaries. (Prior code 17.03.030)

Secs. 16-84—16-100. Reserved.

ARTICLE VI

District Restrictions

Sec. 16-101. Use.

No building or land shall hereafter be used or occupied and no building, structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this Chapter or amendments thereto, for the district in which it is located. (Prior code 17.04.010)

Sec. 16-102. Density.

No building shall hereafter be erected or altered so as to exceed the density regulations of this Chapter for the district in which it is located. (Prior code 17.04.020)

Sec. 16-103. Yard use limitations.

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this Chapter shall be included as a part of a yard or other open space similarly required for another building. (Prior code 17.04.030)

Secs. 16-104—16-120. Reserved.

ARTICLE VII

Nonconformities

Sec. 16-121. Intent.

As the result of the adoption, amendment and repeal from time to time of the regulations within this Chapter, certain land uses, lots or structures which were lawfully established or allowed at the time of their creation have become nonconforming and prohibited. It is the intent of this Article to allow the continuation of such nonconforming uses, lots and structures, subject to the provisions contained herein, and to allow for the repair, renovation or enlargement of nonconforming structures under specified circumstances. (Prior code 17.05.010; Ord. 13-2000 §1)

Sec. 16-122. Continuance of nonconforming uses.

Nonconforming uses lawfully existing prior to the enactment of this Chapter, or any amendment thereto, shall be allowed to continue in the same manner and to the same degree as established before their designation or classification as nonconforming uses, subject to the following:

(1) A nonconforming use may only continue within the same land area and/or site coverage as originally established, and may not be expanded or enlarged.

(2) A nonconforming use may not be changed or altered to another nonconforming use and may not be restored or reestablished after having once been changed to a conforming use.

(3) A nonconforming use may not be resumed, restored or reestablished after a discontinuance of six (6) months or more.

(4) A nonconforming use may not be resumed, restored or reestablished when, regardless as to cause, the building(s) or structure(s) housing the use has been damaged in excess of sixty percent (60%) of its fair market value immediately preceding the damage, or destroyed in its entirety. (Prior code 17.05.020; Ord. 13-2000 §1)

Sec. 16-123. Continuation of nonconforming structures.

Nonconforming structures lawfully existing prior to the enactment of this Chapter, or any amendment thereto, shall be allowed to continue despite their nonconformity and may be renovated, repaired, restored or expanded, but only to the extent that the proposed renovation, restoration, repair or expansion will not increase or expand the nonconforming aspects or features of the subject structure, including, without limitation, nonconformities with respect to site coverage, parking, height or setbacks. (Ord. 13-2000 §1; Ord. 17-2002 §1)

Sec. 16-124. Nonconforming residences.

Notwithstanding any provision within this Article to the contrary, single-family, duplex or multifamily dwellings, excluding mobile homes, located in zone districts other than residential districts may be enlarged, altered, rebuilt or repaired provided that no new or additional dwelling units are added or result therefrom, and provided that any enlargement, alteration, rebuilding or repair complies with the dimensional limitations established for the General Residential (R-2) zone district. (Prior code 17.05.030; Ord. 13-2000 §1)

Sec. 16-125. Nonconforming lots of record.

Where the owner of a nonconforming lot of record that was lawfully established prior to the adoption of this Chapter, or any amendment thereto, does not own sufficient contiguous land that can be joined to the lot to make it conform with the minimum lot size requirements for the zone district in which it is located, such lot may still qualify as a lawful building site subject to the following conditions:

(1) The lot area and lot width are not more than twenty percent (20%) below the minimums specified for the zone district in which the lot is located, and all other dimensional requirements can be complied with; or

(2) Where the lot area and/or lot width are more than twenty percent (20%) below the minimums specified for the zone district in which the lot is located, the owner obtains an authorized variance pursuant to Section 16-62 of this Chapter which will require all proposed development to conform as closely as possible to all zone district dimensional requirements. (Prior code 17.05.040; Ord. 13-2000 §1)

Sec. 16-125.5. Merger of nonconforming lots.

The following tracts or nonconforming lots shall be deemed to merge, as a matter of law, with an adjoining tract or lot that is held under common ownership:

(1) Any tract that does not meet the definition of *lot*, as described in Section 16-4, except where the reason that the tract does not meet the definition of lot results from an eminent domain action by an entity possessing such authority.

(2) Any combination of tracts or lots upon which a building has been built that encroaches upon the lot line (front, rear or side) or a setback line for the applicable zone district.

(3) Any combination of tracts or lots that lack access to a public street or right-of-way. (Ord. 9-2004 §3)

Sec. 16-126. Prohibition.

No lot or parcel that conforms to the dimensional requirements for the zone district in which it is located shall be subdivided or reduced in size in such a way as to make it nonconforming or result in the creation of one (1) or more nonconforming lots, or cause any building, structure, space or use to become nonconforming. (Ord. 13-2000 §1)

Secs. 16-127—16-140. Reserved.

ARTICLE VIII

District Regulations

Sec. 16-141. Intent generally.

It is the intent of this Article and the policy of this Article that if any use or class of use is not specifically allowed in a district as set forth below, it shall be prohibited in that district. (Prior code 17.06.010)

Sec. 16-142. R-1 Low-Density Residential District – intent.

The R-1 Low-Density Residential District is established as a district in which the principal use of land is to be single-family detached dwellings. It is the intention of these regulations to discourage any use which would be detrimental to the low-density residential nature of the areas included within the district. (Prior code 17.06.020, 17.06.021; Ord. 11-2001 §4)

Sec. 16-143. R-1 permitted uses.

Within the R-1 Low-Density Residential District, a building or land shall be used only for the following purposes:

(1) Single-family dwellings, inclusive of foster care homes, but excluding mobile homes.

(2) Incidental or accessory signs.

(3) Temporary construction signs located at least ten (10) feet inside any lot line, and temporary construction offices for a period not to exceed six (6) months.

(4) Customary incidental home occupations, subject to all conditions contained in this Chapter.

(5) Vacation rentals, provided all applicable taxes and fees have been paid. (Prior code 17.06.022; Ord. 11-2001 §4; Ord. 25 §2, 2010; Ord. 30 §2, 2010)

Sec. 16-144. R-1 special uses.

The following uses require a special use permit:

(1) Duplex dwellings.

(2) State-licensed group homes; except that such group homes shall not be located within seven hundred and fifty (750) feet of another such group home unless the Board of Trustees makes a special finding of substantial public need.

(3) Cemeteries.

(4) Churches or similar places of worship, including parish houses and parsonages, but not convents or dormitories;

(5) Public golf courses, parks, playgrounds, swimming pools and community centers, not-for-profit museums, country clubs and civic clubs and lodges operated on a noncommercial or nonprofit basis for recreational purposes only.

(6) Schools.

(7) Public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:

a. All buildings shall be located at least twenty-five (25) feet from any lot line;

b. Fences or other appropriate safety devices are installed to protect the public safety and welfare;

c. No vehicles or equipment are stored, maintained or repaired on the premises;

d. All structures are in keeping with the residential character of the neighborhood; and

e. Adequate landscaping, screening or buffering shall be provided to ensure compatibility with the neighborhood.

(8) Properly licensed child day care homes may be approved administratively subsequent to posting the property for seventy-two (72) hours and notifying adjoining neighbors with no opposition. If there is opposition and the applicant still wishes to pursue the special use, a properly noticed public hearing before the Board of Trustees shall be required. A day care home may serve up to eleven (11) children under the age of eighteen (18) years, or eleven (11) adults.

(9) Fire and police stations.

(10) Bed-and-breakfast.

(11) Medical or dental clinic, office or laboratory.

(12) Accessory dwelling units associated with a primary single-family dwelling. (Prior code 17.06.023; Ord. 18-1992 §1; Ord. 20-1994 §1; Ord. 11-2001 §5; Ord. 11-2002 §1; Ord. 12-2003 §2; Ord. 3-2006 §1; Ord. 4-2006 §1; Ord. 10-2007 §1; Ord. 14 §5, 2010; Ord. 30 §3, 2010)

Sec. 16-145. R-2 General Residential District – intent.

The R-2 General Residential District is established as a district in which the principal use of land is for residential purposes. A greater coverage of lot area and higher densities of land use are encouraged in this district. It is the intention of these regulations to discourage any use which would be detrimental to the residential nature of the areas included within the district. (Prior code 17.06.030, 17.06.031)

Sec. 16-146. R-2 permitted uses.

Within the R-2 General Residential District, a building or land shall be used only for the following purposes:

(1) All those uses listed as permitted uses in the R-1 Low-Density Residential District; and

(2) Duplex dwellings. (Prior code 17.06.032; Ord. 11-2001 §6)

Sec. 16-147. R-2 special uses.

The following uses require a special use permit:

(1) All those uses listed as requiring a special use permit for the R-1 Low-Density Residential District;

(2) Public libraries;

(3) Hospitals and medical or dental clinic, office or laboratory, but not veterinary hospitals or clinics;

(4) Multifamily dwellings. (Prior code 17.06.033; Ord. 11-2001 §6; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §6, 2010)

Sec. 16-148. R-3 High-Density Residential – intent.

The R-3 High-Density Residential District is established as a district to provide for single-family and multifamily residential development. It is the intention of these regulations to discourage any use which would be detrimental to the residential nature of areas included within this district. (Prior code 17.06.040, 17.06.041)

Sec. 16-149. R-3 permitted uses.

Within the R-3 High-Density Residential District, a building or land shall be used only for the following purposes:

(1) All those uses listed as permitted uses in R-1 and R-2 districts; and

(2) Multifamily dwellings including apartments, rowhouses, townhouses and condominiums. (Prior code 17.06.042)

Sec. 16-150. R-3 special uses.

The following uses require a special use permit:

(1) Mobile home parks, provided that:

a. The location shall be suitable for residential use. No part of any mobile home park shall be used for nonresidential purposes, except such uses as are required for the maintenance and management of the park to include laundry facilities, recreation buildings and accessory buildings.

b. The minimum area of any mobile home park is one (1) acre. The maximum area for any mobile home park is six (6) acres.

c. The soil, groundwater level, drainage, rock formation and topography shall not create hazards to the property or to the health and safety of occupants.

d. The minimum site size for individual mobile home sites shall be three thousand (3,000) square feet, with a width at building line of at least thirty-five (35) feet, exclusive of common driveway. If a mobile home subdivision is established, then the provisions of Chapter 17 of this Code shall apply.

e. The maximum density shall be twelve (12) mobile home sites per acre, and each mobile home shall be situated on a mobile home site.

f. Each mobile home site shall abut a driveway within the mobile home park. The driveway shall consist of two (2) inches of asphalt over four (4) inches of base material. The design of any driveway shall provide for adequate accessibility for emergency vehicles and shall be subject to approval as a part of the review process. All driveways shall be adequately maintained by the mobile home park owner or operator to original design standards. Snow removal shall be the responsibility of the mobile home park owner or operator.

g. Two (2) off-driveway parking spaces with not less than four (4) inches of crushed stone or other suitable material on a well-compacted subbase shall be provided for each mobile home space. Required parking spaces may be included within the three thousand (3,000) square feet required for each mobile home space.

h. No mobile home shall be located closer than twenty (20) feet to the exterior boundary of the park of a bounding street or highway right-of-way. Accessory buildings used for laundry, recreation or storage purposes shall be located no closer than forty (40) feet to the boundary or

right-of-way. Each mobile home shall be situated so that the mobile home hitch is fronting on and directly accessible to a conforming mobile home park driveway.

i. Not less than eight percent (8%) of the gross mobile home park area shall be devoted to open space which may be devoted to recreation facilities, generally provided in a central location.

j. The developer shall provide for the parking and storage of recreational vehicles. *Recreational vehicles* are defined to include motor homes, travel trailers, boats, boat trailers, snowmobiles, snowmobile trailers, camper trailers, detached camper shells, antique vehicles, motorcycle trailers and any other vehicle or item of tangible personal property whose principal purpose is for recreation.

k. Each mobile home park owner or operator shall maintain an accurate register. The register shall contain the following information: name of owner and/or occupant; make, model and registration number of the mobile home; and date of arrival and departure of the mobile home. These records shall be available for inspection by the Town Administrator and the County Assessor's office.

l. Each mobile home site shall be clearly numbered with letters not less than three (3) inches in height that are clearly visible from the driveway.

m. The storage, collection and disposal of solid waste in the mobile home park shall be conducted so as to create no unsightliness, health hazards, rodent harborage, insect breeding areas, accident hazards and pollution.

n. Plans clearly indicating the developer's intention to comply with the provisions of this Chapter concerning mobile home parks shall be submitted to and approved by the Town Administrator prior to submission to the Board of Trustees for consideration of granting a special use permit under the provisions of this Chapter. Plans shall include:

1. The area to be used for the mobile home park;

2. The ownership and use of neighboring properties;

3. All proposed entrances, exits, driveways, open space areas and service buildings;

4. The proposed plan for water supply and sewage disposal (adequate space for lines and easements shall be provided); and

5. The location and size of individual mobile home sites including a sketch of the proposed location of the mobile homes on the mobile home sites.

o. Any expansion of mobile home parks in existence as of the effective date of the ordinance codified in this Chapter shall comply with the provisions of this Chapter concerning mobile home parks.

p. Adequate screening, such as a fence or buffer strip of vegetation at least six (6) feet in height, shall be located along all sides of the mobile home park, but shall not extend beyond

the established setback line along any street. This requirement may be modified by the Board of Trustees where adequate buffering exists in the form of vegetation or terrain.

q. Where compliance with the provisions of this Chapter having to do with mobile home parks results in practical difficulties or unnecessary hardships, a variance may be granted by the Board of Trustees according to the provisions of this Chapter.

(2) Laundromats, and retail grocery stores not exceeding two thousand five hundred (2,500) square feet in size, but allowing no secondary or coincidental uses.

(3) Radio and television transmitting stations and studios, provided that:

a. Such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood;

b. All structures shall be located at least thirty-five (35) feet from any lot line; and

c. Adequate landscaping, screening and buffering shall be provided to ensure compatibility with the neighborhood.

(4) Public utility buildings and facilities if such use is essential for the service of the immediate area, and provided that:

a. All buildings shall be located at least twenty-five (25) feet from any lot line;

b. Fences or other appropriate safety and security devices are installed to protect the public safety and welfare;

c. No vehicles or equipment are stored, maintained or repaired on the premises;

d. All structures are in keeping with the residential character of the neighborhood; and

e. Adequate landscaping, screening and buffering shall be provided to ensure compatibility with the neighborhood.

(5) Churches or similar places of worship, including parish houses and parsonages.

(6) Public golf courses, parks, playgrounds, swimming pools and community centers, not-for-profit museums, country clubs, and civic clubs and lodges operated on a noncommercial or nonprofit basis for recreational purposes only.

(7) Schools and dormitories.

(8) Properly licensed child day care homes may be approved administratively subsequent to posting the property for seventy-two (72) hours and notifying adjoining neighbors with no opposition. If there is opposition and the applicant still wishes to pursue the special use, a properly noticed public hearing before the Board of Trustees shall be required. A day care home may serve up to eleven (11) children under the age of eighteen (18) years, or eleven (11) adults.

(9) Hospitals and medical clinics, but not veterinary hospitals or clinics.

(10) Public libraries.

(11) Fire and police stations.

(12) Bed-and-breakfast.

(13) Accessory dwelling units associated with a primary single-family dwelling.

(14) Hospitals and medical or dental clinic, office or laboratory, but not veterinary hospitals or clinics. (Prior code 17.06.043; Ord. 11-2001 §6; Ord. 11-2002 §2; Ord. 12-2003 §3; Ord. 3-2006 §1; Ord. 4-2006 §1; Ord. 10-2007 §1; Ord. 14 §8, 2010; Ord. 30 §4, 2010)

Secs. 16-151—16-152. Reserved.

Sec. 16-153. B-1 General Business District – intent.

The B-1 General Business District is established as a district in which the principal use of land is for retail sales and services to the consumer. It is the intention of these regulations to encourage the development and orderly expansion of the district with such uses and in such a manner as to provide ample parking and a minimum of traffic congestion. (Prior code 17.06.060, 17.06.061)

Sec. 16-154. B-1 permitted uses.

Within the B-1 General Business District a building or land shall be used only for the following purposes:

(1) Businesses engaged in the retail sale of goods to the general public, but excluding those retail establishments requiring unenclosed storage.

(2) Businesses or institutions, either public or private, engaged in providing services to the general public but excluding those establishments requiring unenclosed storage.

(3) Offices; public, municipal, professional and private.

(4) Restaurants with or without bar, but excluding drive-in restaurants.

(5) Fire and police stations.

(6) Automobile parking lots and structures, either public or private.

(7) Customary accessory uses and structures when located on the same lot or abutting lot of same ownership as the main structure, excluding, however, unenclosed storage.

(8) Public utility distribution lines, transmission lines and telephone exchanges, but no service or storage yards.

(9) Fabricating and assembly or processing establishments of small size (five [5] employees or less), such as bakeries, dry cleaners, laundries, woodworking shops, cabinet shops, upholstery shops, printing plants incidental to newspaper offices, publishing establishments and millinery shops.

(10) Parks for public use.

(11) Advertising signs, business signs and outdoor advertising signs.

(12) Civic organizations, private clubs, private lodges and fraternal organizations.

(13) Not-for-profit or for-profit museums, and municipally owned assembly halls and community centers.

(14) Retail greenhouses and nursery, garden and landscape supply stores, inclusive of associated outdoor storage.

(15) Retail display in association with a permitted retail use.

(16) Enclosed storage. (Prior code 17.06.062; Ord. 11-2001 §8; Ord. 11-2002 §3; Ord. 6-2003 §2)

Sec. 16-155. B-1 special uses.

The following uses require a special use permit:

(1) Establishments providing recreational services to the general public.

(2) Establishments providing transportation for the general public, including taxi stands and bus terminals.

(3) Hotels, motels and other forms of public lodging and boarding.

(4) Schools.

(5) Hospitals.

(6) Apartment units contained within a business or commercial building jointly occupied by a use permitted within the zone district (i.e., a mixed-use building) and accessory dwelling units.

(7) Cocktail lounges, taverns and bars.

(8) Public libraries.

(9) Churches or similar places of worship and customary accessory uses.

(10) Auction houses, flea markets and similar uses conducting business in an enclosed structure.

(11) Gasoline or filling stations meeting all conditions of Section 16-241.

(12) Veterinary clinics not providing overnight housing for animals.

(13) Above-ground bulk storage tanks for nonflammable and/or noncombustible gases or liquids which are constructed and sited in compliance with the Town's fire code and all applicable standards and regulations published by the National Fire Protection Association.

(14) Screened storage.

(15) Medical or dental clinic, office or laboratory.

(16) Tire or windshield repair or replacement operations, muffler and exhaust system repair and fabrication operations and oil or vehicular fluid change operations. (Prior code 17.06.063; Ord. 10-1994 §1; Ord. 8-2000 §1; Ord. 11-2001 §8; Ord. 6-2003 §3; Ord. 12-2003 §4; Ord. 8-2004 §1; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §5, 2010; Ord. 26 §1, 2010)

Sec. 16-156. B-1 uses not permitted.

In furtherance of the policy of this Chapter prohibiting uses and classes of uses not specifically allowed hereinabove as a permitted use or special use, but not by way of limitation, the following uses shall not be permitted in the B-1 General Business District:

(1) Auto and mechanized equipment sales yards, including truck and trailer open sales yards.

(2) Farm machinery and equipment open sales yards.

(3) Auto and vehicular equipment repair and paint shops; provided that such prohibition shall not prohibit tire or windshield repair or replacement operations, muffler and exhaust system repair and fabrication operations, or oil or vehicular fluid change operations, which may be permitted as special uses pursuant to Section 16-155.

(4) Mobile home and travel trailer open sales yards.

(5) Veterinary hospitals and kennels.

(6) Uses requiring open storage of goods, materials, equipment, parts or machinery.

(7) Uses pertaining to the keeping, care or sale of domestic farm animals. (Prior code 17.06.064; Ord. 10-1994 §2; Ord. 6-2003 §4; Ord. 26-2010 §2)

Sec. 16-156.5. B-1 OT Mixed Use Designation.

Lots contained within a B-1 Zoning District that are designated as Buena Vista Old Town (OT) lots shall be overlaid with a mixed use designation allowing for both residential and commercial use. The character of the local community should be reflected in any use made of such lots and therefore, lots zoned B-1 which are designated as Old Town (OT) lots located west of Highway 24 in the Town shall be permitted to make any permissive or special use allowed for lots zoned B-1, R-2 and R-1. Lots designated as B-1 Old Town (OT) lots located east of Highway 24 in the Town shall be

permitted to make any permissive or special uses allowed for B-1, R-3 and R-1 Zoning. This overlay shall not apply to any lots that abut East Main Street. (Ord. 16-2005 §5)

Sec. 16-157. B-2 Highway Business District – intent.

The B-2 Highway Business District is established as a district in which the principal use of land is for retail sales and services to the motorizing public, and for other uses not requiring a centralized location, but which do require major highway frontage, comparatively large lot area and open sales yards or unenclosed storage areas. It is the intention of these regulations to encourage the orderly development and expansion of the district with such uses and in such a manner as to provide ample parking space and a minimum of traffic congestion. (Prior code 17.06.070, 17.06.071; Ord. 6-2003 §5)

Sec. 16-158. B-2 permitted uses.

Within the B-2 Highway Business District, a building or land shall be used only for the following purposes:

(1) All uses listed as permitted uses in the B-1 General Business District.

(2) Automobile leasing or sales, including open sales lots, but no unenclosed storage of inoperable or wrecked cars.

(3) Automobile repair and paint shops conducted within a completely enclosed building, excluding unenclosed storage.

(4) Equipment sales, including open sales yards, but no unenclosed storage of inoperable or wrecked machinery and equipment.

(5) Motels, hotels, motor courts or other establishments providing lodging for the general public.

(6) Establishments providing transportation for the general public, including taxi stands and bus terminals.

(7) Restaurants, including drive-in restaurants, with or without bar.

(8) Public libraries.

(9) Gasoline or filling stations meeting all conditions of Section 16-241.

(10) Medical or dental clinic, office or laboratory. (Prior code 17.06.072; Ord. 16-2002 §1; Ord. 6-2003 §6; Ord. 14 §3, 2010)

Sec. 16-159. B-2 special uses.

The following uses require a special use permit:

(1) Establishments providing recreational services to the general public.

(2) Cocktail lounges, taverns and bars.

(3) Apartment units contained within a building jointly occupied by a business or commercial use permitted within the zone district (i.e., a mixed use building) and accessory dwelling units.

(4) Veterinary clinics or hospitals and kennels.

(5) Hospitals.

(6) Schools.

(7) Auction houses, flea markets and similar uses conducting business in an enclosed structure.

(8) Shopping centers.

(9) Above-ground bulk storage tanks for nonflammable and/or noncombustible gases or liquids which are constructed and sited in compliance with the Town's fire code and all applicable standards and regulations published by the National Fire Protection Association.

(10) Screened storage.

(11) Churches or similar places of worship and customary accessory uses. (Prior code 17.06.073; Ord. 8-2000 §2; Ord. 11-2001 §8; Ord. 6-2003 §7; Ord. 12-2003 §5; Ord. 8-2004 §2; Ord. 3-2006 §1; Ord. 10-2007 §1; Ord. 14 §4, 2010)

Sec. 16-160. I-1 Light Industrial District - intent.

The I-1 Light Industrial District is established as a district in which the principal use of land is for the fabrication, assembly and manufacture of goods and materials in conjunction with related retail and wholesale activities. It is the intention of these regulations to encourage the development and orderly expansion of the district with such uses and in such a manner as to avoid dangerous, noxious or unsightly land uses. (Prior code 17.06.080, 17.06.081)

Sec. 16-161. I-1 permitted uses.

Within the I-1 Light Industrial District a building or land shall be used only for the following purposes:

(1) Wholesale distributing houses, warehouses and mini-warehouses.

(2) Facilities for the manufacture, assembly or processing of goods and materials, excluding those listed in Section 16-163.

(3) Railroad transshipment facilities, including those for sand, gravel or other minerals, except coal.

(4) Gasoline or filling stations meeting all conditions of Section 16-241.

(5) Automobile parking lots and structures, either public or private.

(6) Customary accessory uses and structures to include warehouses and storage buildings when located on the same lot or abutting lot of same ownership as the main structure excluding, however, open storage.

(7) Public utility distribution lines, transformer stations, transmission lines and towers, water tanks and towers, and telephone exchanges.

(8) Fire and police stations.

(9) Advertising signs, business signs and outdoor advertising signs.

(10) Open sales yards for the retail sale of automobiles, trucks, boats, trailers, recreational vehicles, farm machinery and equipment, but excluding the unenclosed storage of junked vehicles or wrecked or inoperable equipment or materials.

(11) Offices; public, municipal, professional and private.

(12) Enclosed storage. (Prior code 17.06.082; Ord. 6-2003 §8)

Sec. 16-162. I-1 special uses.

The following uses require a special use permit:

(1) Businesses engaged exclusively in the retail sale of goods to the general public.

(2) Businesses engaged exclusively in providing services to the general public.

(3) Restaurants, including drive-in restaurants, with or without bar.

(4) Industrial, trade or vocational schools and similar uses.

(5) Open yards for the storage or sale of lumber and building materials.

(6) Above-ground bulk storage tanks for gases and liquids of any type.

(7) Dormitories and accessory dwelling units.

(8) Screened storage. (Prior code 17.06.083; Ord. 19, 1996 §1; Ord. 8-2000 §3; Ord. 11-2001 §8; Ord. 12-2002 §3; Ord. 6-2003 §9; Ord. 12-2003 §6; Ord. 3-2006 §1; Ord. 10-2007 §1)

Sec. 16-163. I-1 uses not permitted.

In furtherance of the policy of this Chapter prohibiting uses and classes of uses not specifically allowed hereinabove as a permitted use or special use, but not by way of limitation, the following uses shall not be permitted in the I-1 Light Industrial District:

(1) Cement, lime, gypsum, rockwall or plaster of Paris manufacture.

(2) Acid manufacture.

(3) Explosives manufacture or storage, except for above-ground bulk tank storage of gases or liquids by special use permit.

(4) Glue manufacture, fat rendering, distillation of bones, fertilizer manufacture.

(5) Petroleum or petroleum products refining.

(6) Milling or smelting of ores.

(7) Garbage, offal or dead animal reduction or dumping.

(8) Stockyards, feeding yards or slaughter of animals.

(9) Manufacture of liquid petroleum gases or petroleum products.

(10) Other uses similar to or like the above. (Prior code 17.06.084; Ord. 19, 1996 §2; Ord. 8-2000 §4)

Sec. 16-164. S-1 Special Recreational District – intent.

The S-1 Special Recreation District is established as a district to provide for community recreation. It is the intent of these regulations to discourage any use which would be detrimental to the recreational value of the areas to be included within this district. (Prior code 17.06.090, 17.06.091)

Sec. 16-165. S-1 permitted uses.

Within the S-1 Special Recreation District, a building or land shall be used only for the following purposes:

(1) Active and passive recreation facilities, including but not limited to rodeo grounds and facilities, athletic fields, water sports facilities and temporary special event camping areas.

(2) Short-term parking and/or storage facilities for recreational/camping vehicles.

(3) Museums, noncommercial historical structures and displays and nonprofit tourist/ visitor-oriented information facilities (such as a visitor information center). (Prior code 17.06.092; Ord. 11-2001 §9; Ord. 2-2004 §1; Ord. 6 §1, 2013)

Sec. 16-166. S-1 special uses.

The following uses require a special use permit:

(1) Motor sports facilities.

(2) Target ranges and other facilities utilized for the discharge of firearms.

(3) Archery facilities. (Prior code 17.06.093; Ord. 11-2001 §9; Ord. 3-2006 §1; Ord. 10-2007 §1)

Sec. 16-167. Airport Protection Overlay District.

This overlay district, which is established as a supplemental district superimposed on part or all of an underlying district, is created for the purpose of providing for the safety and convenience of airport users and the general public by preventing the creation of incompatible land uses and the erection of obstructing structures in the vicinity of airports within the Town.

Standard	***Description***
Minimum district size	None
Minimum lot area	Same as the underlying district
Minimum lot width	Same as the underlying district
front setback	Same as the underlying district
Side setback	Same as the underlying district
Rear setback	Same as the underlying district
Max. building height	In no case may it exceed that of the underlying district
Min. dwelling size	Same as the underlying district
Max. lot coverage	Same as the underlying district

(Ord. 3-1991 §2)

Sec. 16-168. APO intent.

(a) The Airport Protection Overlay ("APO") District is a supplemental district that may overlay any standard zoning district. Any use by right or conditional use permitted in the underlying district is also permitted in an APO District so long as that use meets the special conditions required in an APO District.

(b) The APO District is established to minimize exposure of residential and other sensitive land uses to aircraft noise areas, to avoid danger from aircraft accidents, to reduce the possibility of such accidents, to discourage traffic congestion within the area of the district and to restrict noncompatible land uses in proximity to and within airport influence areas.

(c) The APO District shall be applied in the vicinity of all general aviation airports which would be significantly affected by air traffic, noise or any hazard related to the establishment, operation or maintenance of an airport.

(d) The degree of protection provided by this overlay district is considered reasonable and prudent for land use regulatory purposes and is based on established parameters of control. Establishment of this district, however, does not imply that areas outside of the district will be totally free from airport and aircraft related hazards, or that all hazards within the APO District will be completely mitigated. Establishment of this district shall not create a liability on the part of or create or cause action against the Town or any officer, employee or contractor thereof for any damages that may result directly or indirectly from reliance on the provisions contained herein. (Ord. 3-1991 §2)

Sec. 16-169. Permitted uses within an APO district.

No building or land shall be used and no building or other structure shall hereafter be erected, converted or structurally altered, except as provided for herein, and the following use provisions shall apply within an APO District:

(1) No use may be made of land within the APO District in such a manner as to create electrical interference with radio and navigation communication between an airport and aircraft or make it difficult for pilots to distinguish between airport lights and other lights, cause glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport or otherwise endanger the safe taking off, landing or maneuvering of aircraft in the vicinity of the airport. Noise attenuation in building design shall be encouraged and may be required for structures to be erected within the APO District.

(2) Nothing contained within these APO regulations shall be construed to require the removal, lowering or other change or alteration of any structure or object of natural growth not conforming to the provisions contained herein, or to otherwise interfere with the continuance of any nonconforming use, except as specifically set forth herein.

(3) Except as otherwise provided in this Section, nothing contained within the APO regulations shall be construed to require a change in the construction or use of any structure, the erection, construction or alteration of which was legally established or begun prior to the effective date of the adoption of the APO regulations; provided, however, that in the event a structure or use not in conformity with the APO regulations is damaged, destroyed or discontinued, any reconstruction or replacement of such structure, and/or any resumption of such use, shall be subject to the provisions of Article VII of this Chapter and the provisions of this Section and Section 16-170 of this Code.

(4) The owner of any nonconforming structure or object of natural growth is hereby required to permit the installation, operation or maintenance thereon of such markers or lights as shall be deemed necessary by the Board of Trustees or any other appropriate authority to indicate to the operators of aircraft in the vicinity of the airport the presence of such nonconforming structures or objects of natural growth. Such markers and lights shall be installed, operated and maintained at the expense of the owners and/or operators.

(5) Aviation easements may be required, at the discretion of the Board of Trustees, within a designated APO District. (Ord. 3-1991 §2; Ord. 17-2003 §1)

Sec. 16-170. Limitations within an APO District.

(a) Height limitations. Height limitations within an APO District, except as otherwise provided for herein, are subject to the limitations of the underlying district within which the property is located. No structure or object of natural growth shall be constructed, erected, altered, allowed to grow or be maintained in excess of height limits of the underlying zoning district.

(b) Surface limitations.

(1) Surface limitations within an APO District include all land and air space within the APO District that would be hazardous to air navigation if infringed upon. Surface limitations include areas above imaginary surfaces and in the clear zone and are established to regulate the height of structures and natural objects in the vicinity of an airport. These surface limitations are set forth by the Federal Aviation Administration in the Federal Aviation Regulations, Part 77, as amended, and any successor Federal aviation regulations which are hereby adopted by the Town by reference, as minimum standards that the Board of Trustees may, upon due determination, amend to incorporate differing or more stringent provisions to accommodate the needs of airports within the Town.

(2) In addition, before any structure or natural object is permitted to be erected, altered, maintained or allowed to grow above the imaginary surfaces established herein, a Notice of Construction or Alteration shall be filed with the Federal Aviation Administration for a determination of the impact on the navigable airspace. The Board of Trustees, acting in its capacity either as the Board of Trustees or as the Board of Adjustment, and the Planning Commission shall not approve any such development until after receiving and considering the Federal Aviation Administration determination on the matter.

(c) Land use limitations.

(1) Within APO Districts land use patterns will be encouraged that avoid danger to public health and safety or to property due to aircraft operations.

(2) Specific Flight Hazard Areas may be established within an APO district to demarcate areas presenting an enhanced potential risk of hazards associated with flight or airport operations. Within Flight Hazard Areas, uses involving enclosed concentrations of human activity such as schools, churches, hospitals and libraries shall be prohibited, while open space, recreational and agricultural uses shall be encouraged. All proposed new uses and structures and/or all proposed expansions of an existing use or structure within a Flight Hazard Area shall conform with all underlying zoning regulations, including all APO regulations, and shall be supported by and authorized only upon written evidence that the proposed development creates or presents no substantial threat to public safety or property, or to aviation and/or airport operations.

(3) All structures and uses, or the expansion of existing structures and uses, proposed in an APO district must be reviewed and approved in advance in accordance with the special use permit procedures contained in this Chapter. The Board of Trustees may condition development approval upon the execution by the development applicant of an avigation easement.

(4) Submittal requirements in an APO District. In addition to the submittal requirements otherwise contained within this Chapter, the Planning Commission and Board of Trustees may, at their discretion, require additional materials regarding any proposed land use change or development project in an APO District. These additional materials may include, but need not be limited to, any or all of the following items:

a. A map or graphic description of existing and proposed airport facilities including towers, lights, terminals, hangers, aprons, parking areas, taxiways and runways.

b. A map showing the height of all existing and proposed structures within the contemplated development. (Ord. 3-1991 §2; Ord. 11-2001 §10; Ord. 17-2003 §2; Ord. 16 §6, 2012)

Sec. 16-171. APO District boundaries map.

(a) The APO District shall include all land within an area extending laterally one thousand (1,000) feet on either side of the runway centerline at a point five thousand two hundred feet (5,200) north of the north end of the runway and extend south to the south end of the runway where it widens to two thousand (2,000) feet laterally on either side of the runway centerline and extend ten thousand two hundred (10,200) feet south from the south end of Runway 15/33 at the Central Colorado Regional Airport.

(b) Areas within the APO District potentially subject to enhanced disturbances or dangers from aircraft flight or airport operations, or within which specific structures or land uses could negatively impact or interfere with airport operations, may be designated Flight Hazard Areas and shall be described and illustrated on the APO District boundaries map. Land uses and structures within Flight Hazard Areas may be subject to regulations more restrictive and protective of public safety than those regulations otherwise applicable throughout the APO District.

(c) The Town Clerk shall maintain and make available to interested persons during regular business hours not less than one (1) copy of the most current map(s) illustrating the boundaries of the APO District and any Flight Hazard Areas. Such map shall be used for general reference and illustration purposes only and shall not supersede or alter the geographical boundaries of the APO District as set forth in this Section.

(d) The establishment or alteration of the boundaries and regulations for the APO District or a Flight Hazard Area shall be performed in the manner set forth in Section 16-6 of this Chapter. (Ord. 2-2000 §1; Ord. 17-2003 §3)

Sec. 16-172. Old Town Overlay District.

The intent of the Old Town Overlay District is to preserve and protect the historic design of the Town and to create a compact, walkable and mixed-use downtown core area. Infill development is critical to ensuring retail and commercial vitality on Main Street by locating more residents within walking distance of services. Infill development maximizes the efficiency and effectiveness of existing infrastructure that the Town already pays to maintain. The Old Town Overlay District shall apply to all lots that were part of the original Town of Buena Vista Subdivision Plat. (Ord. 5 §3, 2011)

Secs. 16-173—16-190. Reserved.

ARTICLE IX

Planned Unit Development

Sec. 16-191. Planned unit development (PUD) designation, purpose and objectives.

(a) The purpose of planned unit development (PUD) is to encourage innovation and flexibility in the development of land so as to promote variety in the type, design and layout of buildings; improve the integration, character and quality of land uses; promote the more efficient use of land and infrastructure while achieving compatibility of land uses; achieve economy in the delivery and maintenance of public services; and promote the preservation of open space and natural and scenic areas.

(b) PUD zoning or overlay designation may be applied for with regard to any contiguous land (disregarding intervening public streets or easements or other rights-of-way) located within any zone district. The decision to approve an area for PUD zoning or treatment shall at all times rest within the discretion of the Board of Trustees, and an application for PUD designation shall be denied where the particular proposal will not adequately satisfy or implement the purposes of this Article. (Prior code 17.13.020; Ord. 11-2001 §11)

Sec. 16-192. Zoning classification.

PUD constitutes a zoning classification and is established by rezoning or overlaying the designation upon land within an existing or newly created zone district. Approval of a PUD shall be illustrated and its land area defined on the Town's Official Zone District Map. When an area that is already zoned is approved for a PUD overlay, e.g., "R-1 PUD," the underlying zone district's regulations shall remain intact; and in the event the PUD is not completed or is terminated, the underlying zone district regulations shall apply to and govern land uses and development in the subject area. (Prior code 17.13.030; Ord. 11-2001 §11)

Sec. 16-193. PUD plan – conformity with comprehensive plan.

No land shall be designated PUD in the absence of a PUD plan, which plan shall set forth the written and graphic materials as described in this Article. All PUD plans must be in general conformity and consistent with the Town's comprehensive plan. (Prior code 17.13.040; Ord. 11-2001 §11)

Sec. 16-194. Subdivision and zoning regulations applicable – PUD plan.

(a) The subdivision regulations and zoning provisions of the Town shall apply to a PUD insofar as is consistent with these PUD regulations and with any specific zoning or subdivision requirements approved by the Board of Trustees at the time of zoning or platting the PUD in question; but to the extent that the zoning provisions or subdivision regulations conflict with these PUD regulations or with such specific zoning or subdivision requirements, the former shall not be applicable and the provisions of the PUD regulations and of such specific zoning or subdivision requirements shall control.

(b) The approval of a PUD overlay/zoning shall be inseparable from a PUD plan, and a PUD shall not be established or approved without the simultaneous approval of a PUD plan. The approved

PUD overlay/zoning and the approved PUD plan shall together establish and govern the land uses and development allowed within the PUD and shall supersede any other underlying zone district regulations. (Prior code 17.13.050; Ord. 11-2001 §11)

Sec. 16-195. Subdivision provisions modification authorized.

It is recognized that the uniqueness of each proposal for a PUD requires that the specifications, standards and requirements for various facilities, including but not limited to streets, highways, alleys, curbs, gutters, sidewalks, street lights, parks, playgrounds and school grounds, may be subject to modification from the specifications, standards and requirements established in the subdivision regulations and the zoning ordinance of the Town for like uses in other zone districts. Exceptions for utilities, storm drainage, sewage collection and treatment and water supply and distribution are expressly prohibited. The Board of Trustees may, therefore, either at the time of zoning as a PUD or upon final platting under the Town's subdivision regulations, as requested by the applicant, modify the specifications, standards and requirements which would be otherwise applicable to the proposed development. (Prior code 17.13.060; Ord. 11-2001 §11; Ord. 16 §2, 2010)

Sec. 16-196. Compatibility of land use elements.

It is recognized that certain individual land uses, regardless of their adherence to all the design elements provided for in this Chapter, might not exist compatibly with one another. Therefore, a proposed PUD shall be considered from the point of view of the relationship and compatibility of the individual elements of the plan, and no PUD shall be approved which contains incompatible elements. (Prior code 17.13.070)

Sec. 16-197. Overview of PUD procedure.

Approval of a PUD shall be subject to the submission of a full and complete application, the payment of all review and approval fees, preliminary review by the Planning and Zoning Commission and final approval by written resolution by the Board of Trustees after a public hearing. All applicants for a PUD intending to subdivide or resubdivide land as part of the PUD plan shall concurrently submit and pursue a subdivision application as provided for in this Code. Review and submission requirements for a PUD incorporating the subdivision and resubdivision of land shall be construed and applied together with the subdivision processing requirements. Whenever the PUD and subdivision application procedures or requirements overlap, the overlapping procedures or requirements shall not be applied cumulatively, and the procedure or requirement pertinent to the PUD application shall supersede the subdivision procedure or requirement. (Prior code 17.13.080; Ord. 11-2001 §11)

Sec. 16-198. Site plan criteria; general requirements.

The PUD shall meet the following site plan criteria, depicted on a site plan furnished by the developer, unless the applicant can demonstrate that one (1) or more of them is not applicable or that another practical solution has been otherwise achieved:

(1) The PUD shall have an appropriate relationship to the surrounding area, with adverse effects on the surrounding area being minimized.

(2) The PUD shall provide an adequate internal street circulation system designed for the type of traffic generated, safety, separation from living areas, convenience and access. Private internal streets may be permitted, provided that adequate access for police, fire and emergency protection is maintained; streets are named in a logical fashion to avoid confusion; and provisions for using and maintaining such streets are imposed upon the private users and approved by the Board of Trustees. Bicycle traffic shall be provided for if appropriate for the land use.

(3) The PUD shall provide parking areas adequate in terms of location, area, circulation, safety, convenience, separation and screening.

(4) The PUD shall provide common open space adequate in terms of location, area and type of the common open space, and in terms of the uses permitted in the PUD. The PUD shall strive for optimum preservation of the natural features of the terrain.

(5) The PUD shall provide for variety in housing types and densities, other facilities and common open space.

(6) The PUD shall provide adequate privacy between dwelling units.

(7) The PUD shall provide pedestrian ways adequate in terms of safety, separation, convenience, access to points of destination and attractiveness. (Prior code 17.13.090)

Sec. 16-199. Off-street parking.

The number of off-street parking spaces for each use in a PUD shall be determined by the Board of Trustees through consideration of the following factors:

(1) Estimated number of cars to be used by occupants of dwellings in the PUD;

(2) Temporary and permanent parking needs of nondwelling uses;

(3) Varying time periods of use whenever joint use of common parking areas is proposed; and

(4) Parking and storage needs for recreational vehicles, including, but not necessarily limited to, camper shells, boats, travel trailers and snowmobiles. (Prior code 17.13.110)

Sec. 16-200. Building height.

The maximum height of buildings may be increased above the maximum permitted for like buildings in other zone districts (not to exceed thirty-five [35] feet) by reference to the following characteristics of the proposed building:

(1) Its geographic location;

(2) The probable effect on surrounding slopes;

(3) Unreasonable adverse visual effect on adjacent sites or other areas in the vicinity;

(4) Potential problems for adjacent sites caused by shadows, loss of air circulation or loss of view;

(5) Influence on the general vicinity, with regard to extreme contrast, vistas and open space;

(6) Uses within the proposed building; and

(7) Fire protection needs. (Prior code 17.13.120)

Sec. 16-201. Minimum land area.

The minimum size of land that may comprise a PUD shall be determined by the Board of Trustees on a case-by-case basis. (Prior code 17.13.130)

Sec. 16-202. Lot area and coverage, setbacks and clustering.

The minimum lot areas and the minimum setback restrictions may be decreased below and the maximum lot coverages may be increased above those applicable to like lots and buildings in other zone districts to accommodate specific building types with unusual orientation on the lot or relationship between buildings. 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 useable 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. Architectural style of buildings shall not be the only basis for denying approval of a PUD application. (Prior code 17.13.140)

Sec. 16-203. Residential density.

The overall average residential density shall be no greater than the maximum density for the particular area in the land use section of the Town's comprehensive plan. The overall average residential density shall be calculated by summing the number of residential dwelling units planned within the boundary of the PUD and dividing by the total gross areas expressed in acres within the boundary of the PUD. Averaging and transferring of densities within the PUD shall be allowed upon a showing of conformance to the purpose of this Chapter through appropriate utilization of the area within the PUD to achieve high standards of design and habitability. The density of dwelling units as permitted herein, in any particular area, may be greater than the maximum permitted for a like use in other zone districts. (Prior code 17.13.150)

Sec. 16-204. Permitted uses.

(a) All permitted or conditional uses in any zone district may be allowed in a PUD subject to the provisions of Section 16-196. Without limiting the generality of the foregoing, the following uses, separate or in combination, may be permitted in a PUD:

(1) Single-family and multifamily residential dwelling units in detached, semidetached or attached groups, or attached, clustered or multistoried structures, or any combination thereof;

(2) Sale or rental of goods or services;

(3) Recreational facilities;

(4) Public and private offices;

(5) Mobile home parks;

(6) Convention facilities;

(7) Restaurants;

(8) Lodging places, including motels, hotels, lodges and dormitories;

(9) Schools and other educational institutions;

(10) Churches and hospitals;

(11) Business and commercial uses;

(12) Industrial uses; and

(13) Any other uses shown to be appropriate.

(b) The uses which shall be permitted in any particular PUD shall be limited to those specified in the PUD plan and the resolution approving the PUD. (Prior code 17.13.160; Ord. 11-2001, §11)

Sec. 16-205. Common open space.

(a) A minimum of twenty-five percent (25%) of the total area within the boundary of any PUD shall be devoted to usable and accessible common open space; provided, however, that the Board of Trustees may reduce such requirement if it finds that such decrease is warranted by the design of, and the amenities and features incorporated into, the plan and that the needs of the occupants of the PUD for common open space can otherwise be met in the proposed PUD and the surrounding area.

(b) The common open space of a PUD may be owned and maintained by the property owners within the PUD, or by an organization chosen therefrom or thereby. In the event that the organization established to own and maintain common open space, or any successor organization, at any time after establishment of the PUD, fails to maintain the common open space in reasonable order and condition in accordance with the plan, the Board of Trustees may serve written notice upon such organization or upon the residents of the PUD, 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 date and place of a hearing thereon which shall be held within fourteen (14) days of the notice. 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 or in the modifications thereof are not cured within the thirty (30) days or any extension granted, the Town, in order to preserve the taxable values of the properties within the PUD 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. The entry and maintenance shall not vest in the public any rights to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of the year, the Board of Trustees shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the PUD, to be held by the Board of Trustees, at which hearing such organization or the residents of the PUD shall show cause why such maintenance by the Town shall not, at the election of the Board of Trustees, continue for a succeeding year. If the Board of Trustees determines that such organization is ready and able to maintain the common open space in reasonable condition, the Town shall cease to maintain such common open space at the end of the year. If the Board of Trustees determines that such organization is not ready and able to maintain the common open space in a reasonable condition, the Town may, in its discretion, continue to maintain the common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

(d) The cost of such maintenance by the Town shall include actual cost, plus overhead, plus twenty-five percent (25%), and shall be paid by the owners of properties within the PUD who have a right of enjoyment of the common open space, and any assessments unpaid for a period of sixty (60) days shall become a tax lien on the properties. The Board of Trustees shall file a notice of such lien in the office of the County Clerk and Recorder upon the properties affected by such lien within the PUD and shall certify such unpaid assessments to the Board of County Commissioners and the County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of general property taxes. (Prior code 17.13.170)

Sec. 16-206. Application for PUD – PUD plan.

(a) An applicant shall process his or her application for PUD concurrently with any application for subdivision platting under Town ordinances as provided in Section 16-207. An applicant is advised to schedule a preapplication discussion with the Planning and Zoning Commission.

(b) The plan shall show generally within the PUD where each type of use will be located and shall indicate the total acreage which will be devoted to each use. The precise location of use and the location of lots, blocks or other parcels within each area devoted to each use shall be shown as that area is thereafter subdivided and platted in accordance with the ordinances of the Town.

(c) The permitted uses, conditional uses, uses allowed by Section 16-204, minimum lot area, maximum lot coverage, minimum setbacks, maximum height of buildings and all other use and occupancy restrictions applicable to any area zoned as PUD, shall only be those which are approved by the Board of Trustees at the time such area is so zoned.

(d) The applicant shall initiate any request for a PUD in writing and shall include in such writing the following:

(1) A legal description of the area, a statement of the ownership of all interests in the property to be included in the PUD, the written consent of all of the owners and, upon request of the Board of Trustees, evidence of title in such quality as is acceptable to the Board of Trustees;

(2) A plan indicating the broad concept of the proposed development. Such plan shall indicate:

a. The maximum number of dwelling units proposed within the overall area;

b. The minimum acreage which will be dedicated to common open space;

c. The type of uses proposed and the acreage devoted to each use;

d. Major internal vehicular traffic circulation systems;

e. The acreage which will be dedicated for school sites or other public uses;

f. The general nature and location of commercial and industrial uses, if any, to be located in the PUD;

g. Provision for water, sewer, telephone, electricity, gas, cable television and other utilities;

h. Other restrictions proposed by the applicant such as building setbacks, height limits, access requirements and grade or slope restrictions to be applied to particular areas; and

i. How the common open space will be owned and maintained.

(3) A regional location map, on a scale of one (1) inch equalling not more than four hundred (400) feet, illustrating site boundaries, acreage, existing structures and existing zoning.

(4) A map, on a scale of one (1) inch equalling not more than one hundred (100) feet, illustrating site boundaries, acreage, existing structures and existing zoning.

(5) A site plan map, on a scale of one (1) inch equalling not more than one hundred (100) feet, depicting site plan criteria which the applicant is required to meet in Section 16-198.

(6) A topographic map of the site, showing at a scale of one (1) inch equalling not more than one hundred (100) feet, with at least two (2) foot contour intervals for slopes, major vegetation elements, streams, rivers, ditches and areas subject to one hundred year flooding.

(7) The written request shall additionally contain the following information:

a. An explanation of the objectives to be achieved by the PUD;

b. A development schedule indicating the approximate dates when construction of the various stages of the PUD can be expected to begin and be completed;

c. Copies of any special easements, covenants, conditions and restrictions which will govern the use or occupancy of the PUD; provided, however, that the applicant may impose

additional covenants, conditions and restrictions on any particular area in connection with the platting of such areas;

d. A list of the owners of properties located within three hundred (300) feet of the boundaries of the PUD and their addresses (the property owners shall be notified by mail of the PUD application);

e. A statement and findings by a licensed engineer which shall provide evidence of the following as adequate to service the PUD:

1. The proposed water distribution system,

2. The proposed method of sewage collection,

3. The general manner in which storm drainage will be handled, and

4. The general manner in which provision will be made for any potential natural hazards in the area such as avalanche areas, landslide areas, floodplain areas and unstable soils;

f. Easements showing vested legal access for ingress and egress, if applicable;

g. Evidence that the PUD has been designed with consideration of the natural environment of the site and the surrounding area and does not unreasonably destroy or displace wildlife, natural vegetation or unique natural or historic features;

h. A statement of financial capability to timely and fully implement and complete the PUD.

i. Provisions for snow removal; and

j. A discussion of the major internal vehicular system and its relation to the existing system of streets, roads or highways.

(e) The applicant may submit any other information or exhibits which he or she deems pertinent in evaluating his or her proposed PUD. (Prior code 17.13.180; Ord. 11-2001 §11)

Sec. 16-207. PUD/subdivision plat required.

No PUD shall be approved absent the preparation and approval of a PUD/subdivision plat prepared in accordance with the plat requirements contained in the Town's Subdivision Code, and no development activity may occur within a PUD prior to the proper execution and recordation of the PUD/subdivision plat in the real property records of the County. (Prior code 17.13.190; Ord. 11-2001 §11)

Sec. 16-208. Public hearings.

All public hearings required under this Article may be simultaneously noticed and conducted with any other public hearing as required or authorized under the Town's Subdivision Code. (Prior code 17.13.200; Ord. 11-2001 §11)

Sec. 16-209. Development schedule.

(a) The applicant must begin development of the PUD within one (1) year from the time of its final approval by the Board of Trustees; provided, however, that the PUD may be developed in stages. The applicant must complete the development of each stage and of the PUD as a whole substantially in conformity with the development schedule approved by the Board of Trustees.

(b) If the applicant does not comply with the time limits imposed by Subsection (a) above, the Board of Trustees shall review the PUD and may revoke approval for the uncompleted portion of the PUD, require that the PUD be amended, or extend the time for completion of the PUD.

(c) Each stage within a PUD shall be so planned and so related to existing surroundings and available facilities and services that failure to proceed to a subsequent stage will not have a substantial adverse impact on the PUD or its surroundings.

(d) If a PUD contains nonresidential uses, they may be constructed in advance of residential uses if the Board of Trustees finds that such phasing is consistent with sound principles of orderly development and will have no substantial adverse effect on the quality or character of the PUD. (Prior code 17.13.210)

Sec. 16-210. Fee schedule for applications.

The fee for PUD applications shall be the fee as set forth in Section 17-70 of the Buena Vista Subdivision Code for PUD development. (Prior code 17.13.220; Ord. 6-1998, §11)

Sec. 16-211. Planning Commission.

(a) The Planning Commission is responsible for initially investigating all PUD plans and accompanying information in detail to ensure conformity with the provisions of this Article. The commission shall recommend approval of the PUD application, disapproval or approval upon conditions reasonably related and necessary to preserve the intent and purposes of this Article. The only reason for withholding a PUD application from submission to the Board of Trustees shall be a failure of the application to conform to the requirements of this Article.

(b) The Planning Commission shall upon rendering its decision on a PUD application promptly submit the application along with its conclusions, findings, recommendations and conditions to the Board of Trustees. The findings, conclusions, recommendations and conditions of the commission shall be advisory only and nonbonding on the Board of Trustees. (Prior code 17.13.230; Ord. 11-2001 §11)

Sec. 16-212. PUD approval procedure.

(a) A completed PUD application conforming to the requirements of this Article shall be submitted to the Town Administrator along with the appropriate application fee. No application shall be accepted, processed or scheduled for review unless and until it is complete and all necessary fees have been paid. The application shall be accompanied by not less than twenty (20) copies. In the event the Town must retain outside professional services to process or evaluate the application, the applicant shall bear the costs for same, inclusive of engineering, planning and legal fees.

(b) After a PUD application has been determined to be complete and all fees have been paid, it shall promptly be referred to the Planning and Zoning Commission. The commission shall review and evaluate the application at a public meeting conducted not later than sixty (60) days from the date the application was deemed complete, or as soon thereafter as can be accommodated. The commission may continue the public meeting for up to forty (40) days in order to allow for the gathering and submission of additional information deemed necessary to complete the commission's review. The commission shall forward its recommendations and/or findings on the application in writing to the Board of Trustees after it has concluded its deliberations. The commission may recommend denial of the application, approval or approval subject to conditions.

(c) The Board of Trustees shall consider the PUD application at a noticed public hearing conducted not later than thirty (30) days after the date upon which the board receives the recommendations and report of the Planning and Zoning Commission, or as soon thereafter as can be accommodated. Written notice of the subject matter and the time and place of the hearing shall be provided in accordance with the notice requirements for a site specific zoning map amendment contained in Section 16-6 of this Chapter. The hearing may be continued for up to forty (40) days to allow for the gathering and submission of additional information deemed necessary to complete the board's review, inclusive of referring the matter, or any particular item associated therewith, back to the Planning and Zoning Commission for additional study and recommendation. At the conclusion of the hearing and after discussion and deliberation, the board shall vote to approve, approve with conditions or deny the application, and shall thereafter direct staff to prepare a written resolution with supporting findings reflecting the board's decision for the board's review and approval at its next regularly scheduled meeting.

(d) The time limits as set forth in this Section may be waived or extended upon the written request or consent of the applicant.

(e) The burden to demonstrate the application's compliance with all applicable review criteria shall rest with the applicant.

(f) No PUD designation shall be approved absent the applicant's full and timely payment of all fees assessed under this Chapter. (Prior code 17.13.240; Ord. 11-2001 §11)

Sec. 16-213. Form of PUD approval.

All decisions of the Board of Trustees approving a PUD shall be in the form of a written resolution and contain, at a minimum, the information set forth below. No building permit may issue and no development activity may commence within the PUD area until the PUD approval and plat have been duly executed and recorded along with any necessary PUD agreement.

(1) The density allocated to the property by type and number of units;

(2) Approved uses on each development parcel or use areas within the PUD site;

(3) Approved densities in total numbers of units for each development parcel identified;

(4) Approved density transfers from one (1) parcel to another, if any;

(5) The phasing and general timetable of development that shall ensure the logical and efficient provision of municipal services;

(6) Specific conditions applied to the development of any parcels that, by their nature, are subject to special development constraints; and

(7) Variations in any dimensional limitations expressed as either an allowable maximum or a specific maximum. (Prior code 17.13.250; Ord. 11-2001 §11)

Sec. 16-214. PUD agreement.

For any PUD in which variances from underlying zoning requirements are granted, or for which public infrastructure or improvements are required, a written PUD agreement setting forth same and including all specific terms and conditions of approval shall be prepared and submitted by the applicant to the Town Administrator for approval by the Board of Trustees by written resolution. The PUD agreement shall be recorded in the real property records of the County Clerk and Recorder along with the PUD plat/map, and shall run and be a burden upon all lands within the PUD. The agreement shall also specify the amounts and type of financial security that must be posted by the PUD developer to ensure the timely and satisfactory installation of all public infrastructure and other improvements, inclusive of landscaping for common or public areas associated with the PUD. Financial security shall be posted prior to the issuance of any building permit or development activity within the PUD area and shall be in an amount not less than one hundred twenty-five percent (125%) of the estimated cost of the completion of all improvements; and may be provided by letter of credit, performance bond, cash escrow or other financial instrument as deemed acceptable by the Town. Upon the complete installation, inspection and acceptance of the improvements and/or infrastructure, all but twenty-five percent (25%) of the posted financial security shall be released, which twenty-five percent (25%) shall continue to remain posted as security to ensure that all improvements and infrastructure shall remain free of defects for a period of two (2) years after preliminary acceptance of same by the Town. The Town shall be entitled to draw on any posted financial security in order to complete, correct or repair any PUD infrastructure or improvement as called for in the PUD approval. (Ord. 11-2001 §11)

Sec. 16-215. PUD plan enforcement – modifications.

(a) Development of the area within a PUD shall be limited to the uses, densities, configuration and terms, elements and conditions contained within the approved PUD plan and development agreement, and may be enforced by the Town at law or equity. The configuration and mix of the units may be modified as provided for in this Article or in the PUD agreement, but no portion of the density allocation may be transferred to land not included in the PUD plan.

(b) In addition to any and all other remedies as available to the Town under law, the Town Administrator may serve a written notice on the PUD developer, or any landowner within the PUD, to appear before the Board of Trustees when reasonable grounds exist to believe that the PUD plan, or any part thereof, is not being adhered to. The Board of Trustees shall conduct a public hearing to determine the existence of any alleged failure or violation of the PUD approval, and may enter orders directing the correction of same.

(c) All provisions of the PUD plan as finally approved run in favor of the residents, occupants and owners of the PUD, but only to the extent expressly provided in the plan and in accordance with the terms of the plan; and to that extent, the provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or in equity by such residents, occupants or owners acting individually, jointly or through an organization designated in the plan to act on their behalf.

(d) All provisions of the PUD plan authorized to be enforced by the Town may be modified, removed or released by the Town subject to the following:

(1) No modification, removal or release of the provisions of the plan by the Town shall affect the rights of the residents, occupants and owners of the PUD to maintain and enforce those provisions in law or in equity; and

(2) No substantial modification, removal or release of the provisions of a PUD plan by the Town shall be permitted except upon a finding by the Board of Trustees, following a public hearing upon notice as required by this Article, that the modification, removal or release is:

a. Consistent with the efficient development and preservation of the entire PUD,

b. Does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across the street from the PUD or the public interest, and

c. Is not granted solely to confer a special benefit upon any person.

(e) Residents and owners of land in the PUD may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove or release their rights to enforce the provisions of the plan; but no such action shall affect the right of the Town to enforce the provisions of the plan.

(f) An insubstantial amendment to an approved final PUD plan may be authorized by the Town Administrator. However, insubstantial amendments may only be approved if they promote the terms, purposes and conditions of the original PUD plan and approval. The following shall *not* be considered an insubstantial amendment:

(1) A change in the use or character of the development.

(2) An increase or decrease by greater than three percent (3%) in the overall coverage of structures as originally approved within the PUD.

(3) Any amendment that substantially increases vehicle trip generation rates arising from the PUD, or the demand for public facilities.

(4) A reduction by greater than three percent (3%) of the originally approved common or public open spaces.

(5) A reduction by greater than one percent (1%) of the originally approved off-street parking or loading space.

(6) A change in the alignment or reduction in required pavement widths or rights-of-way for streets or easements.

(7) An increase or decrease of greater than two percent (2%) in the originally approved gross floor area of commercial buildings.

(8) An increase or decrease by greater than one percent (1%) in the originally approved residential density of the PUD.

(9) Any change which is directly contrary to a condition or representation of the PUD's original approval, or which requires granting a further variation from the PUD's approved use or dimensional requirements.

(g) During the review of any proposed significant amendment to the PUD, the Town may require such new conditions of approval as are necessary to ensure that the development will be compatible with current community standards and regulations. This shall include, but not be limited to, applying to the portions of the PUD which have not obtained building permits, or are subject to the proposed amendment, any new community policies or regulations which have been implemented since the PUD was originally approved. An applicant may withdraw a proposed amendment at any time during the review process. (Ord. 11-2001 §11)

Secs. 16-216—16-230. Reserved.

ARTICLE X

Regulations of General Application

Sec. 16-231. Off-street parking requirements – intent.

It is the intent of these regulations that adequate parking and loading facilities shall be provided on private property in order to promote the public safety, to lessen congestion in the public streets, and to help make possible the full use of existing streets for traffic movement unhindered by parking, loading and unloading maneuvers conducted within the public streets. To achieve these purposes, it is further intended that upon the erection of any building or the use of any lot, off-street parking and loading space shall be provided which is not less than the minimum required herein, subject to the obtaining of a variance pursuant to Section 16-46. Compliance with these requirements shall be a continuing responsibility. (Prior code 17.07.010, 17.07.011)

Sec. 16-232. Off-street parking required.

(a) Exemptions. Changes in use that do not expand the footprint of the site or the square footage of the structures are exempt from the standards of this Section, provided that the existing off-street parking remains unaltered.

(b) Off-street vehicle storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for the various identified uses. Each off-street parking space shall be provided with vehicular access to a street or alley and shall be designed or installed with

adequate space for turning so that no vehicle shall be required to back into the street or alley, except from spaces used for single- or two-family dwellings. Spaces in garages shall count towards the requirements of this Section. Areas within a driveway or otherwise required to move cars in and out of a parking space shall not be used or considered to meet off-street parking requirements, except with regard to single- or two-family dwellings.

(c) All off-street parking spaces shall be clearly marked, shall have a paved or other all-weather hardened surface of not less than nine (9) feet by (18) eighteen feet in size, and shall have unobstructed access to a street or alley. *Hardened surface* shall mean and include concrete, asphalt, pavers and/or compacted or compressed stone or gravel of sufficient size and depth so as to completely cover the surface of the ground and prevent the creation of ruts, potholes or mud. If the parking requirement is for five (5) or more spaces, the surface shall be concrete, asphalt or pavers.

(d) Off-street parking zone standards by zone districts.

(1) General Business District (B-1). Parking requirements in this zone district are based on the linear frontage of the property. For every twenty-five (25) linear feet of frontage, the property will be required to provide one and one-half (1.5) spaces that shall be located on the rear or side of the building off of the alley. The parking requirement shall be rounded up at one-half (0.5) or more. For properties containing double frontage, the linear frontage calculation shall be based on the narrowest lot line. Properties that do not have an alley are exempt from the off-street parking requirement. Commercial properties that do not have an alley shall be required to install a bike rack in the front of the property to be exempt from the off-street parking requirement. A bike rack can be installed in front of any property to count towards one (1) of the required parking spaces. A minimum of thirty-six (36) inches of clearance must be maintained on any public walkway where a bike rack is installed. Single-family residences shall not be required to provide more than two (2) spaces per lot.

(2) Highway Business District (B-2), Industrial (I) and Special Recreational (S-1). Parking requirements for this zone district are based on Table 16.232 below. Definitions of all uses listed in the Table can be found in Section 16-4 of this Chapter. Areas used for mechanical space, bathrooms, accessory storage or part of a structure that are not used by the public or an employee shall not count towards the required parking area. A bike rack can be installed on any property to count towards two (2) of the required parking spaces. A minimum of thirty-six (36) inches of clearance must be maintained on any public walkway where a bike rack is installed. ADA parking spaces shall be installed per the amounts set forth in the adopted building code. Parking for special uses in these zone districts shall be determined during the review process pursuant to Section 16-61.

Table 16.232
Off-Street Parking B-2, I and S-1 Zone Districts

Uses	*Required Off-Street Parking*
Low intensity retail	1 space per 500 sq. ft.
High intensity retail	1 space per 400 sq. ft.
Low intensity office	1 space per 500 sq. ft.
High intensity office	1 space per 400 sq. ft.
Restaurants	1 space per 250 sq. ft. of dining area
Civic structures	1 space per 500 sq. ft.
Hotels, motels and bed and breakfasts	1 space per room plus 2 spaces for administration
Conference rooms or centers	1 space per 200 sq. ft.
Wholesaling or manufacturing	1 space per 1,000 sq. ft.
Storage space	1 space per 1,000 sq. ft.
Gasoline or filling stations	1 space per 300 sq. ft.
Other uses *	1 space per 500 sq. ft.

* Uses not defined may be appealed per Section 16-62 to the Planning and Zoning Commission to reduce the required parking.

(3) Low-Density Residential (R-1), General Density Residential (R-2) and High-Density Residential (R-3). Off street parking requirements for these residential zone districts shall be one (1) space for homes of less than eight hundred fifty (850) square feet; two (2) spaces for single-family homes; four (4) spaces for duplex development (two [2] per unit); and one and one-half (1.5) spaces per unit for multi-family developments of three (3) or more units. Access shall be from the alley if one is present. Garage spaces and driveways count towards this requirement. Parking for special uses in these zone districts shall be determined during the review process pursuant to Section 16-61 of this Chapter. Single-family and duplex homes in the Old-Town Overlay and properties that do not have alley access are exempt from this requirement. (Ord. 13 §2, 2012)

Sec. 16-233. Location on other property.

If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property, provided that such property lies within four hundred (400) feet of the main entrance to such principal use. Such automobile parking space shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner. (Prior code 17.07.013)

Sec. 16-234. Extension of parking areas or spaces for commercial uses into residential districts.

Required parking areas or spaces associated with a commercial use in a commercial zone district may extend up to one hundred and twenty (120) feet into a residential zone district, provided that the parking area or space:

(1) Adjoins the commercial district;

(2) Has its only access to, or fronts upon, the same street that serves the commercial use and is adjacent to the property for which it provides the required parking space; and

(3) Is separated from abutting properties in the residential district by adequate screening such as a fence or a buffer strip of vegetation at least six (6) feet in height. (Prior code 17.07.014; Ord. 11-2001 §12)

Sec. 16-235. Parking for multifamily dwellings.

No more than six (6) of the required number of parking spaces shall be allowed between a multifamily dwelling unit and a street or highway unless otherwise approved. (Prior code 17.07.015)

Sec. 16-236. No reduction in required off-street parking — variances.

No parking area or off-street parking space shall be encroached upon by buildings, storage or other use; nor shall the number of required parking spaces be reduced except upon written application for a variance under Section 16-62 of this Chapter and a finding that by reason of a permanent reduction in floor area, building occupancy, seating capacity, number of employees or other such cause, the number of required parking spaces can be reduced without violating the purpose and intent of the off-street parking regulations. (Prior code 17.07.016; Ord. 11-2001 §12)

Sec. 16-237. Mixed uses.

In the case of mixed uses, the total requirement for off-street parking shall be the sum of the requirements of the various uses computed separately as specified herein. (Prior code 17.07.017)

Sec. 16-238. Off-street loading and unloading space required.

Every lot on which a business, trade or industry use is hereafter established shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley, or if there is no alley, to a street. For the purpose of this Section, an off-street loading space shall have minimum dimensions of twelve (12) feet by thirty-five (35) feet. Required space shall be considered as follows:

(1) Retail business. One (1) space for each ten thousand (10,000) square feet of gross floor area.

(2) Wholesale and industry. One (1) space for each fifteen thousand (15,000) square feet of gross floor area.

(3) Truck terminals. Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one (1) time. (Prior code 17.07.020)

Sec. 16-239. One principal building on a lot; exceptions and procedures.

(a) Only one (1) principal building and its customary accessory buildings may be erected on any one (1) lot, except as allowed within a planned unit development (PUD); and except that in the General Business (B-1), Highway Business (B-2), Light Industrial (I-1) and Special Recreational (S-

1) districts, more than one (1) principal building may be allowed on a single lot by special use permit when the buildings will be maintained under single ownership.

(b) In addition to the application and approval criteria set forth in Section 16-61 of this Chapter, an applicant for a special use permit to allow for more than one (1) principal building on a lot shall be required to provide the following information with its application:

(1) A site plan drawn to scale (not to exceed 1"=50') in dark ink, or presented on legible printed sheets, utilizing sheets not more than 24"x36" and not less than 11"x17" in size unless a different size is allowed by the Town Administrator. Where multiple sheets are used, an index shall be provided and each sheet shall be separately identified and cross-referenced with the sheets attached to it. The site plan shall be prepared by an engineer, surveyor or other qualified professional where the scope or nature of the application, or the Town's review of same, require the detail and certainty of a professionally prepared plan.

(2) The site plan shall accurately depict, and be accompanied by a narrative report describing the following items:

a. The dimensions and location of all existing or proposed buildings and structures, above- and below-ground utilities and other improvements on the subject lot. All principal buildings must be served by their own separate water and sanitary sewer lines, and shall be separately metered.

b. Building envelopes for all existing and proposed buildings.

c. Off-street parking areas and spaces and loading areas.

d. Vehicle and pedestrian ingress and egress points and the traffic circulation pattern showing the direction of traffic flow.

e. The location of service and refuse collection areas.

f. The location of all signs indicating the size, shape and height of each sign.

g. The type, location, design and specifications (including photometrics) for all outdoor lighting.

h. The location of existing and proposed fences, landscaping and other methods of visual screening. Landscaping shall conform to the requirements of the Town landscape/planting guide and the method of maintenance of the landscaping, as well as a list of type, size and quantity of plant materials and the general location of the landscaping shall be provided.

i. The estimated date of completion of the proposed improvements. (Prior code 17.07.030; Ord. 11-2001 §12; Ord. 11-2003 §1)

Sec. 16-240. Visibility at intersections.

On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the centerline of the street shall be placed or

maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on the street right-of-way lines, each of which is twenty-five (25) feet from the point of intersection. (Prior code 17.07.040)

Sec. 16-241. Gasoline service or filling stations.

The following regulations shall apply to all gasoline service or filling stations:

(1) All buildings shall be located at least forty (40) feet from any street right-of-way line.

(2) Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way line.

(3) All service, storage or similar activities shall be conducted entirely on the premises.

(4) All major repair work, if any, shall be conducted within a completely enclosed building.

(5) Open storage of wrecked or inoperable cars, discarded tires, auto parts or similar materials shall not be permitted. (Prior code 17.07.050)

Sec. 16-242. Signs and outdoor advertising.

(a) Purpose and intent. The regulations in this Section are intended to coordinate the use, placement, physical dimensions and design of all signs within the Town. The purpose of these regulations is to:

(1) Ensure that signs are well designed and contribute in a positive way to the Town's visual environment, express local character, honor local heritage and enhance the distinctive image for the Town.

(2) Recognize that signs are a necessary means of visual communication for the convenience of the public and provide flexibility within the sign review/approval process to allow for unique circumstances and creativity.

(3) Recognize and ensure the right of those concerned to identify businesses, services and other activities by the effective use of signs and limit signs to those which are accessory and incidental to the use on the premises where such signs are located.

(4) Provide a reasonable balance between the right of an individual to identify his or her business and the right of the public to be protected against the visual discord resulting from the unrestricted proliferation of signs and similar devices.

(5) Protect the public from damage or injury caused by signs that are poorly designed or maintained and from distractions or hazards to pedestrians or motorists caused by the indiscriminate placement or use of signs.

(6) Encourage signs that are responsive to the aesthetics and character of their particular location, adjacent buildings and uses and the surrounding neighborhood; and ensure that signs are

compatible and integrated with the building's architectural design and with other signs on the property.

(7) Ensure that signs are appropriate for the type of street on which they are located.

(8) Bring nonconforming signs into compliance with these regulations.

(b) Administration. The Town Administrator shall administer the sign regulations herein.

(1) Nonconforming signs. A legally permitted permanent nonconforming sign may remain, provided that it is maintained in good repair, with the following provisions.

a. Modification. Nonconforming signs shall not be enlarged, extended, structurally reconstructed or altered in any manner unless the sign is modified to conform to these regulations.

b. Damage. A nonconforming sign or the structure supporting the sign which is damaged or destroyed to the extent of fifty percent (50%) or more shall not be altered, replaced or reinstalled unless it is in conformance with these regulations. If the damage or destruction is less than fifty percent (50%), the sign must be under repair within sixty (60) days and all repairs must be completed within six (6) months.

c. Discontinuance. The property signage must be brought into conformance with these regulations within six (6) months following a change in use.

d. Change in location. Nonconforming signs may not be moved to a new location.

(c) Permit procedures. No sign, except as provided by Subsection (f) of this Section, shall be erected, displayed, altered, relocated or replaced until the Town has issued a sign permit and the sign registration sticker is duly affixed to the sign.

(1) Permit application. Applications for sign permits shall be submitted on the forms provided by the Town, completed as required, with the required sign permit fee attached. At a minimum, the sign permit application shall include the following:

a. Business name, address and phone number.

b. Business owner name, mailing address and phone number.

c. Name, mailing address and phone number of property owner.

d. Site plan showing the location of the sign on the premises in relation to lot lines, buildings, sidewalks, streets, public rights-of-way and street intersections within three hundred (300) feet of the proposed sign.

e. Description of sign (or signs), including type, size, structural design and construction materials.

f. Drawing or photograph of the proposed sign with specifications indicating height, perimeter, area of sign and/or area of copy, dimensions, type of lettering proposed, means of support, method of illumination and any other significant characteristics.

g. Any other information requested by the Town Administrator in order to carry out the purpose of these regulations.

h. The required sign permit fee as established by resolution of the Town.

(2) Permit review and action. The Town Administrator shall review the sign permit application and issue or deny the permit in conformance with the standards in this Code.

a. Official date. The official date of submission shall be the day the Town Administrator has determined that the application, with all required data, has been properly prepared and submitted and is complete.

b. Time to review. The Town Administrator shall determine whether the proposed sign will or will not be in compliance with the requirements of these regulations and shall, within seven (7) to ten (10) days of the official date of submission, ask for additional information or issue or deny the sign permit.

c. Photograph. When the sign has been completed, the applicant shall photograph the completed sign and submit the photograph to the Town Administrator. The Town Administrator shall then inspect the sign.

d. Inspection for compliance. The Town Administrator shall perform a final inspection after installation of any approved sign and, if approved, attach the approval sticker to the sign.

e. Discrepancies. Any discrepancies between any sign as approved and the sign as constructed shall be identified in writing by the Town Administrator and may result in the halt of construction and correction of the discrepancy. If the discrepancy is not corrected within twenty (20) days after written notice, the sign may be ordered removed by the Town Administrator.

f. Registration of all signs. All signs must be registered with the Town. Signs that are certified as legal nonconforming signs may continue to be displayed, provided that a registration sticker is affixed to the sign.

g. Information to be affixed on permitted signs. All permitted signs after the effective date of these regulations (and legal nonconforming signs) shall have the following information permanently affixed in a conspicuous place.

1. Date of sign permit approval.

2. The sign permit number.

3. The voltage of any electrical apparatus used in connection with the sign.

h. Violations. Any sign which has not been permitted or has not been certified as a legal nonconforming sign shall be deemed to be in violation of these regulations and shall be ordered removed by the Town Administrator, with the costs of removal to be at the expense of the sign owner or the property owner. Failure to comply will result in the Town proceeding with the enforcement procedures presented in Section 16-3 of this Chapter.

(3) Expiration of sign permit. If the sign authorized by any sign permit has not been erected within sixty (60) days from the date of approval, the sign permit shall be deemed expired. Prior to the deadline of sign installation, the applicant may request an extension, in writing, from the Town Administrator.

(4) Revocation of sign permit. Signs must be properly maintained, painted and kept free from all hazards. The Town Administrator shall take action if any sign, whether new or preexisting, is damaged, moved or otherwise altered, either intentionally or by natural forces, in a manner which causes the sign to be not in conformity with these regulations or to be a hazard or danger to the public. The Town Administrator shall give written notice specifying the violation to the sign owner and the property owner to conform or to remove the sign. If the sign has not been brought into conformance within thirty (30) days from the date of the notice, the Town Administrator shall revoke the sign permit and the subject sign shall be removed at the expense of the property or business owner.

(d) Appeals.

(1) Appeals to the Board of Adjustment may be taken by any person subject to and aggrieved by a decision of the Planning and Zoning Commission or the zoning enforcement official made under this Section. Such appeal shall be taken within ten (10) days from the date of the decision sought to be appealed by filing with the Town Administrator a written notice specifying the grounds thereof. All appeals shall be accompanied by the appropriate fee. The Town Administrator shall promptly transmit to the Board of Adjustment all papers constituting the record upon which the action or decision being appealed was taken. A timely appeal shall stay all proceedings in furtherance of the action appealed from unless the Town Administrator certifies to the Board of Adjustment that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of competent jurisdiction for good cause shown on notice to the Town Administrator. The Board of Adjustment shall fix a reasonable time and place for a hearing on an appeal not more than forty-five (45) days after the date of receipt of the notice of appeal and send notice thereof in writing by regular mail to the appellant not less than fifteen (15) days in advance. The appellant shall appear in person or by an agent or attorney at the hearing and be heard. Absent good and just cause, the failure of an appellant or his or her agent or attorney to attend the hearing on appeal shall constitute an abandonment of the appeal, and no further proceedings shall be had thereon. Appeals shall be heard and determined in a reasonably prompt fashion. Final decisions of the Board of Adjustment shall be reduced to writing and signed by the chairperson and shall be provided to the applicant.

(2) Interpretation. Questions concerning whether a certain type of sign is permitted shall be addressed to the Planning staff.

(e) Comprehensive Sign Plan. Applicants wishing to vary from the sign number and size limits set forth in this Section may submit a Comprehensive Sign Plan application as outlined below.

(1) General. A Comprehensive Sign Plan may or may not run with the property and shall be approved subject to such safeguards, terms and conditions as deemed necessary and appropriate to protect and preserve the intent and purposes of this Section. Violations of the terms and conditions imposed on a Comprehensive Sign Plan shall be deemed violations of this Section and shall be punishable under the general penalty provisions of this Code.

(2) Applications for a Comprehensive Sign Plan (with appropriate copies and supporting materials) shall be submitted to the Town Administrator on forms provided therefor. All applications for a Comprehensive Sign Plan shall be initially reviewed by Town staff for completeness. A reasonable fee shall be charged for each application, and a site plan and/or other drawing and information may be required as part of the application. Actual costs for professional planning, engineering, legal and/or other consulting services incurred by the Town in reviewing an application shall be paid by the applicant.

(3) Administrative review process. Applications for a Comprehensive Sign Plan with total signage not in excess of twenty-four (24) square feet and with no internally lit signage shall be reviewed by the Town Administrator. At the time of filing a Comprehensive Sign Plan for administrative review, the applicant shall provide notice of the application to adjacent property owners (excluding public rights-of-way) summarizing the plan and notifying them of their right to comment on or object to the plan by filing such comments or objections with the Town Administrator within seven (7) business days of the date the application is filed with the Town. Such notice shall be provided by: (a) prominently and visibly posting the property subject to the application; and (b) delivering notice either by regular mail or personal delivery. Applications shall be reviewed within ten (10) business days, and the Town Administrator shall, in writing, approve, deny or conditionally approve the application based on the criteria set forth in Paragraph (5) below.

(4) Planning and Zoning Commission public hearing. Applications that do not meet the requirements for the administrative review process set forth in Paragraph (3) above shall be reviewed by the Planning and Zoning Commission at a public hearing. The applicant shall be notified in advance of the time and place of the Planning and Zoning Commission's public hearing and may attend and participate therein. Not less than fourteen (14) days prior to the hearing, written notice describing the request and the time and place for the hearing shall be prominently and visibly posted on the property subject to the application and sent by regular mail to the applicant and the owners of all properties that are adjacent to the subject property (excluding public rights-of-way). The Planning and Zoning Commission shall, in writing, approve, deny or conditionally approve the application based on the criteria set forth in Paragraph (5) below.

(5) Approval. Comprehensive Sign Plans shall be approved by the Planning and Zoning Commission or Town Administrator, as applicable, but only after finding that the proposed plan will not adversely impact the neighborhood or the public safety and welfare. In making such a determination, the following criteria shall be considered:

a. Whether the features of the signs, including the illumination, support structure, color, lettering, height and location, are designed so that the signs are an attractive, effective and complimentary feature of the building or property which they serve;

b. Whether the signs make a positive contribution to the general appearance of the street and commercial area in which they are located;

c. Whether the scale and placement of the signs are appropriate for the building on which they are placed, the area in which they are located and are sensitive to the context in which they are used, and whether building signs are harmonious in scale and proportion with the building facade to which they are mounted; and

d. Whether the signs are professionally designed and fabricated of quality, durable materials.

(f) Exempt signs. A sign permit shall not be required for the following types of signs, provided that the special conditions attached to each type of exempt sign are met.

(1) Name and address identification signs. One (1) sign indicating the address, number and/or name of occupants of the premises that does not exceed two (2) square feet in area per side and does not include any commercial advertising or other identification.

(2) Window signage. Signs and decals affixed or painted on windows or door glass panels, provided that not more than fifty percent (50%) of the total window area is covered.

(3) Flags. The flag of any nation, organization of nations, state, county or municipality, provided that no more than two (2) flags of a legal size defined in Subsection (k) of this Section may be displayed per business and that the flag is not used or displayed in connection with a commercial promotion or as an advertising device.

(4) Directional and warning signs. Any sign commonly associated with and limited to information and directions necessary and convenient for persons coming on the property, including signs marking entrances, private drive signs, handicapped parking signs, parking area, one-way drives, rest rooms, security and warning signs, pickup and delivery areas. The maximum size of each directional or warning sign shall be two (2) square feet.

(5) Public signs. Signs erected by government agencies or utilities, including traffic, utility, safety, railroad crossing and identification signs for public facilities.

(6) Temporary real estate signs (for sale, lease or rent). Display of these signs shall be limited to two (2) per property and six (6) square feet in area in residential zones and sixteen (16) square feet in all other zones. These signs shall be removed within thirty (30) days following closing of the sale or lease of the property.

(7) Garage or yard sale signs. Signs, where permitted, advertising garage sales or yard sales shall be installed no more than two (2) days prior to the sale and shall be removed within one (1) day after the close of the garage or yard sale.

(8) Historical plaques. Plaques authorized by Buena Vista Heritage or the State Historical Society identifying historic buildings or sites.

(9) Signs located inside buildings. Signs located inside a building, except that any sign which is located within five (5) feet of any window shall not have any flashing or moving lights, excepting temporary Christmas-type lights, which would produce any glare or distraction for any passing motorist.

(10) Menu display board. One (1) menu sign may be located at the entrance of a restaurant, provided that it is no larger than three (3) square feet and is located in a permanent frame.

(11) Political signs. Political signs no more than four (4) square feet announcing political candidates seeking office appearing on a ballot shall conform to the following stipulations:

a. No person shall post any political sign upon public or private property without permission of the property owner.

b. Political signs shall not be permitted on any utility pole, lighting pole or other similar structure.

c. Political signs shall be removed within five (5) calendar days following the election for which they were posted.

(12) Temporary special event signage is signage used in conjunction with an approved Town special event permit. These temporary events signs shall be installed no earlier than fourteen (14) days prior to the event and must be removed twenty-four (24) hours after the approved special event.

(g) Temporary signs. Temporary signs may be erected only after obtaining a temporary sign permit, which shall cite the length of time the sign may be displayed and date of expiration, excluding holiday decorations.

(1) Temporary sign permit application. A temporary sign permit application must be accompanied with the appropriate permit fee and a deposit fee as established by resolution of the Board of Trustees.

(2) Removal of temporary signs. Temporary signs must be removed within the time period specified on the permit. Upon applicant certification that the sign has been removed, the deposit shall be returned.

(3) Type and size of temporary signs. The following signs are those that require a temporary sign permit.

a. Sale banners. Banners used to advertise a sale or special event. Maximum duration of such banners is two (2) weeks. Banners shall be no larger than sixteen (16) square feet in area and shall be professionally created. Only one (1) banner shall be permitted at a time. The maximum number of banner temporary sign permits issued per business per year shall be three (3).

b. Construction signs. Construction signs announcing new buildings or projects may be permitted as temporary signs after the commencement of construction. Each construction

project site shall be limited to one (1) sign on the construction site premises, not exceeding twenty (20) square feet in area and eight (8) feet in height. The construction sign shall be removed after the first certificate of occupancy for the project is issued.

c. Temporary vendor signs. Signs associated with vendors for special occasions shall be processed concurrently with the application for temporary use permit in conformance with Section 16-63 of this Chapter. Such signs shall be attached to the vendor cart or temporary structure and be made of permanent durable material.

d. Town event banners. Large event banners hung over Main Street advertising a Town event shall be permitted as a temporary sign for the time frame of one (1) week prior to the event and during the event only.

e. Inflatable signs and other objects. Signs and other objects which are inflated, including but not limited to balloons, for the purpose of attracting attention to a business may be permitted for a two-week duration once per quarter and no more than four (4) times in one (1) calendar year, excluding holiday decorations to be included during the season.

(h) Signs requiring a special review sign permit. The following types of signs require a special review sign permit application with review and approval by the Planning and Zoning Commission. The special review sign permit process is encouraged for those signs of uniquely creative design or materials or in locations requiring review of special conditions. The special review sign permit process shall follow the same process as outlined in Subsection (e) of this Section.

(1) Off-premises signs. The following shall apply to off-premises signs until such time that the Town adopts the Town Sign Plaza Program.

a. Off-premises signs shall be permitted in accordance with the terms and conditions of this Section. Off-premises signs are limited to nonresidential zones.

b. In order to obtain permission to use an off-premises sign, a business applicant shall meet the following requirements:

1. The applicant shall obtain written permission from all adjacent property owners for the placement of the off-premises sign along street frontage on property either owned by the Town or by the adjoining property owners;

2. The applicant shall submit an off-premises sign application and an off-premises sign application processing fee as established by the Board of Trustees;

3. The applicant shall provide proof of insurance for liability arising out of the use or placement of said off-premises sign and shall verify that the Town is listed as an additional insured under said policy; and

4. The off-premises sign applied for shall comply in all respects with the terms and conditions of this Section.

c. Off-premises signs shall comply with the following regulations:

1. Off-premises signs shall not interfere with either pedestrian traffic or vehicle traffic;

2. Off-premises signs shall not detract from the general appearance of the area in which the sign is being placed;

3. Placement of off-premises signs shall be made in the discretion of the Town Administrator so as to avoid the over-proliferation of signs on one (1) parcel of property or in one (1) particular area;

4. Off-premises signs shall not be placed in zone districts other than B-1 and B-2 Zone Districts;

5. Off-premises signs shall not be placed in areas designated as Town parks;

6. No business organization shall have more than one (1) off-premises sign located on Town property;

7. There shall be no more than one (1) off-premises sign placed on any single parcel of property or property frontage; and

8. Off-premises signs shall be no larger than six (6) square feet per side.

(2) Exterior wall or roof murals.

(3) Roof signs.

(4) A sign painted on a wall.

(5) Neon signs.

(6) A statuary sign.

(7) Animated and moving signs. A sign or other display with either kinetic or illusionary motion powered by natural, manual, mechanical, electrical or other means, including but not limited to flags having commercial messages, garrison flags and all pennants, banners, streamers, propellers and discs, as well as flashing signs, signs with illuminated elements that are used to simulate the impression of motion, searchlights and signs with emissions such as smoke, vapors, sound or odor.

(8) Backlit and internally illuminated signs, except such signs are prohibited on East Main Street pursuant to Subsection (i), below.

(i) Prohibited signs. The following signs are expressly prohibited:

(1) Glaring signs. Signs with light sources or which reflect brightness (such as mirrors) in a manner which constitutes a hazard or nuisance. This includes signs with fluorescent text, graphics or background, as well as holographic signs.

(2) Obstructive signs. A sign or other advertising device erected or maintained in any manner so as to obstruct free and clear vision of an intersection, traffic approaching the intersection or a roadway.

(3) Posters and handbills. Any exterior sign affixed to any structure, tree, pole or natural vegetation.

(4) Strings of light. Any devices including lights that outline property lines, sales areas or any portion of a structure and are intended to advertise or draw attention to a business or commercial activity, except as follows:

a. Lights used temporarily as holiday decorations. Holiday lights are permitted between November 15 and January 15 of the holiday season.

b. Lights or other devices used on a temporary basis on parcels on which carnivals, fairs or other similar temporary activities are held.

c. Strings of lighting used to delineate an area of outdoor dining must be reviewed as part of the required landscaping plan.

d. All other strings of lighting must be reviewed as part of the required landscaping plan (Section 16-255 of this Chapter).

(5) Vehicle signs. Any sign displayed on a parked vehicle or trailer (also called "street blimps") where the primary purpose is to divert traffic to advertise a business not on or near the same premises. However, business names or logos are permitted on vehicles, provided that the vehicle is associated with the business and normally parked at the business premises.

(6) Signs in the public right-of-way. A sign in, on, over or above a public right-of-way that in any way interferes with normal or emergency use of that right-of-way.

(7) Abandoned signs.

(8) Backlit and internally illuminated signs on East Main Street.

(j) Permitted signs. The following are permitted signs, provided that each sign conforms to the design criteria established for the relevant use or district in which the sign is located.

(1) Permitted maximum number, area and height. In the B-1 zone districts, no use by right on a property shall have more than two (2) signs with a maximum sign area of forty (40) square feet. In the B-2 and I-1 zone districts, no use by right on a property shall have more than two (2) signs with a maximum sign area of seventy-two (72) square feet. Variations from these limits may be permitted with the approval of a Comprehensive Sign Plan by the Planning and Zoning Commission.

Zone District	*Sign Type*	*Number*	*Area*	*Height*
B-1	Wall	1 per street frontage	24 sq. ft.	Cannot project above roofline
	Projecting	1	6 sq. ft.	Min. 8 ft. above ground Max. 11 ft. above ground
	Awning, canopy or marquee	Counted toward total wall sign max.	Counted toward total wall sign area	Min. 8 feet above ground
	Freestanding monument	1 (except prohibited on Main Street)	6 sq. ft.	Max. 4 ft. above ground
	Portable A-frame, sandwich board, portable menu boards, wheeled	1	12 sq. ft.; Portable menu boards, 20 sq. ft.	N/A
B-2, I-1	Wall	1 per street frontage	24 sq. ft.	Min. 10 ft. above ground Max. 20 ft. above ground Max. 5 ft. to top of sign (monument)
	Projecting	1 (internally lit vinyl prohibited)	24 sq. ft.	Min. 8 ft. above ground
	Freestanding monument	2	48 sq. ft.	Min. 10 ft. above ground Max. 20 ft. above ground
	Service station:			
	price sign	1 price sign per street front	9 sq. ft.	Max. 10 ft.
	self/full serve	1 per each pump island	3 sq. ft.	N/A
	Awning, canopy or marquee	Counted toward total wall sign max.	Counted toward total wall sign area	Min. 8 ft. above ground
	Portable A-frame, sandwich board, portable menu boards, wheeled	1	12 sq. ft.; Portable menu boards, 20 sq. ft.	N/A
	Drive-through menu boards (B-2 only)	1	20 sq. ft.	7 ft.
R-1, R-2, R-3	Home occupation	1	2 sq. ft.	N/A
	Freestanding	1 per subdivision entrance	24 sq. ft.	Min. 10 ft. above ground Max. 20 ft. above ground

(2) General sign design standards. The following standards apply to all permitted signs in the Town. Standards associated with the word "shall" are mandatory; those that are "encouraged" are not mandatory but highly recommended.

a. Sign materials and construction. All signs shall be constructed of durable materials designed to withstand expected winds and erected so as not to sustain damage and deterioration from the elements. Permitted materials include wood, metal, stone or other durable material.

No sign shall contain iridescent or Day-Glo paint. Permitted permanent exterior signs shall not be made of paper, cloth, canvas, cardboard, wallboard or other similar nondurable material.

b. Streamers. No sign or part of a sign shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices.

c. Sign illumination. No sign or lighting device shall be placed or directed to permit the beams and illumination to be directed, reflected or beamed upon a public road, highway, sidewalk or adjacent property so as to cause traffic hazard, nuisance or glare. All lighting fixtures shall be designed to be "down lights;" i.e., direct lighting below a ninety-degree horizontal plane extending from the lowest point of the light source. Unless otherwise permitted, all signs shall be externally lit by lights in a visible fixture above the sign. Backlit and internally illuminated signs are allowed by special use. Full-spectrum and energy-efficient light bulbs are recommended.

d. Content. There shall be no signs or pictures of an obscene, indecent or immoral character such as will offend morals or decency in accordance with constitutional standards.

e. Maintenance. Every sign, including those specifically exempt from permits and permit fees, shall be maintained in good repair and in a safe, clean and attractive condition.

(3) Measurement of sign area and height.

a. Sign surface area. The area of a geometric shape enclosing any message, logo, symbol, name, photograph or display face shall be measured using standard mathematical formulas. Time-and-temperature devices shall not be included within the measurement of maximum sign area.

b. Sign height. The height of a sign shall be measured from the highest point of a sign to the ground surface beneath it. When berms are used in conjunction with signage, the height of the sign shall be measured from the mean elevation of the fronting street.

(4) Sign types.

a. Wall sign. One (1) wall sign is permitted per business in the B-1, B-2 and I-1 zones only, unless a business fronts directly onto two (2) public streets (i.e., the building or business property is contiguous to the street right-of-way); then one (1) wall sign per street frontage is permitted. In the event more than one (1) sign is proposed per frontage, a sign plan application must be submitted to be reviewed and approved by the Planning and Zoning Commission.

b. Wall sign design standards. Wall signs are encouraged to be uncluttered, used for the purpose of business identification, with good contrast between the letters and the background. A wall sign shall not extend above the roof or parapet of the building front or fascia. Wall signs should not interfere with the architectural features of historic structures. The maximum permitted wall sign area shall include the sign copy of a wall sign and an awning sign. The total permitted wall sign area shall be twenty four (24) square feet. Any awning signs shall be included in the maximum total sign area calculation for the business.

(5) Projecting sign. In the B-1 zone, one (1) projecting sign is permitted per business, provided that the sign can be located in a manner that does not interfere with the building historic architecture.

a. Projecting sign design standards. Projecting signs (permitted in the B-1 zone only) shall not exceed six (6) square feet of total sign area per side. Projecting signs shall extend from the building wall or fascia at an angle of ninety (90) degrees (unless the sign is a historic theatre marquee) and shall project no more than three (3) feet from the plane of the face of the building to which they are attached. Projecting signs located above awnings are discouraged. The lowest edge of a projecting sign area shall be no lower than eight (8) feet from the sidewalk or ground over which it extends. The top edge of a projecting sign area shall be no higher than fourteen (14) feet above the ground or sidewalk over which it projects.

b. Revocable license. The owner of any permitted sign extending over a public street or other public right-of-way or space during the period of time that the sign and associated attachments are installed shall enter into a revocable license agreement with the Town prior to installing the sign.

(6) Freestanding sign. In the B-2 and I-1 zones, one (1) freestanding sign is permitted per business, provided that it is located on the premises and the business is not otherwise identified on a freestanding directory sign. One (1) freestanding directory sign is permitted per shopping center or multi-tenant building in the B-2 or I-1 zone. In residential zones, not more than one (1) permanent subdivision identification sign is permitted for each primary entrance to a recorded subdivision, indicating only the name and logo of the subdivision.

a. Freestanding sign design standards. Any freestanding sign shall be located inside the property line and shall be situated outside all clear sight triangles. Freestanding signs shall be designed to not block the view of an adjacent business and shall not interfere with any sidewalk or path. The maximum sign area permitted (per side) of a freestanding sign shall be forty-eight (48) square feet. Freestanding pole signs shall be no taller than twenty (20) feet at the top of the sign area and no less than ten (10) feet at the bottom of the sign area.

b. Freestanding monument signs are encouraged to be designed with attractive supports and surrounding landscaping. A freestanding monument sign shall be no more than five (5) feet tall at the top of the sign structure. Maximum contrast between letters and background is encouraged with minimal sign clutter.

c. A service station or other business selling automotive fuel is permitted one (1) price sign for each street frontage not to exceed nine (9) square feet in area and ten (10) feet in height. "Self/full serve" signs not to exceed three (3) square feet in area each are permitted on each end of each pump island. Signs affixed to the top or sides of an operable fuel dispensing pump shall not exceed three (3) square feet in area, shall only display instructional or price information and shall not include advertising copy pertaining to any product, sale or promotion.

(7) Awning, canopy or marquee sign. One (1) awning, canopy or marquee sign is permitted per business in the B-1, B-2 and I-1 zones. Any portion of an awning, canopy or marquee

containing advertising copy shall be treated as a sign and shall be included in the overall sign area maximum for wall signs.

a. Awning sign design standards. The sign on an awning may be appliquéd or painted on the awning. Awning signs may not project above the awning itself, or be located on the slope of the awning. No awning shall be lower than eight (8) feet above the ground or sidewalk over which it extends. Awning signs shall be located on the "flat" surface, that is the awning surface parallel with the building wall facing the street frontage.

b. Canopy or marquee sign design standards. Canopy or marquee signs may not project above the structure itself or be located on the canopy roof. No canopy sign shall be lower than eight (8) feet above the ground or sidewalk over which it extends. Canopy or marquee signs shall be located on the "flat" surface, that is the surface parallel with the building wall and facing the street frontage. Canopy or marquee signs shall be located on the first floor business only.

c. Signs suspended below a canopy, marquee or awning. Signs suspended below a canopy, such as soffit signs, shall be no larger than two (2) square feet in size and shall be no lower than eight (8) feet from the sidewalk below.

d. Revocable license. The owner of any awning, canopy or marquee sign extending over a public street or other public right-of-way or space shall enter into a revocable license agreement with the Town prior to installing the sign.

(8) Drive-through menu boards. Drive-through menu boards are only allowed in the B-2 zone district. If the combination of proposed signs exceeds the maximum sign number and area standards, a Comprehensive Sign Plan for all signs on the site must be reviewed and approved pursuant to Subsection (e) of this Section. Menu boards and order boards shall be subject to the following standards:

a. Each drive-through restaurant shall be allowed one (1) menu board per drive-through service lane where customers preview the menu from their vehicles and one (1) menu board per drive-through service lane where customers order food from their vehicles.

b. Each menu board shall have a maximum allowable area of sixteen (16) square feet.

c. Each menu board shall have a maximum height of seven (7) feet.

d. Each menu board shall incorporate materials and colors that match or complement the materials and colors of the associated building.

e. Each menu board shall include an architecturally complementary base that is proportional to the size of the sign.

f. No other sign shall be attached or added to a menu board.

g. The sign must be screened with effective xeriscaping.

(9) Portable A-frame, sandwich board, menu boards, wheeled signs. One (1) portable sign is permitted per business and shall be located on the same property on which the business is located. No portable signs are permitted in the public right-of-way. Portable signs shall be no larger than three (3) feet by four (4) feet or twelve (12) square feet (exclusive of structural components), attractively designed, and be made of durable material. Menu boards shall be no greater than four (4) feet by five (5) feet or twenty (20) square feet in size.

(10) Home occupation sign. In a residential zone, one (1) wall sign is permitted as a business identification sign. One (1) sign per home occupation is permitted as a wall sign, not to exceed two (2) square feet. Home occupation signs shall contain only the name of the business and/or business owner.

(11) Historical signs. Legally permitted signs of thirty (30) years of age or more; i.e., "historical signs," are permitted in nonresidential zones, provided that the sign is kept in good repair and does not constitute a hazard to the public safety.

(k) Definitions.

Abandoned sign means a sign which, for a period of ninety (90) consecutive days, has not advertised a business on the premises where such sign is located or for which a special or temporary sign permit has expired.

Advertising sign means a sign that describes products or services being offered to the public.

A-frame sign means a type of portable sign that is constructed or shaped in the form of the letter "A" (also called "sandwich board").

Animated sign means any sign which includes action or motion or whose copy is changeable by other than direct manual intervention.

Area of copy means the entire area within a single continuous perimeter composed of squares, rectangles, circles, ovals or any other geometrical shape which enclose the extreme limits of the message, announcement or decoration on a wall, projecting or freestanding sign.

Area of sign means the area of the largest single face of the sign within a perimeter which forms the outside shape, including any frame, or forms an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. If the sign consists of more than one (1) section or module (as in the case of wall and awning signs), all areas will be totaled.

Awning means a roof-like cover made of pliable material over a window or doorway that is attached to the outer wall or fascia of a building.

Banner means a temporary sign composed of lightweight material either enclosed or not enclosed in a rigid frame.

Canopy sign means a sign attached to a permanent covered walkway that extends over the public sidewalk.

Construction sign means a temporary sign erected on the premises on which construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors and similar persons or firms having a role or interest with respect to the structure or project.

Cut-out-letter sign means the sign area considered to be that of a single rectangle or square encompassing all of the letters used to convey the message of the sign, including the open space between letters of words within that rectangle or square.

Directional sign means any sign commonly associated with and limited to information and directions necessary and convenient for persons coming on the property, including signs marking entrances, parking areas, one-way drives, rest rooms and pickup and delivery areas.

Directory sign means any sign containing a list of the names of business establishments located within a building complex.

Double-faced sign means a two-faced sign utilizing both sides or surfaces for display purposes.

Drive-through menu board means a sign displaying the menu of a drive-through restaurant to customers seated in vehicles in drive-through service lanes.

External illumination means illumination of a sign from a source of light not contained within the sign itself.

Flag means any fabric containing the official insignia of any nation, organization of nations, state, province, county, city or fraternal organization, with proportions that have been established by Presidential declaration; three (3) feet by five (5) feet when hung from a building; or five (5) feet by seven (7) feet when hung from a pole.

Freestanding sign means a sign permanently anchored directly to the ground or supported by one (1) or more posts, columns or other vertical structures or supports and not attached to or dependent for support from any building.

Frontage, business means the linear distance of the exterior building wall of a business facing a public right-of-way or highway and which contains the main entrance to the business.

Governmental sign means a sign erected and maintained pursuant to and in discharge of any governmental function or required by any law, ordinance or governmental regulation.

Grand opening sign means a temporary sign permitted to announce the opening of a completely new enterprise or the opening of an enterprise under new management.

Height means the vertical distance between the ground level (prior to any filling, berming or landscaping solely for the purpose of elevating the sign) under a sign and the highest point of the sign structure.

Historical sign means a sign that is at least thirty (30) years in age.

Illegal sign means any sign for which a valid and current Town sign permit has not been obtained and which is not exempt from the provisions of this Section.

Internal illumination means illumination of a sign from a source of light contained within the sign itself, including sign letters created with neon tubing.

Marquee sign means any sign attached to or under a covered structure projecting from a building which extends over the sidewalk, usually also supported by posts. A *marquee* may also mean the projecting sign associated with theatres.

Monument sign means a freestanding sign with a base affixed to the ground, where the length of the base is at least two-thirds ($^2/_3$) the horizontal length of the monument.

Mural means a painting or picture applied to and made part of a wall which may be pictorial or abstract and is characteristically visually set off or separated from the background color or architectural environment.

Neon sign means any sign that is illuminated by tubes filled with neon, argon, krypton and related inert gases, including any display of neon lighting tubes which is in view of the general public from a public right-of-way or from any public area, regardless of the shape, size, design or configuration.

Nonconforming sign means any sign for which a valid sign permit was obtained when constructed but is not in compliance with current sign regulations.

Off-premises sign means a sign that advertises a business, commodity, service or entertainment not related to the premises where the sign is located.

Permanent sign means an exterior sign constructed of durable, permanent material, such as wood, metal, stone or other durable material, not including paper, cloth, canvas, cardboard, wallboard or banner plastic (unless the sign is part of an awning).

Plaza sign means a one- or two-sided or three-dimensional structure displaying smaller signs, each of equal size, for the purpose of housing off-premises directional signs for one (1) or more businesses.

Pole sign means a freestanding sign with a base supported from the ground by a pole or a similar support structure of narrow width.

Political sign means a temporary sign announcing or supporting political candidates or issues connected with any national, state or local election.

Portable sign means a sign, graphic or display which can be readily moved from place to place and which is not affixed to a building, a vehicle or the ground.

Projecting sign means a sign which is supported by an exterior wall of a building or other structure and which is constructed and displayed perpendicular to the face of the building or other structure so that both sides of the sign are visible. A projecting sign extends out from the building.

Real estate sign means a temporary sign which is used to offer for sale, lease or rent the premises upon which the sign is placed.

Roof sign means a sign that is constructed to extend above the primary peak of the roofline.

Sign means any identification, description, illustration or device, illuminated or nonilluminated, which is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, service, place, activity, person, institution, business or solicitation, including any permanently installed or situated merchandise or any logo, painting, banner, pennant, placard or temporary sign designated to advertise, identify or convey information, with the exception of window displays and national flags.

Soffit sign means a sign affixed to the underside of a roof overhang adjacent to a store or other commercial premises.

Statuary sign means any three-dimensional sign which is a modeled or sculptured likeness of a living creature or inanimate object.

Subdivision entrance sign means a sign which, by means of a symbol, name, logo or other graphic, identifies a subdivision.

Temporary sign means a sign displayed for a fixed, terminable length of time and to be removed after the temporary purpose has been served or the term length has expired, whichever comes first.

Town Sign Plaza Program means a coordinated sign plan program for wayfinding throughout the Town.

Walkway sign means a sign affixed to the underside, side or top of a permanent covered walkway or canopy that covers the public right-of-way.

Wall sign means a sign painted on or attached to an exterior wall of a building or other structure and which is mounted parallel to the surface so that only one (1) side is visible to the public. (Prior code 17.07.060; Ord. 11-2001 §12; Ord. 2-2005 §§1, 2; Ord. 14-2005 §1; Ord. 4 §1, 2009; Ord. 7 §§1—3, 2010; Ord. 11 §1, 2011; Ord. 11 §1, 2012)

Sec. 16-243. Junkyards.

Junkyards are prohibited everywhere within the Town. This prohibition shall apply to private as well as commercial lots and uses, and shall encompass the unenclosed storage of junked vehicles. For purposes of this Section, *junked vehicle* shall have the meaning as provided in Article III of Chapter 8 of this Code. (Prior code 17.07.070; Ord. 11-2001 §12)

Sec. 16-244. Animals.

The keeping of livestock, including cattle, horses, mules, burros, sheep, swine, llama and goats and any animal used for working purposes on a farm or ranch, or is raised for food or fiber production; and fowl, including ducks, geese, chickens, turkeys, pheasants and other game birds, shall

be prohibited in all zone districts except as allowed by permit issued under Article V of Chapter 7 of this Code. (Prior code 17.07.080; Ord. 11-2001 §12)

Sec. 16-245. Dimensional requirements.

(a) The dimensional requirements as set forth in the following table shall apply in the enumerated zone districts.

		Lot Size			*Minimum Yard Requirements*				
		Min. Lot Area (square feet)	***Max. Lot Area (square feet)***	***Min. Lot Width (feet)***	***Front Yard Setback (feet)***	***Side Yard Setback (feet)***	***Rear Yard Setback (feet)***	***Allowable Maximum Building Coverage***	***Maximum Building Height (feet)***
Residential									
R-1	Single-family	6,500 (b)	None	65	25	5.0	15 (d)	35%	25
	Two-family	10,000 (b)	None	75	25	7.5	15	40%	25
R-2	Single-family	6,000 (b)	None	65	20	5.0	15 (d)	35%	35
	Two-family	10,000 (b)	None	65	20	5.0	15	40%	35
R-3	Single-family	6,000 (b)	None	65	20	5.0	15 (d)	35%	35
	Two-family	10,000 (b)	None	65	20	5.0	15	40%	35
	Three-family	10,000 (b)	None	75	20	5.0	15	50%	35
	Four-family	12,000 (a)(b)	None	75	20	5.0	15	50%	35
	Row-house	2,500	5,000	25	20	7.5 (per end unit only)	15	50%	35
CROSSMAN'S ADDITION									
R-1 OT	Single-family	4,375	None	35	15	5.0	15	45%	30
	Two-family	6,250	None	50	15	5.0	15	45%	30
R-2 OT	Single-family	4,375	None	35	20	5.0	15	45%	35
	Two-family	6,250	None	50	20	5.0	15	45%	35
R-3 OT	Single-family	4,375	None	35	15	5.0	15	45%	35
	Two-family	6,250	None	50	15	5.0	15	45%	35
	Three-family	6,250	None	50	15	5.0	15	50%	35
	Four-family	6,250	None	50	15	5.0	15	50%	35
	Row-house	2,500	None	35	15	7.5 (per end unit only)	15	50%	35
B-1 OT	Mixed use	2,500	None	25	None	0	0	100%	35

	Lot Size			*Minimum Yard Requirements*				
	Min. Lot Area (square feet)	***Max. Lot Area (square feet)***	***Min. Lot Width (feet)***	***Front Yard Setback (feet)***	***Side Yard Setback (feet)***	***Rear Yard Setback (feet)***	***Allowable Maximum Building Coverage***	***Maximum Building Height (feet)***
Commercial-Industrial								
B-1	**2,500**	**None**	**25**	**None**	**0 (c)**	**0 (c)**	**100%**	**35**
B-2	**2,500**	**None**	**25**	**25**	**0 (c)**	**0 (c)**	**100%**	**35**
I-1	**None**	**None**	**None**	**25**	**0 (c)**	**0 (c)**	**100%**	**35**

	OLD TOWN OVERLAY DISTRICT								
	Min. Lot Width (feet)	*Max. Lot Width (feet)*	*Min. Front Yard Setback (feet)*	*Max. Front Yard Setback (feet)*	*Side Yard Setback (feet)*	*Rear Yard Setback (feet)*	*Allowable Maximum Building Coverage*	*Minimum Frontage Buildout*	*Maximum Building Height (feet)*
Residential									
R-1 OT	**25**	**100 (g)**	**15**	**25**	**3**	**5 (h)**	**60%**	**NA**	**30**
R-2 OT	**25**	**100 (g)**	**10**	**20**	**3**	**5 (h)**	**70%**	**NA**	**35**
R-3 OT	**25**	**100 (g)**	**5**	**15**	**3**	**5 (h)**	**80%**	**NA**	**35**
B-1 OT	**25**	**150 (g)**	**0**	**15 (e)**	**0**	**0**	**100%**	**60% (f)**	**45**

(a) Plus 1,250 square feet additional lot per dwelling unit in excess of 4.

(b) Plus 2,500 square feet for a corner lot or a reverse corner lot.

(c) No side or rear yard shall be required except as follows: Where the lot abuts upon property zoned for residential use, adequate screening such as a fence or buffer strip of vegetation at least 8 feet in height shall be provided along the side and/or rear lot line of side abutting residential property.

(d) Except that a garage abutting a publicly dedicated alley with a width of no less than 15 feet may be set back 5 feet from the property line. Accessory structures may be placed with a zero setback, provided the structure is located entirely on the property, is not located in any utility, drainage or other easement and the structure does not create any drainage concerns. Setbacks for garages shall follow the setbacks for the applicable zone district, except for in the rear of the lot. The rear setback for garages shall be as follows:

Attached or detached garage or carport with no alley: 5 feet.

With an alley and doors opening directly onto the alley: 5 feet.

With an alley but with no doors opening directly onto the alley: 0 feet.

(e) East Main Street, from Hwy 24 to Belden, all buildings shall have no setback.

(f) East Main Street, from Hwy 24 to Belden, the minimum frontage buildout shall be 70%.

(g) A single family house shall not occupy more than 2 historic Town lots. A duplex shall not occupy more than 3 historic lots.

(h) If garage door does not open into the right-of-way, the minimum rear setback may be 0 feet.

(i) Frontage buildout: The total lineal footage of the front wall of building and planted components over 15 feet tall with a continuous canopy facing the public right-of-way, divided by the lot width.

(Ord. 5 §1, 2011)

Sec. 16-246. Mobile homes, trailer coaches and manufactured homes – placement.

Mobile homes, trailer coaches and manufactured homes within the Town shall be placed on a permanent foundation, with axles and wheels removed or detached in such a manner that the mobile home, trailer coach or manufactured home becomes an improvement to real property as a permanent structure. (Prior code 17.07.100, 17.07.101)

Sec. 16-247. Skirting.

Mobile homes, trailer coaches and manufactured homes within the Town shall be skirted in a neat and orderly fashion with an opaque material so that the area beneath the mobile home, trailer coach or manufactured home is not visible from any direction. (Prior code 17.07.102)

Sec. 16-248. Mobile home parks.

Any mobile home or trailer coach located in a legally established mobile home park within the Town shall be exempt from the provisions of Section 16-246, provided that the owner of the mobile home or trailer coach shall rent but shall neither own nor have entered into a contract to purchase the land, lot or mobile home site on which the mobile home or trailer coach is located. In such case, the provisions of other sections of this Chapter shall still apply. (Prior code 17.07.103)

Sec. 16-249. Travel trailers.

Travel trailers shall be used as residences only on a temporary basis. Such temporary residential use shall occur only in a legally permissible commercial establishment designed and designated for the temporary placement of travel trailers, or upon a private lot not to exceed two (2) weeks when the owner or user of the travel trailer is visiting the lot owner or renter. (Prior code 17.07.104)

Sec. 16-250. Inspection requirement.

Any mobile home or trailer coach not bearing a label or seal of compliance from a recognized testing laboratory, such as Underwriters' Laboratory or similar testing laboratory or service, or an inspection tag from the State Division of Housing, shall not be located in the Town; except that mobile homes and trailer coaches already located in the Town as of the effective date of the ordinance codified in this Chapter shall not be subject to the inspection requirement of this Section. (Prior code 17.07.105)

Sec. 16-251. Manufactured homes.

Nothing in this Chapter shall be construed to exclude or prohibit, or have the effect of excluding or prohibiting, the use and siting of single-family manufactured housing units within the Town, so long as such housing units meet or exceed the National Manufactured Housing Construction Standards Act of 1974, as amended, and/or equivalent engineering performance standards established in the Town's municipal building code. (Prior code 17.07.106; Ord. 11-2001 §12)

Sec. 16-252. Personal wireless telecommunication facilities.

(a) It is the purpose and intent of this Section to apply to and regulate the placement, construction and modification of personal wireless telecommunication service facilities as allowed under federal and state law so as to ensure and protect the historic preservation, aesthetic, planning and safety values and goals underlying this Chapter 16. The regulations set forth in this Section shall be liberally construed in furtherance of such values and goals and shall be applied and enforced in addition to any licensing and environmental assessment processing required by the Colorado Public Utilities Commission and/or under the Federal Communications Act of 1934 or other federal law.

(b) Definitions. As used in this Section, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

(1) *Customer premises equipment* means equipment employed on the premises of an individual telecommunications service end-user or customer to receive or transmit personal telecommunications.

(2) *Personal wireless telecommunication service facilities* means unmanned commercial facilities or equipment for the reception, transmission or switching of personal wireless telecommunications or telecommunication services utilizing frequencies that may or may not be licensed by the Federal Communications Commission, including, and by way of example and not limitation, antennae, towers and equipment housing/ shelters.

(3) *Personal wireless telecommunication services* means communication services involving the transmission of voice, electronic mail or messaging, or other information by radio between mobile stations or receivers and land or fixed stations, or between land or mobile stations themselves, including, by way of example and not limitation, cellular telephone, paging and mobile radio services.

(c) Allowed locations. Personal wireless telecommunication service facilities shall be allowed as a use by right in all zone districts within the Town, except for residential zone districts. In residential zone districts, personal wireless telecommunication service facilities shall be prohibited, except for customer premises equipment.

(d) Building permit required – compliance with underlying zoning regulations. The construction and/or installation of any personal wireless telecommunication service facility shall be subject to the requirements of the Town's building code(s) and may not exceed the dimensional standards or limitations for the zone district in which the facility is to be constructed or installed absent a duly issued variance. In addition, the owner/operator of a proposed facility shall document in writing at the time of application for any building permit that it complies, and will continue to comply, with current Federal Communications Commission standards for cumulative field measurements of radio frequency power densities and electromagnetic fields, and Federal Communications Commission regulations prohibiting localized interference with the reception of television and radio broadcasts. (Ord. 15-2000 §1)

Sec. 16-253. Measuring building height.

The height of buildings shall be measured on a vertical plane from the average natural or finished grade, whichever is lower, to the highest point on the roof surface. Chimneys, antennae, flag poles, bell towers, steeples, vents or other roof or building appurtenances extending from the surface of the roof shall not be measured in calculating building height; however, such appurtenances shall not extend more than ten (10) feet above the building height absent a duly approved variance; except for mechanical equipment, which may not extend more than five (5) feet above the building height. (Ord. 11-2001 §12)

Sec. 16-254. Home occupations.

A customary incidental home occupation may only be conducted in accordance with the provisions of this Section.

(1) Operational standards.

a. The home occupation shall be incidental and secondary to the use of a dwelling for dwelling purposes;

b. The home occupation shall not change the essential residential character of a dwelling;

c. The on-site activities of the home occupation shall be carried on entirely within the dwelling or in an attached or a detached building on the subject premises, and that portion of the dwelling and/or the attached or detached building used for a home occupation shall comply with all building, fire, safety and other codes applicable to the particular home occupation;

d. There shall be no storage or display of any goods, products, equipment or materials outside of the dwelling, garage or other building on the property containing the home occupation, and no hazardous or dangerous materials, or such quantities of same, not customarily associated with a residential use shall be stored or used on the premises;

e. Absent a variance, the home occupation shall not occupy more than twenty-five percent (25%) of the total gross floor area of the dwelling and/or other structure in which the home occupation is conducted, or five hundred (500) square feet, whichever is less;

f. The home occupation may be allowed no more than one (1) nonilluminated freestanding or wall sign not to exceed two (2) square feet;

g. The home occupation shall not cause any use or activity which is inconsistent with the residential zone in which it is located, or which disrupts the neighborhood by the creation of traffic, congestion, dust, smoke, vibration, noise from equipment, excessive lighting, offensive odor or electrical interference.

h. All persons engaged in a home occupation must obtain and maintain all necessary business licenses prior to and during the operation of the home occupation;

i. The home occupation shall not operate during such hours as to disturb neighbors or alter the residential character of the subject premises;

j. The home occupation shall not employ more than two (2) persons on site who are not full-time residents of the dwelling/property on which the home occupation occurs;

k. Vehicle traffic generated by the home occupation shall not significantly increase over the traffic level normally associated with the subject premises and shall not create or cause a need for new or additional off-site parking. No use or storage of heavy equipment or commercial or heavy trucks or trailers shall be permitted or allowed; and

l. No sales of goods or products shall be allowed on the premises of the home occupation, except those incidental to any service provided by the home occupation.

(2) Review of home occupation—complaints and violations.

a. The operation of a home occupation may be subject to review upon written complaint. In the event a complaint is received by the Town containing substantial credible information illustrating a possible violation of the terms and/or operating standards contained in this Section, the Town Administrator shall cause notice of such complaint to be served personally or by certified mail, return receipt requested, on the operator of the home occupation. The notice shall describe in reasonable detail the complaint concerning the home occupation and command the operator to appear before the Board of Trustees at a public hearing to show cause why the operation of the home occupation should not be suspended, modified or terminated. The notice shall be issued not less than ten (10) days prior to the hearing and shall contain the date, time and place for same. A copy of the notice shall also be timely provided in advance of the hearing to the person who submitted the subject complaint. The Board of Trustees may suspend, modify or terminate the operation of a home occupation upon a finding that the terms of this Section have been violated. All decisions of the Board of Trustees under this Section shall be reduced to writing and copies thereof shall be promptly mailed or personally delivered to the operator and complainant.

b. Violations of the terms or conditions of this Section may be punishable under the general penalty provisions of this Code. (Ord. 2-2002 §2)

Sec. 16-255. Landscaping requirements.

(a) Purpose. The purpose of this Section is to provide standards for landscaping of all development within the Town so as to maintain the character of residential neighborhoods, commercial centers and industrial areas. This shall be accomplished by requiring minimum planting, buffering and screening around and within residential and nonresidential developments and their associated parking areas, and by requiring long-term maintenance of landscaped areas.

(b) Minimum landscape area standards. The minimum landscape area and number of required trees shall be provided per required landscaped area in various zone districts:

Table 16-1

Zone District	*Minimum Landscape Area*	*Number of Trees Per Required % of Landscaped Area*
Single-Family Residential (R-1)	25% *	2 per lot
Medium Density Residential (R-2)	25% *	2 per lot
High Density Residential (R-3)	20%	1 per 800 sq. ft.
Commercial (B-1)	10% **	1 per 300 sq. ft.
Commercial (B-2)	10% **	1 per 600 sq. ft.
Industrial (I)	10% **	1 per 1,000 sq. ft.

* Exempted from Subsection 16-255(d), landscaping standards.

** Development that utilizes 100% lot coverage or a zero front setback shall be exempt from the requirements of Table 16-1.

(c) Applicability. The landscape standards of this Section shall apply to all development within the Town, except as follows:

(1) Old Town (OT). Development in the OT Overlay District that utilizes a zero (0) front setback, one hundred percent (100%) lot coverage or is located along E. Main Street shall be exempt from the landscaping standards of this Section. All new residential development in the Old Town overlay shall be required to plant two (2) additional trees on each lot, one (1) of which shall be located in the front of the structure. Street trees shall count towards this requirement. All other commercial development or multifamily development shall be required to provide a minimum of a ten-percent (10%) landscape area and plant trees and shrubs in accordance with parking lot requirements of Subsection (d) below. All new development shall be stabilized or landscaped to control runoff onto neighboring properties.

(2) Single-family or duplex dwelling. The construction, reconstruction, modification, conversion, structural alteration, relocation or enlargement of a single-family or duplex dwelling on a lot of record shall only be required to provide a minimum of two (2) additional trees on each lot, one (1) of which shall be located in the front of the structure. Street trees shall count towards this requirement.

(3) Change of use, maintenance and repairs. Changes of use, maintenance and repairs which do not expand the use or size of the property by more than ten percent (10%) shall be exempt from the landscaping standards of this Section.

(d) Landscaping standards.

(1) Landscape plan. A landscape plan shall be submitted for review as part of an application for any development within the Town, except for development specifically exempted in Paragraphs (c)(1), (2) and (3) above. The landscape plan shall contain the following information:

a. Drawing. A drawing identifying all existing deciduous trees and coniferous trees of four (4) inches in caliper or greater and illustrating the location, size and type of all proposed landscaping. The drawing shall identify all existing vegetation which is to be preserved, demonstrate how irrigation is to be provided and provide a legend.

b. Calculations. A written summary of all calculations used to determine the landscaping required for the site.

c. Erosion control. A description of how erosion will be controlled on site, during construction and following completion of development.

d. Maintenance program. A maintenance program shall be provided with a description of the proposed program to maintain the landscaping after it has been installed for a minimum of two (2) planting seasons.

(2) Vegetation and site standards:

a. Site stabilized. All new development shall be stabilized or landscaped to control runoff onto neighboring properties or public rights-of-way.

b. Plants compatible with local conditions. All plants depicted on the landscape plan shall be of a variety which is compatible with local climate and the soils, drainage and water conditions of the site in accordance with the Buena Vista Planting Guide. Trees or shrubs that are not recommended in the Buena Vista Planting Guide shall not count towards the required trees and shrubs of this Chapter.

c. Deer fencing. Wire mesh deer fencing shall be installed around all new tree plantings to provide adequate protection.

d. Save existing vegetation. The landscape plan shall be designed to save all existing healthy trees and shrubs whenever possible. Existing trees and shrubs that are four (4) inches in caliper or more which are preserved shall count toward the landscaping standards of this Section.

e. Water conservation.

1. The total amount of high water use zones on a property may not exceed fifty percent (50%) of the total landscaped area. The total amount of high water use turf grass may not exceed thirty percent (30%) of the total landscaped area. Turf grass areas designated for high use or a specific recreational use shall be excluded from the total landscaped area under this requirement.

2. Plants or turf grass from a high water use zone may not be planted on slopes or berms at a 4:1 slope or steeper.

f. Obstructions prohibited.

1. Fire hydrants and utilities. Landscaping shall be located so as not to obstruct fire hydrants or utility boxes and so it will not grow into any overhead utility lines.

2. Curb cuts and intersections. No plant material greater than two (2) feet in height shall be located within the clear sight triangle as defined by this Chapter, or so as to otherwise cause visibility obstructions or blind corners at intersections.

g. Minimum size. Trees and shrubs depicted on the landscape plan shall be of the following minimum size at the time of their planting:

1. Deciduous trees. Deciduous trees shall be a minimum of one and one-half (1½) inches in caliper, measured six (6) inches above the ground.

2. Coniferous trees. Coniferous trees shall be a minimum of six (6) feet in height.

3. Shrubs. Shrubs shall be a ten-inch by ten-inch container or larger.

h. Parking areas and access. Parking areas and access shall not count towards the minimum landscape area.

i. Trash receptacles. Screening shall be provided for all trash receptacles of two (2) cubic yards volume or greater and shall consist of landscaping or a structural visual barrier, such as a fence, to block the view of the trash receptacle and to keep trash contained. One (1) side of the screening shall be designed for easy access for trash removal. Any landscaping so provided shall count toward the landscaping standards of this Section.

(3) Landscaping standards applicable to parking areas.

a. Buffer strip. A landscape buffer shall be required between any parking area, sales lot and property line. The buffer strip shall be a minimum of two (2) feet for nonvegetated areas and a minimum of five (5) feet for vegetated areas. Buffer strips shall be required to delineate access to a public street. Design ideas for buffer strips can be found in the Buena Vista Planting Guide. This buffer strip area shall count toward the minimum landscaping area.

b. Interior landscaping. In addition to the required minimum landscape area standards of Table 16-1, any parking area containing more than twenty (20) parking spaces shall be required to plant the required additional number of trees and shrubs and provide landscaped islands in accordance with Table 16-2 as follows:

Table 16-2

Parking Spaces	***Required Additional Trees and Shrubs***	***Required Minimum Square Footage of Landscaped Islands*** *
20—30	1 tree, 3 shrubs	25 square feet
31—40	2 trees, 6 shrubs	50 square feet
41—50	3 trees, 9 shrubs	75 square feet
51—75	4 trees, 12 shrubs	100 square feet
76—100	6 trees, 20 shrubs	150 square feet
100 or more	10 trees, 40 shrubs	250 square feet

* Landscaped islands count towards the minimum landscape area.

c. Dispersed. The landscaped islands shall be dispersed throughout the parking area and in the parking area in such a way as to provide visual relief, particularly of parking aisles, by using flowering ornamental plantings and to provide physical relief by using seasonal shade trees.

(4) Installation and maintenance requirements.

a. Required time for completion – date of occupancy. Landscaping required for all uses shall be installed within six (6) months of its initial date of occupancy, excluding the months of October through April.

b. Irrigation systems and plans. If an irrigation system is installed, the system shall meet the following minimum requirements.

1. Backflow preventer. An approved backflow prevention device shall be installed with all irrigation systems.

2. Low-volume, drip or subsurface irrigation systems must be used in all nonturf grass areas and in landscaped areas where any one (1) dimension is less than six (6) feet in width and surrounded by impervious surfaces.

3. Any landscaping areas that are being dedicated or will be in the future maintained by the Town in association with a development shall be required to install an irrigation system. The plans for this irrigation system must be approved by the Public Works Department. This excludes nondisturbed areas, nature areas or areas located in the floodplain.

c. The portion of the public right-of-way, if any, between the property line and the street may be used for landscaping purposes and shall be maintained and may be improved as such by the abutting property owner. The replacement of any damaged landscaping due to work in the right-of-way is the responsibility of the private property owner.

d. Landowner responsible. Maintenance of landscaped areas shall be the responsibility of the landowner.

e. Replacement. Landscaping which does not survive two (2) planting seasons shall be replaced within three (3) months, or during the next planting season. The replacement vegetation shall be similar in size and type to the vegetation which did not survive, so the integrity of the approved landscape plan is preserved. (Ord. 13-2010 §2; Ord. 5 §2, 2012)

Sec. 16-256. Storage standards and retail display.

(a) All unenclosed or outdoor storage shall comply with the following standards:

(1) No unenclosed or outdoor storage shall be located along a primary building frontage.

(2) All unenclosed or outdoor storage adjacent to a residential zone district or a lot or parcel on which a residential use is existing by right (a permitted use) shall be set back at least fifteen (15) feet from the boundary/property line separating the residential property from the lot or parcel on which the storage is occurring.

(3) The stockpiling of decorative rock, bark or wood chips, or soil and similar loose landscaping material, shall be maintained in neat piles not greater than ten (10) feet in height and shall be protected from dispersal by blowing wind and other adverse weather events.

(4) Trees, shrubs, flowers and similar live plant products displayed by a nursery and/or a landscaping or garden supply retailer shall not constitute unenclosed or outdoor storage.

(5) Vehicles and/or equipment stored in association with a commercial or other nonresidential use and not on retail display within an open sales yard shall be screened by a fence or other acceptable physical barrier six (6) feet in height (unless otherwise permitted by variance), and all such vehicles and equipment shall be stored at their lowest operating height and in a manner that minimizes their visual profile from view.

(b) All screened storage shall comply with the following standards:

(1) All screening shall consist of durable, low-maintenance materials that effectively block the visual observation of the stored materials when viewed at a height of six (6) feet above finished or natural grade at distances up to and including forty (40) feet from the screening.

(2) No stored material shall be stacked or stored so as to exceed the height of the screening.

(3) Screening may consist of fencing, walls or other structures. All screening shall be maintained in good and effective condition.

(4) Chain-link fencing may be used for screening if fitted with an effective opaque screen. However, chain-link fencing fitted with plastic, wood, vinyl or metal slat inserts shall not be acceptable.

(5) Wood fences used for screening shall be made of natural, pressure-treated or manufactured (recycled) wood of sufficient quality and durability to withstand prolonged exposure to the weather.

(6) The Building Official may approve alternative screening materials and/or methods upon written application. All alternative screening shall effectively serve and satisfy the intent and purposes of this Section.

(7) All screened storage adjacent to a residential zone district or a lot or parcel on which a residential use is existing by right (a permitted use) shall be set back at least fifteen (15) feet from the boundary/property line separating the residential property from the lot or parcel on which the storage is occurring.

(c) Retail display. Absent an authorized variance, maximum retail display area shall not exceed one hundred and fifty (150) square feet for buildings with less than fifty-five (55) linear feet of primary building frontage, or two and three-quarters (2¾) square feet for each one (1) foot of primary building frontage for buildings with primary building frontage of fifty-five (55) linear feet or greater. (Ord. 6-2003 §10)

Sec. 16-257. Accessory dwelling units (ADUs).

(a) Accessory dwelling units are intended to provide increased affordable housing opportunities within the Town and to facilitate housing in close proximity to places of employment.

(b) ADUs shall contain not more than eight hundred fifty (850) square feet and not less than four hundred (400) square feet. Only one (1) ADU shall be allowed per principal building.

(c) Each ADU shall contain a kitchen equipped, at a minimum, with an oven, a stove with two (2) burners, a sink and a refrigerator/freezer with a capacity not less than six (6) cubic feet.

(d) Each ADU shall contain a bathroom equipped with, at minimum, a sink, a toilet and a shower.

(e) No ADU shall contain more than two (2) bedrooms, and one (1) off-street parking space shall be provided for each bedroom in addition to the required parking space for the principal building/use.

(f) All water service connections made to an ADU shall comply with the Town's water service connection requirements, and each ADU sharing and/or connected to the water service line/system serving a principal building shall be assessed a one-time water service expansion/ connection fee equal to one-quarter (¼) of the connection fee that would be charged for a new water connection serving the principal building. All sanitary service connections serving an ADU shall comply with the requirements of the Buena Vista Sanitation District.

(g) ADUs in a Light Industrial (I-1) zone district shall be limited to attached units and shall not be allowed to occupy the ground floor of the primary building. Attached ADUs in the General Business (B-1) and Highway Business (B-2) districts shall not be allowed to occupy the ground level street frontage within a principal building, while detached ADUs must be located in the rear half of the lot or parcel.

(h) Detached ADUs in a residential zone district must be located in the rear half of the residential lot or parcel unless the ADU is to be located within or above a garage.

(i) An ADU may not be condominiumized and/or sold separate and apart from the primary building to which it is accessory.

(j) The design, exterior treatments and color of an ADU shall be the same as, or compatible with, the design and exterior color and treatments of the primary building to which it is accessory. (Ord. 12-2003 §7)

Sec. 16-258. Crossman's Addition lots.

The recognition of individual lots (as defined in Section 16-4) in the Crossman's Addition subdivision, as may be the result of the provisions in this Chapter, shall not create any new, or modify any existing, obligation of the Town to provide any public service or public improvement, or to maintain any public improvement, to any such lot located in Crossman's Addition. (Ord. 9-2004 §4)

Secs. 16-259—16-270. Reserved.

ARTICLE XI

Exceptions and Modifications

Sec. 16-271. Compliance mandatory – exceptions.

Compliance with the requirements of this Chapter is mandatory, except that under the specific conditions enumerated in this Article, the requirements are waived or modified as so stated. (Prior code 17.08.005)

Sec. 16-272. Front yard setback for dwellings.

The front yard setback requirements of this Chapter for dwellings shall not apply on any lot where the average setback of existing buildings, located either wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street, is less than the minimum required setback. In such cases, the setback on such lot may be

less than the required setback but not less than the average of the setbacks of the aforementioned existing buildings. (Prior code 17.08.010)

Sec. 16-273. Side yard setback.

Where a side yard abuts a street, the setback requirement for the side yard shall be the same as the front yard setback requirement for lots or property facing the same street as that abutting the side yard, except as otherwise provided for in Section 16-245. (Prior code 17.08.020; Ord. 11-2001 §13; Ord. 3-2005 §4; Ord. 16-2005 §2)

Sec. 16-274. Double-frontage, reverse-corner lots.

(a) Where double-frontage or reverse-corner lots exist, front yard setback requirements shall apply wherever the lot abuts street or highway right-of-way.

(b) The requirements set forth in this Section shall not apply to the overlay zone districts identified as R-1 OT, R-2 OT and R-3 OT. (Prior code 17.08.030; Ord. 3-2005 §5; Ord. 16-2005 §4)

Sec. 16-275. Projections into required open space.

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except as follows:

(1) The ordinary projection of sills, belt course, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above shall project into a minimum side yard more than twenty-four (24) inches.

(2) Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard not more than three and one-half (3½) feet, and the ordinary projections of chimneys and flues may be permitted by the Town Administrator where the same are so placed as not to obstruct the sunlight and ventilation. (Prior code 17.08.040)

Sec. 16-276. Rights-of-way.

Street, alley, irrigation ditch and highway rights-of-way shall not be considered as part of a lot for any required yard or open space. (Prior code 17.08.050)

Sec. 16-277. Public welfare or convenience.

The Board of Trustees may exempt any building or structure from the operation of the provisions of this Chapter upon satisfactory proof presented at a noticed public hearing that such building or structure is reasonably necessary for the convenience or welfare of the public. The Board of Trustees may impose or attach to any exemption such terms and conditions as it deems reasonable and necessary to preserve and advance the purposes of this Chapter and protect the public interest and welfare. (Prior code 17.08.060; Ord. 11-2001 §13)

Secs. 16-278—16-290. Reserved.

ARTICLE XII

Encroachment Permit

Sec. 16-291. Uses prohibited without encroachment permit.

(a) No person shall conduct any activity or enterprise that involves placement of a cart, unrolled blank booth, table, stage or other structure or equipment in the public right-of-way without a valid encroachment permit therefor issued under this Section.

(b) No person shall install or construct any structure, awning, balcony, occupied colonnade or stoop over or upon the public right-of-way without a valid encroachment permit therefor issued under this Section. (Ord. 12-2005 §2)

Sec. 16-292. Application for permit.

(a) Any person who wishes to encroach over or upon the public right-of-way shall apply for and obtain an encroachment permit from the Town Administrator according to the application process established by the Town Administrator. Encroachment permits for permanent structures shall be irrevocable, subject to the provision of adequate insurance. Encroachment permits for nonpermanent structures may be subject to a term as determined by the Town Administrator to ensure that the encroachment remains appropriate for its setting and compliant with the terms of the permit.

(b) The Town Administrator may establish review guidelines and application submittal requirements, and may also impose conditions on any permit to ensure that permitted encroachments comply with this Code and enhance the proposed location.

(c) The construction of any permitted encroachment shall be completed within the time period established by the permit, which shall in no event exceed one (1) year, or the permit will automatically expire.

(d) The Town Administrator may impose a reasonable fee for an application for an encroachment permit, which fee may be amended from time to time.

(e) The Town Administrator may require proof of authority from any person purporting to sign an application for the use of any person or entity other than the signator.

(f) The Town Administrator has the discretion to forward any and all encroachment permit applications for review and approval by the Planning and Zoning Commission and/or Board of Trustees.

(g) Whenever any permittee desires to change the use or location of the activity authorized by the permit, the permittee shall follow the review and approval process required of a new applicant. (Ord. 12-2005 §2)

Sec. 16-293. Mandatory insurance.

The holder of an encroachment permit issued under this Section shall indemnify and hold harmless the Town, its officers, employees and agents, against any and all claims arising from any

occurrence occasioned by the permitted use, and shall maintain, during the period of the permit, comprehensive general public liability and property damage insurance naming the Town, its officers, employees and agents as insureds in an amount equal to the limits under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., plus the costs of defense; provided that the insurance is primary insurance and that no other insurance maintained by the Town will be called upon to contribute to loss covered by the policy; and providing for thirty (30) days' notice of cancellation or material change to the Town. (Ord. 12-2005 §2)

Sec. 16-294. Outdoor dining.

(a) In addition to the provisions described above, applications for all outdoor dining encroachment permits shall state the exact dimensions of the proposed encroachment and the distances from the encroachment to existing structures such as benches, tree grates, etc., as well as existing signs and lights. Encroachments may extend into the public right-of-way a distance that allows five (5) feet of unobstructed sidewalk measured from the curb or existing encroachment (such as an existing tree) along the building frontage. In the alternative, the five (5) feet of unobstructed sidewalk may be similarly measured from the building frontage if the applicant wishes the encroachment to front off the curb; provided, however, that at all times pedestrians must have access to a minimum of five (5) feet of unobstructed sidewalk as a thoroughfare between permitted outdoor dining encroachments.

(b) The outdoor dining permittee shall prominently display the permit. (Ord. 12-2005 §2)

Sec. 16-295. General permit requirements.

(a) A permittee is responsible for maintaining the area within and in proximity to the permitted location in a neat, clean and hazard-free condition, including without limitation disposing of all trash off site.

(b) The Town Administrator may deny an encroachment permit if the proposed use does not benefit the Town, would constitute a physical hazard to the public health, safety or welfare or would violate any law. (Ord. 12-2005 §2)

Sec. 16-296. Transfer of permit.

A permit for a permanent encroachment shall be automatically transferred or assigned with the appurtenant property. A permit for a temporary encroachment is not automatically transferable or assignable. The Town Administrator may review a request to transfer or assign a temporary encroachment permit as a new application at his or her discretion. (Ord. 12-2005 §2)

Sec. 16-297. Termination of permit.

(a) Any permit issued hereunder may be revoked by the Town Administrator under the procedures established by the Town Administrator for a violation of this Section or a breach of a condition in the permit. Notice to the Town of cancellation of or material change to any insurance policy in which the Town is named as an insured may result in the immediate revocation of the encroachment license.

(b) In the event a permitted permanent structure is removed or demolished, the encroachment permit shall expire.

(c) Upon revocation or expiration of any permit, the permittee shall remove all structures or improvements from the permit area and restore the area to its condition existing prior to issuance of the permit. (Ord. 12-2005 §2)

Secs. 16-298, 16-299. Reserved.

ARTICLE XIII

Sexually Oriented Businesses

Sec. 16-300. Location restrictions.

(a) Sexually oriented businesses shall only be located within the Industrial (I-1) District not overlaid by planned unit development zoning, and shall be located a minimum of one thousand (1,000) feet from any:

(1) Area zoned for residential use;

(2) Single-family or multifamily dwelling, whether located within or outside of the Town;

(3) Church, public park, community center, recreation facility, publicly owned or maintained building open for use to the general public, or library;

(4) State-licensed day care facility;

(5) School or educational facility serving persons under eighteen (18) years of age, or property owned by a school or educational facility; or

(6) Any other sexually oriented business.

(b) The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any church, community center, recreation facility, publicly owned or maintained building open for use to the general public, school, school-owned or educational facility-owned property, day care facility, public park, dwelling or residential district shall be measured in a straight line, without regard to intervening structures, from the nearest portion of the structure used for the sexually oriented business to the nearest property line of the church, community center, recreation facility, publicly owned or maintained building open for use to the general public, school, school-owned or educational facility-owned property, day care facility or dwelling, or the nearest boundary of the public park or residential district.

(c) Sexually explicit advertisements or other promotional displays for sexually oriented businesses that are harmful to minors shall not be visible to minors from pedestrian ways, walkways or other public areas. (Ord. 20-2010 §2; Ord. 24-2010 §1)

Secs. 16-301—16-310. Reserved.

ARTICLE XIV

Marijuana Clubs

Sec. 16-311. Definitions.

Marijuana club means a place not used for residential purposes where individuals gather to consume, grow or distribute or otherwise use marijuana, regardless of whether such place calls itself private or public or charges an admission, membership or similar fee. A marijuana establishment with a valid license under Article XVIII, Section 16 of the Colorado Constitution (recreational marijuana establishment) or under Article XVIII, Section 14 of the Colorado Constitution (medical marijuana establishments) and its accompanying state regulations and this Code, shall not constitute a marijuana club. (Ord. 3 §1, 2013; Ord. 9 §6, 2013)

Sec. 16-312. Prohibited.

Marijuana clubs are prohibited in all zone districts in the Town. (Ord. 3 §1, 2013; Ord. 9 §6, 2013)

Secs. 16-313—16-320. Reserved.

CHAPTER 17

Subdivisions

ARTICLE I

Subdivision Code

Sec. 17-1. Adoption.

There is hereby adopted and incorporated herein by reference the *1996 Buena Vista Subdivision Code*, also known as the *Subdivision Code*, promulgated and published by the Town of Buena Vista, P.O. Box 2002, Buena Vista, Colorado 81211. The Subdivision Code establishes comprehensive regulations and standards governing the subdivision and development of real property and is intended to protect and enhance the public health, safety and welfare. (Ord. 12, 1996 §1; Ord. 3-1998, §1)

Sec. 17-2. Amendments.

Amendments to the Subdivision Code shall be adopted and become effective in the same manner as ordinances. (Ord. 12, 1996 §1; Ord. 3-1998, §1; Ord. 4-2008 §2)

Sec. 17-3. Application.

This Article and the Subdivision Code shall apply to real property and development both within and outside the corporate limits of the Town to the extent permitted by law. (Ord. 12, 1996 §1; Ord. 3-1998, §1)

Sec. 17-4. Copy on file.

At least one (1) copy of the *1996 Buena Vista Subdivision Code* shall be maintained on file in the office of the Town Clerk and may be inspected by any interested person between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. Copies of the Subdivision Code shall be available for sale to the public through the office of the Town Clerk at a moderate price. (Ord. 12, 1996 §1; Ord. 3-1998, §1)

Sec. 17-5. Violations and penalty – Void permits.

(a) It shall be unlawful for any person, including an owner, occupant, builder or agent, to divide, subdivide, convey, transfer, develop or use, or to attempt or negotiate to divide, subdivide, convey, transfer, develop or use, any real property in violation of the provisions of this Article or the Subdivision Code. A violation of any of the provisions of this Article or the Subdivision Code shall constitute a misdemeanor, punishable upon conviction for each separate offense by a fine or imprisonment, or both, as set forth in Article IV of Chapter 1 of this Code.

(b) No building permit, water system connection permit, access permit or other permit shall be issued for any building, development or structure situated on any lot or parcel of land divided, subdivided, transferred, sold or conveyed in violation of this Article and/or the Subdivision Code.

(c) All persons are presumed to know the terms and requirements of this Article and the Subdivision Code and the extent of the legal authority of the Town and its employees, boards and commissions to issue development approvals or permits. Any permit or approval issued in error or otherwise not in conformity with the requirements of this Article or the Subdivision Code shall be void. Similarly, any permit or approval issued in reliance upon, or as a result of, a materially false

statement or representation made in the process of obtaining the permit or development approval shall, likewise, be void. Any person having received a void or voidable permit or approval shall not be relieved from having to comply with all applicable terms and conditions of the Subdivision Code and this Article, and the Town shall not be stopped from fully enforcing the same. (Ord. 3-1998, §1)

Secs. 17-6—17-20. Reserved.

2010 DEVELOPMENT CODE
(Amended)

(Incorporated—by reference, into
Chapter 17 of the Buena Vista Municipal Code)

Town of Buena Vista, Colorado

Revised 2-21-98 and 12-14-99, 4-12-02, 4-01-05, 1-31-06 and 3-08

Table Of Contents

CHAPTER 17 DEVELOPMENTS

ARTICLE I GENERAL PROVISIONS

Sec. 17-1 Title.

These regulations shall officially be known, cited, and referred to as the 2010 Development Code, as amended, of the Town of Buena Vista, Colorado (hereinafter "these regulations").

Sec. 17-2 Policy.

(a) It is declared to be the policy of the municipality to consider the development of land as subject to the control of the municipality pursuant to the Comprehensive Plan of the municipality for the orderly, planned, efficient, and economical development of the municipality.

(b) Land to be developed shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be developed until adequate public facilities and improvements exist and proper provision has been made for drainage, water, sewerage, and capital improvements such as schools, parks, recreational facilities, transportation facilities, and improvements.

(c) The existing and proposed public improvements shall conform to and be properly related to the proposals shown on the Comprehensive Plan, and the capital budget and program of the municipality, and it is intended that these regulations shall supplement and facilitate the enforcement of the provisions and standards contained in the Town's building and related codes, Zoning Ordinance (Chapter 16 of the Buena Vista Municipal Code), the Comprehensive Plan, and the capital budget and program of the municipality.

(d) Land that has been approved for development or subdivided prior to the effective date of these regulations should, whenever possible, be brought within the scope of these regulations to further the purposes of regulation(s) identified in Section 1.3

Sec. 17-3 Purposes.

These regulations are adopted for the following purposes:

(a) To protect and provide for the public health, safety, and general welfare of the municipality.

(b) To guide the future growth and development of the municipality in accordance with the Comprehensive Plan.

(c) To provide for adequate light, air, and privacy; to secure safety from fire, flood, and other danger; and to prevent overcrowding of the land and undue congestion of population.

(d) To protect the character and the social and economic stability of all parts of the

municipality and to encourage the orderly and beneficial development of the community through appropriate growth management techniques; to assure the timing and sequencing of development; to promote in-fill development in existing neighborhoods and non-residential areas with adequate public facilities; to assure proper urban form and open space separation of urban areas; and to protect environmentally critical areas and areas premature for urban development.

(e) To protect and conserve the value of land throughout the municipality and the value of buildings and improvements upon the land; and to minimize the conflicts among the uses and buildings.

(f) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation, and other public requirements and facilities.

(g) To provide the most beneficial relationship between the uses of lands and buildings and the circulation of traffic throughout the municipality, having particular regard to the avoidance of congestion in the streets and highways and the pedestrian traffic movements appropriate to the various uses of land and buildings; and to provide for the proper location and width of streets and building lines.

(h) To establish reasonable standards of design and procedures for subdivisions and development in order to further the orderly layout and use of land; and to ensure proper legal descriptions and monumenting of subdivided land.

(i) To ensure that public facilities and services are available concurrently with development which will have a sufficient capacity to serve the proposed development; and to further ensure that the community will be required to bear no more than its fair share of the cost of providing the necessary facilities and services by requiring the development to pay fees, furnish land, or establish mitigation measures to ensure that the development provides its fair share of capital facilities needs generated by the development.

(j) To prevent the pollution of air, rivers, streams, and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and management of natural resources throughout the municipality in order to preserve the integrity, stability, and beauty of the community and the value of the land.

(k) To preserve the natural beauty and topography of the municipality and to ensure appropriate development with regard to these natural features.

(l) To provide for open spaces through the most efficient design and layout of the land.

(m) To ensure that land is subdivided only when subdivision is necessary to provide for uses of land for which market demand exists and which are in the public interest.

(n) To remedy the problems associated with inappropriately subdivided lands, including premature subdivision, excess subdivision, partial or incomplete subdivision, and scattered and low-grade subdivision.

Sec. 17-4 Legal Authority.

These regulations are adopted by the Board of Trustees of the Town of Buena Vista pursuant to the authority granted by Part 2 of Article 23 of Title 31, C.R.S. Pursuant to 31-23-227, C.R.S., the Board of Trustees, and not the Planning Commission of the Town of Buena Vista (hereinafter the "Planning Commission"), has promulgated these regulations; and, the Board of Trustees has assumed and shall exercise those duties and powers provided in these regulations.

Sec. 17-5 Authority of Planning Commission

The Planning Commission is vested with the authority to review, and to recommend to the Board of Trustees the approval, conditional approval or disapproval of any application related to the subdivision or development of land submitted to it for its review pursuant to these regulations. The Planning Commission may additionally review and recommend approval, conditional approval or disapproval of any request for a variance from these regulations submitted pursuant to the provisions of Section 17-14.

Sec. 17-6 Authority of Board of Trustees

The Board of Trustees is vested with final authority to review and to approve, conditionally approve or disapprove any application related to the subdivision or development of land submitted to it for its approval pursuant to these regulations. The Board of Trustees may additionally review and either approve, conditionally approve or disapprove any request for a variance from these regulations submitted pursuant to the provisions of Section 17-14.

Sec. 17-7 Jurisdiction.

(a) These regulations apply to all development or subdivision of land located within the corporate limits of the municipality or outside the corporate limits as provided by 31-23-213, C.R.S.

(b) No land may be subdivided through the use of any legal description other than with reference to a plat approved by the Board of Trustees and recorded with the Chaffee County Clerk and Recorder in accordance with these regulations.

(c) No land described in this Section 17-7 shall be subdivided, sold, conveyed, or transferred until both of the following conditions has occurred in accordance with these regulations:

1. The applicant has obtained approval of the development of such property in accordance with the requirements of these regulations; and

2. The applicant has filed the approved plat with the Clerk and Recorder of Chaffee County.

(d) No building permit or certificate of occupancy shall be issued for any parcel or lot which has been created in violation of the terms and/or regulations of this code. Likewise, no excavation of land, earthmoving or earthwork, on construction of any public or private improvement, shall be allowed or commenced on any lot or parcel absent town approval of final construction plans and full compliance with the terms

and regulations of this code.

Sec. 17-8 Effective Date.

In order that land may be developed in accordance with the purposes and policies set forth in this Article I, these development regulations are hereby adopted and made effective as of _____ 2010.

Sec. 17-9 Interpretation, Conflict, and Separability.

(a) Interpretation. In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. These regulations shall be construed broadly to promote the purposes for which they are adopted.

1. Public Provisions. These regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulations, statute, or other provision of law, except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.

2. Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction; provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive or standards that are higher than the requirements of these regulations, or the determination of the Board of Trustees in approving a development or in enforcing these regulations, and the private provisions are not inconsistent with these regulations or the determinations made under these regulations, then the private provisions shall be operative and supplemental to these regulations and the determinations made under these regulations.

(b) Separability. If any part or provision of these regulations or the application of these regulations to any person or circumstance is adjudged invalid by any court of competent jurisdiction, the judgment shall be confined in its operation to the part, provision, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the validity of the remainder of these regulations or the application of these regulations to other persons or circumstances. The Board of Trustees hereby declares that it would have enacted the remainder of these regulations even without any such part, provision, or application which is judged to be invalid.

Sec. 17-10 Saving Provision.

These regulations shall not be construed as abating any action now pending under, or by virtue of, prior existing subdivision or development regulations of the Town, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the municipality under any section or provision existing at the time of adoption of these regulations, or as vacating or annulling any right obtained by any person, firm, or corporation by lawful action of the municipality, except as shall be expressly provided for in these regulations.

Sec. 17-11 Repeal of Prior Regulations.

Upon the adoption of these regulations according to law, the 1996 Subdivision Code Ordinance hereafter named the 2010 Development Code of the Town of Buena Vista codified as Chapter 17 of the Buena Vista Municipal Code, as amended, is hereby repealed and reenacted as set forth in these regulations.

Sec. 17-12 Amendments.

For the purpose of protecting the public health, safety, and general welfare, the Board of Trustees may amend these regulations from time to time in the manner provided by law.

Sec. 17-13 Public Purpose.

The regulation of the development of land and the attachment of reasonable conditions to land development is an exercise of valid police power delegated by the state to this municipality. The developer has the duty of compliance with reasonable conditions laid down by the Board of Trustees for design, dedication, improvement, and restrictive use of the land to conform to the physical and economic development of the municipality and to the health, safety, and general welfare of the future lot owners in the development and of the community at large.

Sec. 17-14 Variances, Exceptions, and Waivers of Conditions.

(a) General. Where the Board of Trustees finds that the extraordinary hardships or practical difficulties may result from strict compliance with these regulations and/or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve variances, exceptions, and waivers of conditions to these regulations so that substantial justice may be done and the public interest secured; provided that the variance, exception, or waiver of condition shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the Board of Trustees shall not approve variances, exceptions, and waivers of conditions unless it shall make findings based upon the evidence presented to it in each specific case that:

1. The granting of the variance, exception, or waiver of condition will not be detrimental to the public safety, health, or welfare or injurious to the other property;

2. The condition upon which the request is based is unique to the property for

which the relief is sought and is not applicable generally to other property;

3. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out; and

4. The relief sought will not in any manner vary the provisions of the Zoning Ordinance (Chapter 16 of the Buena Vista Municipal Code) or the Comprehensive Plan, except that those documents may be amended in the manner prescribed by law.

(b) Conditions. In approving variances, exceptions, or waivers of conditions, the Board of Trustees may require such conditions as will, in its judgment, substantially secure the purposes described in Section 17-3.

(c) Procedures. A request for a variance, exception, or waiver of condition shall be submitted in writing by the applicant. Such request shall be submitted at the time of filing the development application. The request shall state fully the grounds for the variance and all of the facts relied upon by the petitioner.

Sec. 17-15 Computation of Time.

In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded. As used in this Section the term "legal holiday" includes January 1, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as President's Day; the last Monday in May, observed as Memorial Day; July 4, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; November 11, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; December 25, observed as Christmas day, and any other day designated as a legal holiday by the Town.

Sec. 17-16 Enforcement, Violations, and Penalties.

(a) General

1. It shall be the duty of the Development Coordinator to enforce these requirements and to bring to the attention of the Town Attorney or the Town Attorney's designated representative any violation of these regulations.

2. It shall be unlawful for any person to erect, construct, reconstruct, use or alter any building or structure or to excavate any public or private street, road or access, or install any utility service or line, serving or intended to serve any lot, parcel or land that has not received final approval as provided for in this code.

3. It shall be unlawful for any person to transfer, sell or convey, or to negotiate to transfer, sell or convey, any property, or portion thereof, for which subdivision approval is required under these regulations before a plat of the subdivision has been approved by the Board of Trustees in accordance with the provisions of the regulations and filed with the Clerk and Recorder of Chaffee County.

4. The subdivision of any lot or any parcel of land by the use of metes and bounds description for the purpose of sale, transfer, conveyance or development is prohibited.

5. No building permit shall be issued for the construction of any building or structure located on a lot or parcel subdivided, transferred, sold or conveyed in violation of the provisions of these regulations; nor shall the municipality have any obligation to issue a certificate of occupancy for or to extend or provide utility services to any lot or parcel created in violation of these regulations.

(b) Violations and Penalties. Any person who violates any of these regulations shall, upon conviction, be punished as provided in Article IV of Chapter 1 of the Buena Vista Municipal Code.

(c) Civil Enforcement. Appropriate actions and proceedings may be taken in law or in equity to prevent any violation of these regulations; to prevent unlawful construction or use of property; to recover damages; to restrain, correct, or abate a violation; and to prevent illegal occupancy of a building, structure or premises. These remedies shall be in addition to the penalties described above.

(d) Plat Enforcement. The Town shall have the authority to bring an action in a court of competent jurisdiction for injunctive relief to enforce any plat restriction, plat note, plat map, or similar instrument, and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map or similar instrument.

Sec. 17-17 Inapplicability to Town.

Notwithstanding anything contained in these regulations to the contrary, the provisions of these regulations shall not apply to the sale, transfer or conveyance of any land owned by the Town within the area commonly known as the "Industrial Park", or to the division of any real property owned by the Town into less than three (3) new parcels. Such property may be sold, transferred and conveyed by the Town by such means and in such manner as it shall determine without compliance being required with the provisions of these regulations. The intent of this Section is to allow the Town to engage in the normal business of the Town, but not to give the Town the license to engage in real estate development or sales.

Sec. 17-18 to 17-20 (Reserved)

ARTICLE II DEFINITIONS

Sec. 17-21 Usage.

(a) For the purpose of these regulations, certain numbers, abbreviations, terms, and words shall be used, interpreted, and defined as set forth in this Article II.

(b) Unless the context clearly indicates to the contrary, words used in the present tense include the future tense and words used in the plural include the singular. Wherever applicable, the pronouns in these regulations designating the masculine or neutral shall equally apply to the feminine, neutral and masculine genders

Sec. 17-22 Words and Terms Defined.

As used in these regulations the following words shall have the following meanings:

Adequate Public Facilities. Facilities determined to be capable of supporting and servicing the physical area and designed intensity of the proposed development as determined by the Board of Trustees based upon specific levels of service.

Alley. A public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

Arterial. Streets with anticipated average daily traffic exceeding two thousand (2,000) cars per day.

Applicant. The owner of land proposed to be developed or its representative who shall have express written authority to act on behalf of the owner. Consent shall be required from the legal owner of the premises.

Block. A tract of land bounded by streets, or by a combination of streets and alleys, public parks, cemeteries, railroad rights-of-way, or boundary lines of municipalities.

Board or Board of Trustees. The Board of Trustees of the Town of Buena Vista, Colorado.

Bond. Any form of a surety bond in an amount and form satisfactory to the Board of Trustees. All bonds shall be approved by the Board of Trustees whenever a bond is required by these regulations.

Building. Any structure built for the support, shelter, or enclosure of persons, animals, chattels, or movable property of any kind.

Certify. Whenever these regulations require that an agency or official certify the existence of some fact or circumstance, the Town by administrative rule, practice or established procedure may require that such certification be made in any manner, oral or written, which provides reasonable assurance of the accuracy of the certification.

Certificate of Occupancy (C.O.) a document issued by Chaffee County certifying a building's compliance with applicable building codes and other laws, and indicating the building to be in a condition suitable for occupancy.

Collector. Collector streets generally connect to arterials or other collectors, and residential driveways are normally not found on collectors.

Colorado Open Meetings Law. The provisions of Part 4 of Article 6 of Title 24, C.R.S., as amended from time to time, or any successor statute.

Common Ownership. Ownership by the same person, corporation, firm, entity, partnership, or unincorporated association; or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockbroker, partner, or associate, or a member of his family owns an interest in each corporation, firm, partnership, entity, or unincorporated association.

Concurrency. Requirement that development applications demonstrate the adequate public facilities be available at prescribed levels of service concurrent with the impact or occupancy of development units.

Condominium. A common interest community defined by Section 38-33.3-103(8), C.R.S, in which portions of the real estate are designated for separate ownership and the remainder of which is designated for common ownership by the owners of the separate ownership portions.

Condominium Unit. An individual portion of a condominium designated for separate ownership or occupancy, the boundaries of which are described in or determined from a recorded condominium plat or map; including a defined individual airspace together with an interest in appurtenant physical elements and/or land.

Condominiumization. The conversion of a building or lot, or other parcel of land, either in whole or in part, to a condominium common interest community.

Construction Plans. The maps or drawings accompanying a development plan and showing the specific location and design of improvements to be installed in the development in accordance with the requirements of the Planning Commission and Board of Trustees as a condition of the approval of the development plan.

Contiguous. Lots are contiguous when at least one boundary line of one lot touches a boundary line or lines of another lot.

Cooperative. An entire project which is under the common ownership of a Board of Directors with units leased and stock sold to individual cooperators.

Common Interest Community. A real estate development as defined in Section 38-33.3-102(8), C.R.S., or any successor statute.

Comprehensive Plan. The comprehensive plan for development of the Town

prepared and adopted by the Planning Commission and Board of Trustees, pursuant to Part 2 of Article 23 of Title 31, C.R.S., and including any part of such plan separately adopted and any amendment to such plan, or parts thereof.

C.R.S. The Colorado Revised Statutes, as amended from time to time.

Cul-de-Sac. A local street with only one outlet that terminates in a paved vehicular turnaround and having an appropriate terminal for the safe and convenient reversal of traffic movement.

Design Criteria. Standards that set forth specific improvement requirements.

Developer. The owner of land proposed to be developed or its representative who is responsible for any undertaking that requires review and/or approval under these regulations.

Development Agreement. A written contract between a developer and the Town memorializing terms and conditions associated with the approval of a subdivision or other development project and which may specify required improvements and vest property rights. Applicable to intermediate and major developments.

Development Coordinator. The person appointed by the Board of Trustees to administer these regulations and to assist administratively the Board of Trustees and the Planning Commission. If no such officer is appointed, the Town Administrator shall serve as the Development Coordinator.

Development Agent. Any person who represents, or acts for or on behalf of, a subdivider or developer, in selling, conveying, or developing, or offering to sell, lease, or develop any interest, lot, parcel, unit, site, or plat in a development, except an attorney-at-law whose representation of another person consists solely of rendering legal services.

Development Improvements Agreement. A contract entered into by a developer with and for the benefit of the town and under which the developer guarantees to construct and/or install, and complete, all improvements required within a development in accordance with a specified schedule.

Development, Major. See Major Development.

Development, Minor. See Minor Development.

Development Plans. The final maps or drawings, described in these regulations, on which the applicant's plan of development is presented to the Planning Commission and Board of Trustees for approval and which, if approved, shall be submitted to the Chaffee County Clerk and Recorder for recordation. If the property is to be subdivided, a development plan shall include a subdivision plat.

Disturbance. Land that is cleared, grubbed, and/or graded for construction purposes, not including the addition of vegetated areas.

Easement. Authorization by a property owner for another to use the owner's property for a specified purpose.

Escrow. A deposit of cash with the Town or escrow agent to secure the promise to perform some act.

Final Acceptance. Written letter from the Public Works Department accepting infrastructure after warranty period has expired.

Final Plan. The plat of a subdivision, or the construction plans for a development to be recorded after approval by the Board of Trustees and any accompanying material as described in these regulations.

Fixture height or mountain height. The vertical distance measured from the ground directly below the centerline of the fixture to the lowest part of the light source.

Foot-candles. A unit of surface illumination that is equal to one lumen per square foot as measured by a properly calibrated digital light meter. For purposes of these regulations, foot-candles shall be measured at a height of three (3) feet above finished grade directly under the illumination source.

Full cut-off fixture. A fixture that emits zero, or near zero, light at an angle of 90 degrees or more above vertical, and which limits to 10% of the total lumens the light fixture can emit above the vertical angle of 80 degrees from the vertical. This applies to all lateral angles around the fixture.

Fully shielded. A light fixture equipped with internal and/or external shields or louvers or opaque lensing to prevent brightness and glare at normal viewing angles by directing illumination and light downward.

Grade. The slope of a road, street, or other public way specified in percentage terms.

Hardscape. Landscape improvements that are not live vegetation, and create an impervious surface.

Health Department and Health Officer. The agency and person designated by the Board of Trustees to administer the health regulations of the local government.

Health, Safety, or General Welfare. The purpose for which municipalities may

adopt and enforce land use regulations for the prevention of harm or promotion of public benefit to the community; commonly referred to as the police power.

Homeowners Association. See Property Owners Association.

Infill Development. Development designed to occupy scattered or vacant parcels of land which remain after the majority of development has occurred in an area.

Intermediate Development. A subdivision containing less than four lots, a development disturbing between one and five acres. Requires the installation of a new public street or the extension of a water or sewer main line, and/or the installation of public improvements or infrastructure in excess of sidewalks, curb, gutter or fire hydrants.

Light Trespass. The shining of light produced by a light fixture beyond the boundaries of the property on which it is associated.

Local streets. Generally serve neighborhood traffic over very short distances and connect to higher use streets such as *collectors*. The primary purpose of a *local* street is to provide vehicular access to adjacent land.

Lot. A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, or transfer of ownership, or possession, or for building development.

Major Development. A subdivision containing four or more lots, or a development disturbing more than 5 acres.

Maximum initial horizontal illuminance. The maximum lighting level, measured in lumens three (3) feet above ground level, on a horizontal plane located directly below the centerline of the fixture.

Minor Development. A subdivision containing less than four lots, or a development disturbing more than 10,000 square feet but less than one acre. Does not require the installation of any new public street or the extension of a water or sewer main line, or the installation of any public improvements beyond sidewalks, curb, gutter, dry utilities or fire hydrants.

Open Meetings Law. See Colorado Open Meetings Law.

Manufactured Housing. See definition in Sec. 16-4 of the Buena Vista Municipal Code.

Mobile Home. See definition in Sec. 16-4 of the Buena Vista Municipal Code.

Mobile Home Subdivision. A subdivision of land which creates two or more lots which are intended to be sold to third-party buyers for the placement thereon of a mobile home.

Money in Lieu of Land. Payment of money into a municipally ear-marked fund to provide for acquisition of facilities off-site in place of dedicating land or providing such facility on site.

Municipality. See Town.

Nonresidential Development. A development whose intended use is other than residential, such as commercial or industrial.

Off-Site. Any premises not located within the area of the property to be developed, whether or not in the common ownership of the applicant for development approval.

Official Comprehensive Plan. See Comprehensive Plan.

Ordinance. Any legislative action, however denominated, of the Town which has the force of law, including any amendment or repeal of any ordinance.

Parcel. See Lot and Tract.

Person. Any individual or group of individuals, or any corporation, general or limited partnership, joint venture, limited liability entity, unincorporated association, or governmental or quasi-governmental entity.

Person Entitled to Notice. In the context of an application for a Minor or Intermediate Development or any other type of approval provided for in this Chapter, other than approval of a Major Development, a person who owns real property within 100 feet measured from any boundary line of the proposed development, according to the most current records of the Chaffee County Assessor. For a Major Development, a person entitled to notice is a person who owns real property within 500 feet measured from any boundary line of the proposed development, according to the most current records of the Chaffee County Assessor.

Phased Development Application. An application for development approval submitted pursuant to a specific plan in which the applicant proposes to immediately subdivide property, but develop the lots in one or more individual phases over a specified period of time.

Planned Unit Development (PUD). A development constructed on a tract of minimum size under single ownership planned and developed as an integral unit and consisting of a combination of residential and/or nonresidential uses on the land.

Planning Commission. The Planning and Zoning Commission of the Town of Buena Vista established pursuant to the provisions of Article IX of Chapter 2 of the Buena Vista Municipal Code.

Police Power. Inherent, delegated, or authorized legislative power for purposes of regulation to secure health, safety, and general welfare.

Preliminary Acceptance. Written letter from the Public Works Department following completion of construction. Warranty period begins following preliminary

acceptance.

Preliminary Plan. The preliminary drawing or drawings, described in these regulations, indicating the proposed manner or layout of the development to be submitted to the Planning Commission and Board of Trustees for approval.

Property Owners Association. An association or organization, whether or not incorporated, which operates under and pursuant to recorded covenants or deed restrictions, through which each owner of a portion of a development -- be it a lot, parcel site, unit plot, condominium, or any other interest -- is automatically a member as a condition of ownership and each such member is subject to a charge or assessment for a pro-rated share of expense of the association which may become a lien against the lot, parcel, unit, condominium, or other interest of the member.

Public Hearing. An adjudicatory proceeding held by the Board of Trustees preceded by published notice and actual notice to certain persons and at which certain persons, including the applicant, may call witnesses and introduce evidence for the purpose of demonstrating that the requested approval should or should not be granted. Witnesses shall be subject to cross-examination. The rules of civil procedure and rules of evidence binding on the courts shall not, however, bind the Board of Trustees in connection with the holding of a public hearing.

Public Input Session. An informational meeting held by the Board of Trustees. Except as otherwise provided in this Chapter, no notice of such meeting is required, other than compliance with the Open Meetings Law. A public input session is not a public hearing; and the requirements and procedures required hereunder for a public hearing shall not apply to a public input session.

Public Improvement. Any drainage, ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established.

Registered Engineer. An engineer properly licensed and registered in the State of Colorado.

Registered Land Surveyor. A land surveyor properly licensed and registered in the State of Colorado.

Regulations. The provisions of this Chapter 17 of the Town of Buena Vista, Colorado.

Right-of-Way. A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for any other special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the

lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for streets, crosswalks, water mains, sanitary sewers, storm drains, shade trees, or any other use involving maintenance by a public agency shall be dedicated to public use on which such right-of-way is established.

Sale. The transfer of ownership, or any possessory interest in land, including installment land contract or contract for deed, deed, devise, intestate succession, or other transfer of an interest in a development or part thereof, whether by metes and bounds or lot and block description.

Security. The letter of credit or cash escrow provided by the applicant to secure its promises in the Development Improvement Agreement.

Setback. The distance between a building and the street line nearest to the building.

Site Specific Development Plan. A plan of the type described in Sec. 17-41 of these regulations, approved by the Town, which has been submitted by a landowner or his representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

Sketch Plan. A sketch preparatory to the preliminary plans of a Major Subdivision or Development to enable the applicant to save time and expense in reaching general agreement with the Planning Commission and Board of Trustees as to the form of the plat and the objectives of these regulations.

Structure. Anything constructed or erected.

Subdivide. The act or process of creating a subdivision.

Subdivider. Any person, firm, partnership, corporation or other entity that engages in the creation, development or formation of a subdivision or subdivision lots.

Subdivision. A lot or other parcel of land which has been divided into two or more lots for the purpose, whether immediate or in the future, of ownership, development, sale or conveyance. *Subdivision* shall also mean the process of dividing, or the division of, lots or other parcels of land into two or more separate lots, tracts, development sites, condominium units or parcels, whether by deed, metes and bounds description, or other means of division, for the purpose of conveyance or development, including divisions under the terms of the Town's development regulations. *Subdivision* shall also include the consolidation, aggregation or reconfiguration of lots or parcels into one or more new lots. Unless a division of land specified below is undertaken and/or adopted for the purpose of evading the requirements of this chapter, the term "subdivision" shall not apply to any division of land: (i) which is created by order of any court in this state, or by operation of law, provided that the town is given timely notice of and an opportunity to participate in such proceeding prior to the entry of the court order and the town does not file an appropriate pleading within twenty (20) days after receipt of such notice

from the court; (ii) which is created by a lien, mortgage, deed of trust, or any other security instrument, or the foreclosure thereof; (iii) which creates a cemetery lot; (iv) which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property; (v) which is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy, or as tenants in common, and any such interest shall be deemed for purposes of this chapter to be only one interest; (vi) which creates an easement or right-of-way for utility installation, solar access, open space, or pedestrian/vehicle travel; (vii) which is described in or created by a contract for the sale of land which is contingent upon the purchaser or seller obtaining approval pursuant to this chapter to subdivide the land subject to the contract prior to closing on the sale; or (viii) which is created by act of the board of trustees of the town dividing real property owned by the Town to the extent provided in Sec. 17-17.

Town. The Town of Buena Vista, Colorado.

Town Attorney. The licensed attorney designated by the Board of Trustees to furnish legal assistance for the administration of these regulations.

Town Engineer. The licensed engineer designated by the Board of Trustees to furnish engineering assistance for the administration of these regulations.

Townhome. A building on its own separate lot containing one dwelling unit that occupies space from the ground to the roof and is attached to one or more other dwelling units by at least one common wall. For the purposes of these regulations, townhome projects shall be considered a subdivision by virtue of creation of lots underlying the townhome structure**.**

Tract. A defined parcel of land.

Vegetated. Landscape area with live vegetation, such as grass, shrubs, and trees.

Vested Property Right. The right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

Zoning Ordinance. The provisions of Chapter 16 of the Buena Vista Municipal Code, as amended from time to time.

Sec. 17-23 Acts by Agent or Authorized Representative.

Whenever any action is required to be taken by these regulations, such actions may be taken by the person so required, or by such person's duly authorized agent or representative.

Sec. 17-24 to 17-25 (Reserved)

ARTICLE III DEVELOPMENT APPLICATION PROCEDURE AND APPROVAL PROCESS

Sec. 17-26 General Procedure.

(a) **Compliance With Procedures Mandatory.** Before any land is developed the owner of the property proposed to be developed, or such person's authorized agent, shall apply for and secure approval of the proposed development in accordance with the following procedures.

(b) **Classification of** development**.** Developments occurring within the Town are classified as follows:

1. Minor Development;
2. Intermediate Development; and
3. Major Development.

The procedure to be followed to obtain approval for each type of development is set forth hereafter.

(c) **Official Submission Date.** For purposes of these regulations, and any other applicable law, the date of closure of any public hearing conducted under this article, inclusive of any adjourned date of such hearing, shall constitute the official submission date for the purpose of calculating or commencing any time period in which a final plat shall be approved, denied, or conditionally approved or denied.

(d) **Exemptions.**

Notwithstanding subjection (a) above, the following land development activities shall be exempt from the full development process and procedures set forth in this article:

1. **Lot Line Adjustment.** An adjustment of a lot line between two contiguous lots if all of the following conditions have been met.
   (a) The requested adjustment is necessary to correct a survey or engineering error in a recorded plat, or to allow an insubstantial boundary change between adjacent lots or parcels to relieve hardship or practical necessity, or to allow a transfer of land from a larger conforming lot to a smaller non-conforming lot so as to make both lots conforming, or to allow a boundary change between lots or parcels that is not intended or will result in an avoidance of the purpose of this chapter.

   (b) All owners whose lot line(s) or boundary line(s) are subject to the adjustment shall join in the lot line adjustment application.

2. **Elimination of Lot Lines.** The elimination of lot lines to merge not more than

two (2) conforming lots, or to merge two (2) or more non-conforming lots, but not more than are necessary to create a single conforming lot within the applicable zoning district, if all of the following conditions have been met.

(a) The lots to be consolidated are under one and the same ownership.

(b) The consolidated lot resulting from the elimination of lot lines will not exceed any lot size maximum or other regulation established for the zone district in which the lot is situated.

(c) The proposed elimination of the lot line(s) is not intended or will result in an avoidance of the purposes of this chapter.

(d) Except for the construction or enlargement of a single-family or duplex residence and/or an accessory building, when allowed by right under the applicable zoning district regulations, no development shall be permitted on a consolidated lot in a residential zone district absent prior review and approval of the proposed development under the provisions of this Chapter 17 and/or the Multifamily Design Review Standards set forth in Chapter 18 of the Buena Vista Municipal Code.

3. **Duplex conversion subdivision**. The division of a single lot on which an existing duplex dwelling is located, or is to be constructed, into two (2) separate lots if all of the following conditions have been met.

(a) The duplex is to be divided along a code-compliant fire-resistant common wall into two separate single-family dwelling units on separate lots of conforming size in the zone district, or on lots not less than 5,000 square feet in size if the minimum lot size for the zone district cannot be obtained.

(b) Each of the dwelling units is served by its own separate utility service lines and meters inclusive of water, sewer, electricity and natural gas.

(c) A common-wall maintenance agreement shall be established and recorded to run with the land comprising the proposed duplex lots.

(d) Except for the original primary structure(s) comprising the dwelling units and any common and/or side-by-side or connected garages or driveway(s), all new structures, or the expansion of any existing structures, on the new duplex lots shall be subject to the setback requirements for the underlying zone district in which the lots are located.

(e) The proposed duplex lots shall be the same size, or approximately the same, and each lot shall have its own direct access to a street.

(e) **Condominiums**

1. Processing of Applications

(a) For purposes of these regulations, the creation or abolition of new condominium units or of a planned community as defined in Section 38-33.3-103(22) C.R.S., as may be amended, constitutes the creation of separate interests and is considered a subdivision action.

(b) Notwithstanding the definitions of major and minor developments at Section 17-22 of this chapter, condominium developments of twenty (20) or more units shall be processed by the Town as a major development according to the requirements of Section 17-29. The applicant may apply for combined preliminary/final subdivision plat review, which combined review may be ranted at the sole discretion of the Development Coordinator.

(c) Condominium developments of less than twenty units shall be processed by the Town as a minor or intermediate development pursuant to Sections 17-27 or 28 of this chapter, as appropriate depending on whether installation of public improvements or infrastructure is proposed. Notwithstanding the provision of Section 17-27, for all condominium minor developments, a public hearing shall be held before the Planning Commission, whose decision shall constitute final approval or denial of the application; provided however, that applicants shall have the opportunity to appeal the decision of the Planning Commission on a condominium minor development within thirty (30) days to the Board of Trustees.

(d) Development applications for detached, single-family residences proposed as condominiums with common interest ownership of the lot or lots underlying the units shall be processed as development actions.

2. **Submittal requirements.** In addition to the development application requirements at Sections 17-27 through 29, as applicable, all condominium development applicants shall submit the supplementary information and comply with the regulations cited herein:

(a) Applicants shall comply with the Town's multifamily design review standards at Section 18-26 of this Code. Further, nothing herein shall be construed to waive the provisions of Section 16-147 of the Code, which requires a special use permit for multifamily dwellings in the Town's R-2 Zone District.

(b) Twenty (20) copies of a preliminary condominium plat (see subsection (e) requirement for amended plat/map) shall be submitted showing the following. These items may be combined with the general development plan submittal requirements at Sections 17-27 through 29 as one document.

(i) Required. parking spaces and joint trash collection areas;
(ii) Floor plans, elevations, and site plan as required to show separate ownership of all separate units, common elements, and

limited common elements labeled as such,

(iii) Number, type, and floor area of units, common elements and limited elements, delineated in square feet and fractions thereof; proposed use for each unit; land area; floor area ratio; and

(iv) Statement of the total number of units shown on the proposed plat.

(c) Applications for condominium projects shall include documentation showing compliance with the standards and terms of the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-201, et seq., as may be amended.

(d) At submission of a preliminary development plan for major condominium developments or final development plan for minor or intermediate condominium condominium developments, the applicant shall submit detailed engineering plans and specifications for all improvements, whether private or public.

(e) After buildings have been constructed and final "as-built" surveys have been completed, the applicant shall submit an amended condominium plat showing graphically and dimensionally the subdivisionof buildings into volumetric spaces and the relationship of these spaces with the boundaries of the site and other appurtenances on the site. These condominium plats shall comply with the requirements of C.R.S. §38-33.3-209, as may be amended, and may be approved administratively by the Development Coordinator without further review by the Board of Trustees or the Planning Commission. No individual condominium unit shall be sold into separate ownership until and unless a condominium plat has been approved by the Town based upon an "as-built" survey of the unit boundaries and such plat has been recorded in the real estate records of Chaffee County. A plat note on the Final Subdivision Plat for each condominium development shall be included to this effect.

3. **Condominium conversions.** An applicant proposing to condominiumize an existing building is exempt from the development requirements described in subsection (1) but must submit a condominium conversion inspection report to the Building Official describing the structural condition of the building, the proposed condominium units, and their compliance with all building and fire safety codes. Applications for existing building condominiumization must also comply with the requirements of subsection (2) above. The applicant shall make the building and all proposed condominium units available for inspection by the Building Official if the Building Official deems such inspection necessary to conform compliance of the building and/or units with building and fire safety codes. The cost of such inspections shall be borne by the applicant. Notwithstanding the provision that states the regulations will only apply to new buildings, the applicant shall further comply with the Town's multifamily design review standards at Section 18-26 of this Code. Review and approval of an

application to condominiumize an existing building shall be per the terms and conditions of Section 17-26.5(a) through (e) of this chapter. The conversion of an existing structure to multiple ownership interests shall not be permitted if the use of the structure is nonconforming pursuant to Chapter 16, Article VII of this Code.

Sec. 17-27 Exemption Procedures.

Land development activities eligible for exemption from normal development standards and processes shall be subject to the following procedures:

(a) All applicants for a development exemption shall meet with the Development Coordinator to discuss exemption procedures prior to the submission of an application.

(b) All applicants shall submit a complete application, accompanied by any required fee, and for subdivision exemption requests a professionally prepared subdivision exemption plat substantially conforming in all respects to the applicable requirements of Article IV of this chapter and illustrating all proposed adjusted lot lines and lots. The applicant shall provide no less than an original and two (2) copies of the proposed subdivision exemption plat unless otherwise specified by the Development Coordinator.

(c) All applications for a development exemption shall be initially reviewed by the Development Coordinator for recommendation and then forwarded to the Chair of the Planning and Zoning Commission, who shall approve or deny same within thirty (30) days without need for notice or hearing. Appeals from a decision of the Chair of the Planning and Zoning Commission shall be to the Board of Trustees in accordance with the procedures set forth in subsection (e) below.

(d) For subdivision exemption requests, upon approval of an application, the Chair of the Planning and Zoning Commission shall sign a reproducible mylar original of the final subdivision exemption plat substantially conforming in all applicable respects to the requirements of Article IV of this chapter, and two (2) duplicate paper prints of the mylar. One paper print shall be returned to the applicant. The Town Clerk shall file the approved plat with the County Clerk and Recorder as soon as reasonably possible, with the cost thereof to be borne by the applicant.

(e) Appeals from a decision approving or denying a development exemption shall be made to the Board of Trustees in writing by filing same with the Town Clerk within ten (10) days from the date of the decision appealed from. All appeals shall be heard by the Board of Trustees de novo and shall be conducted at a public meeting within thirty (30) days from the filing of the appeal, or as soon thereafter as can be accommodated. The Town Clerk shall both 1) notify the appellant by certified mail, return receipt requested, of the date the appeal shall be heard and 2) publish notice thereof in a

newspaper of general circulation at least seven (7) days in advance of the hearing. The decision of the Board of Trustees on appeal may be issued orally, but shall thereafter be reduced to writing within a reasonable period of time after the conclusion of the hearing and mailed to the appellant.

(f) Aggregation and Consolidation of Lots for Development Purposes. Any application seeking to simultaneously merge or aggregate two or more lots or parcels and then subdivide same for the purpose of creating two (2) or more new conforming lots shall be reviewed and approved under the procedures and standards utilized for establishing a minor, intermediate, or major development, as the case may be, depending upon the total number of new lots sought to be created.

Sec. 17-28 Minor Development

(a) **Pre-Application Conference.** Before submitting an application for a Minor Development, the applicant shall schedule an appointment and meet with the Development Coordinator to discuss the procedure for approval of such an application and the requirements as to the dedication of land for public utility easements, utility extensions, required rights-of-way dedications, and similar matters. The Development Coordinator shall also advise the applicant, when appropriate, to discuss the proposed development with those officials who must eventually approve those aspects of the development coming within their jurisdiction.

(b) **Application Procedure and Requirements.** After meeting with the Development Coordinator, the owner of the land, or such person's authorized agent, shall file an application for approval of a Minor Development with the Planning and Zoning Commission. The application shall:

1. Be made on forms available at the office of the Development Coordinator;

2. Be presented to the Development Coordinator;

3. Be accompanied by minimum of ten (10) full size (24"x36") and twenty (20) half-size (11"x17") copies of a site plan at a maximum scale of 1'=50', including the following:

   (a) The correct legal description of the lot or parcel which is proposed to be developed,
   (b) The square footage of the total development and the individual square footage of each of the new lots,
   (c) Identification of all existing and proposed structures and providing square footage and finished floor elevations, with dimensions to all property lines
   (d) All existing and proposed utilities,
   (e) The size of all existing and proposed easements,
   (f) Existing and proposed site access, and existing and proposed continuations

of current and future streets and bikeway/pedestrian trails,

(g) Construction plan requirements as set forth in Article IV for minor developments

4. Be accompanied by letters from each public utility provider stating the ability of such provider to provide utility service to the development.

5. Be accompanied by proof of ownership of the property proposed to be developed;

6. Be accompanied by a fee as set forth in Article IX of this Chapter;

7. Include an address and telephone number of a person who shall be authorized to receive all notices required by these regulations;

8. Include the names and addresses of all persons entitled to receive notice of the consideration of the application, together with a stamped legal-size envelope for each such person to be used to mail notice of the public hearing; and

9. Whenever the plat of a Minor Development covers only a part of an applicant's contiguous holdings, the applicant shall submit, at the scale of no more than one hundred (100) feet to the inch, a sketch in pen or pencil of the proposed development area, together with its proposed street system, and an indication of the probable future street system, and an indication of the probable future street and drainage system of the remaining portion of the tract.

(c) **Approval Procedure.**

1. Upon receipt of all required submittal materials the Development Coordinator shall place the matter on the next available regular meeting agenda of the Planning Commission for review and the making of a recommendation to the Board of Trustees. No notice shall be required in connection with the review by the Planning Commission, other than the Planning Commission's compliance with the requirements of the Colorado Open Meeting Law. The Planning Commission may continue its review from time to time until its review is completed.

2. Following consideration of the application the Planning Commission shall vote to recommend approval, conditional approval or denial of the application to the Board of Trustees.

3. Upon receipt of the recommendation from the Planning Commission the Development Coordinator shall schedule a public hearing on the application before the Board of Trustees. Such hearing shall be held not less than twenty (20) nor more than thirty (30) days after the receipt by the Development Coordinator of the recommendation of the Planning Commission, unless the applicant waives this requirement and agrees to an extension of this period.

4. Notice of the public hearing shall be published once in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing. Notice of the public hearing shall also be mailed to all persons entitled to notice by certificate of mail not less than five (5) days prior to the date of the hearing. Unless otherwise indicated in the record of the public hearing, the appearance of a person at the public hearing shall constitute a waiver of notice of the hearing.

5. The Development Coordinator shall furnish one (1) poster to the applicant to be posted by the applicant on the property proposed to be subdivided at least five (5) days prior to the public hearing. At the time of the public hearing, the applicant shall submit an affidavit stating that the applicant has placed the poster provided by the Development Coordinator on the property proposed to be subdivided.

6. Within thirty (30) days of the completion of the public hearing the Board of Trustees shall, by Resolution, approve, deny or conditionally approve the application.

(d) **Standards for Approval of a Minor Development.** No proposed Minor Development shall be approved by the Board of Trustees unless the applicant proves by clear and convincing evidence that:

1. The development conforms in all respects to the requirements of this Chapter;

2. New lots to be created by the Minor Development meet the lot size requirements of the Town's zoning ordinance;

3. Adequate utility service is or will be available to serve all new lots, and proper easements for the installation of such utility service exist or will be created;

4. The applicant has dedicated or will dedicate to the Town those easements and rights-of-way lawfully required by the Town for current and future streets, utilities and bicycle/pedestrian trails; and

5. Proper drainage control has been demonstrated.

(e) **Signing and Recordation of Plan for Minor Development.**

1. The developer shall incorporate all conditions of approval and submit final documents for execution within eighteen (18) months of Trustee approval. If not completed within eighteen (18) months the applicant must reapply for final approval. The Mayor and Chairperson of the Planning and Zoning Commission shall execute the approved final plan for a Minor Development within 30 days after the applicant has submitted same to the Town, along with any and all other documents and evidence, if necessary, demonstrating that all applicable conditions of approval for the development have been satisfied, including the execution of a development or subdivision improvements agreement and the full payment of all fees. No person shall sell, transfer, convey, lease or rent, or negotiate to sell, transfer, convey, lease or rent, any lot or other property within

the development until the development plan has been duly recorded in the office of the Chaffee County Clerk and Recorder. All public or other development improvements that may be installed as part of a minor development, if any, shall be subject to warranty after construction and acceptance as required at Sec. 17-46(b) of this chapter. No building permit shall be processed by the Town for any lot prior to the satisfactory installation and inspection of water lines and fire hydrants, and a driveable surface for emergency vehicles. No Certificate of Occupancy shall be processed or issued by the Town for any lot prior to the complete and satisfactory installation of all development improvements or infrastructure required to serve such lot.

2. The Mayor and the Chair of the Planning and Zoning Commission shall sign the reproducible mylar original of the final development plan and two (2) prints of the final development plan. The prints will be returned to the applicant's engineer.

3. It shall be the responsibility of the Town Clerk to file the approved plan with the county clerk and recorder's office within ten (10) days of the date of signature. Simultaneously with the filing of the final plan, the Town Clerk shall also record the development or subdivision improvements agreement and any agreement for dedications, if any, together with such other legal documents as may be required to be recorded by the Town Attorney. The applicant shall bear the cost of all recordation fees.

(f) **Limitation on Minor Development.** In order to deter the piecemeal development of land and insure the timely installation of necessary public improvements, no real property may be the subject of a Minor Development more than once. In the event application is made to redevelop property that has previously been the subject of a Minor Development, such application must be processed and approved as an Intermediate Development unless the proposed development requires processing and approval as a Major Development.

Sec. 17-29 Intermediate Development.

(a) **Pre-application Conference.** Before submitting an application for an Intermediate Development, the applicant shall schedule an appointment and meet with the Development Coordinator to discuss the procedure for approval of such an application and the requirements as to the dedication of land for public utility easements, utility extensions, required rights-of-way dedications, and similar matters. The Development Coordinator shall also advise the applicant, when appropriate, to discuss the proposed development with those officials who must eventually approve those aspects of the development coming within their jurisdiction.

(b) **Application Procedure and Requirements.** After meeting with the Development Coordinator, the owner of the land, or such person's authorized agent, shall file an application for approval of an Intermediate Development with the Planning and

Zoning Commission. The application shall:

1. Be made on forms available at the office of the Development Coordinator;

2. Be presented to the Development Coordinator;

3. Be accompanied by minimum of ten (10) full sized (24"x36") and twenty (20) half size (11"x17") copies of the following:

   (a) A proposed development plan and for subdivisions, a proposed subdivision plat prepared by a registered surveyor meeting the requirements and specifications of Article IV of this Chapter.
   (b) Preliminary construction plans prepared by a registered engineer and meeting the requirements of Article IV of this Chapter.

4. Be accompanied by letters from each public utility provider stating the ability of such provider to provide utility service to the development.

5. Be accompanied by proof of ownership of the property proposed to be developed;

6. Be accompanied by a fee as set forth in Article IX of this Chapter;

7. Include an address and telephone number of a person who shall be authorized to receive all notices required by these regulations; and

8. Include the names and addresses of all persons entitled to receive notice of the consideration of the application, together with a stamped legal-size envelope for each such person to be used to mail notice of the public hearing.

9. Whenever the plan of an Intermediate Development covers only a part of an applicant's contiguous holdings, the applicant shall submit, at the scale of no more than one hundred (100) feet to the inch, a sketch in pen or pencil of the proposed development area, together with its proposed street system, and an indication of the probable future street system, and an indication of the probable future street and drainage system of the remaining portion of the tract.

(c) **Approval Procedure.**

1. Upon receipt of all required submittal materials the Development Coordinator shall place the matter on the next available regular meeting agenda of the Planning Commission for review and the making of a recommendation to the Board of Trustees. No notice shall be required in connection with the review by the Planning Commission, other than the Planning Commission's compliance with the requirements of the Colorado Open Meeting Law. The Planning Commission may continue its review from time to time until its review is

completed.

2. Following consideration of the application the Planning Commission shall vote to recommend approval, conditional approval or denial of the application to the Board of Trustees.

3. Upon receipt of the written recommendation of the Planning Commission, the Development Coordinator shall schedule a public hearing on the application before the Board of Trustees to be held not less than twenty (20) nor more than sixty (60) days after the date of receipt of the Planning Commission recommendation, unless the applicant agrees in writing to an extension of time.

4. Notice of the public hearing shall be published once in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing. Notice of the public hearing shall also be mailed to all persons entitled to notice by certificate of mail not less than five (5) days prior to the date of the hearing. Unless otherwise indicated in the record of the public hearing, the appearance of a person at the public hearing shall constitute a waiver of notice of the hearing.

5. The Development Coordinator shall furnish one (1) poster to the applicant to be posted by the applicant on the property proposed to be subdivided at least five (5) days prior to the public hearing. At the time of the public hearing, the applicant shall submit an affidavit stating that the applicant has placed the poster provided by the Development Coordinator on the property proposed to be subdivided.

6. Within thirty (30) days of the completion of the public hearing the Board of Trustees shall, by Resolution, approve, deny or conditionally approve the application.

d) **Standards of Approval for Intermediate Development.** No proposed Intermediate Development shall be approved by the Board of Trustees unless the applicant proves by clear and convincing evidence that:

1. The development conforms in all respects to the requirements of this Chapter;
2. The development conforms in all respects to the requirements of the Town's zoning ordinance;
3. The proposed development will not result in the scattered development of land that leaves undeveloped parcels of land lacking urban services between developed parcels;
4. The applicant has dedicated or will dedicate to the Town those easements and rights-of-way lawfully required by the Town for current and future streets, utilities and bikeway/pedestrian trails; and
5. The developer has taken every effort to mitigate the impact of the proposed development on the public health, safety, and welfare.

(e) **Signing and Recordation of Plans for Intermediate Development.**

1. The developer shall incorporate all conditions of approval and submit final documents for execution within 18 months of Trustee approval, or shall reapply for final approval. The Mayor and Chairperson of the Planning and Zoning Commission shall execute the approved final plan for a Intermediate Development within 30 days after the applicant has submitted same to the Town, along with any and all other documents and evidence, if necessary, demonstrating that all applicable conditions of approval for the development have been satisfied, including the execution of a development or subdivision improvements agreement and the full payment of all fees. No person shall sell, transfer, convey, lease or rent, or negotiate to sell, transfer, convey, lease or rent, any lot or other property within the development until the development plan has been duly recorded in the office of the Chaffee County Clerk and Recorder. All public or other development improvements that may be installed as part of a development, if any, shall be subject to warranty after construction and acceptance as required at Sec. 17-46(b) of this chapter. No Certificate of Occupancy shall be processed or issued by the Town for any lot prior to the complete and satisfactory installation of all development improvements or infrastructure required on such lot.
2. The Mayor and the Chair of the Planning and Zoning Commission shall sign the reproducible mylar original of the final development plan and two (2) prints of the final development plan. The prints will be returned to the applicant's engineer.
3. It shall be the responsibility of the Town Clerk to file the approved plat with the county clerk and recorder's office within ten (10) days of the date of signature. Simultaneously with the filing of the final plat, the Town Clerk shall also record the subdivision or development improvements agreement and any agreement for dedications, if any, together with such other legal documents as may be required to be recorded by the Town Attorney. The applicant shall bear the cost of all recordation fees.

(f) **Development Improvements.** The construction of public and other development improvements to be installed as part of an Intermediate Development shall be secured by adequate bond, cash escrow, letter of credit, or other security instrument as approved by the Town, and shall be identified in a development or subdivision improvements agreement that shall be executed by the subdivider and the Town as a condition of approval for every Intermediate Development. All development improvements shall be subject to warranty after construction and acceptance. No building permit shall be processed or issued by the Town for any lot prior to the satisfactory installation and inspection of water lines and fire hydrants, and a driveable surface for emergency vehicles. No Certificate of Occupancy shall be processed by the Town for any lot prior to the submission, review and approval of final construction plans for all development infrastructure and improvements as required by the terms and conditions of the development approval and/or the terms of this code, and the complete and satisfactory

installation of such infrastructures and improvements necessary to serve any lot or lots for which a building permit has been sought. All costs reasonably incurred by the Town in reviewing the approving final construction plans, inclusive of engineering and legal fees, shall be paid by the applicant.

Sec. 17-30 Major Development.

(a) **General**. The process to obtain approval of a Major Development involves three separate and distinct steps: (i) approval of the sketch plan, (ii) approval of the preliminary plans; and (iii) approval of the final plans.

(b) **Pre-application Conference**. Before submitting an application for a Major Development, the applicant shall schedule an appointment and meet with the Development Coordinator to discuss the procedure for approval of such an application and the requirements as to the dedication of land for public utility easements, utility extensions, required rights-of-way dedications, and similar matters. The Development Coordinator shall also advise the applicant, when appropriate, to discuss the proposed development with those officials who must eventually approve those aspects of the development coming within their jurisdiction.

(c) **Sketch Plan**.

1. **Submittal Requirements**. After meeting with the Development Coordinator the owner of the land, or such person's agent, shall file an application for approval of a Sketch Plan for a Major Development with the Planning Commission. The application shall:

   (a) Be made on forms available at the office of the Development Coordinator;

   (b) Be presented to the Development Coordinator;

   (c) Be accompanied by minimum of ten (10) full size (24"x 36") and twenty (20) half-size (11"x17") copies of a sketch plan for the proposed development meeting the requirements of subparagraph 2 of this Paragraph (c);

   (d) Be accompanied by a proposed development schedule;

   (e) Be accompanied by a fee as set forth in Article IX of this Chapter;

   (f) Include an address and telephone number of a person who shall be authorized to receive all notices required by these regulations; and

   (g) Include the names and address of all persons entitled to receive notice of the consideration of the application, together with a stamped legal-size envelope for each such person to be used to mail notice of the public hearings.

   (h) Be accompanied by letters from each public utility provider stating the ability of such provider to provide utility service to the development. The sketch plan shall contain such additional information as may be reasonably requested by the Development Coordinator;

(i) Be accompanied by proof of ownership of the property proposed to be developed;

(j) Whenever the plat of a Minor Development covers only a part of an applicant's contiguous holdings, the applicant shall submit, at the scale of no more than one hundred (100) feet to the inch, a sketch in pen or pencil of the proposed development area, together with its proposed street system, and an indication of the probable future street system, and an indication of the probable future street and drainage system of the remaining portion of the tract.

2. **Contents**. Sketch plans submitted to the Planning Commission, prepared in pen or pencil, shall be drawn to a scale of not more than one hundred (100) feet to an inch and shall show the following information:

(a) **Name.**

(i) Name of subdivision if property is within an existing subdivision.

(ii) Proposed name if not within a previously platted subdivision. The proposed name shall not duplicate the name of any plat previously recorded.

(iii) Name of property if no development name has been chosen. (This is commonly the name by which the property is locally known).

(b) **Ownership**.

(i) Name and address, including telephone number, of legal owner or agent of property, and a copy of last instrument conveying title to each parcel of property involved in the proposed development, giving grantor, grantee, date, and land records reference.

(ii) Copy of any existing legal rights-of-way or easements affecting the property.

(iii) Existing covenants on the property, if any.

(iv) Name and address, including telephone number, of the professional engineer and surveyor responsible for development design, for the design of public improvements, and for surveys.

(c) **Description.** Location of property by government lot, section, township, range and county. Also include graphic scale, north arrow, and date.

(i) A vicinity map showing streets and other general development of the surrounding area. The sketch plan shall show all school and improvement district lines with the zones properly designated.

(ii) Location of property lines, existing easements, burial grounds, railroad rights-of-way, watercourses, and existing wooded areas or trees eight (8) inches or more in diameter, measured four (4) feet above ground level; location, width, and names of all existing or platted streets or other public ways without or immediately adjacent to the tract.

(iii) Location, sizes, elevations, and slopes of existing sewers, water mains, culverts, and other underground structures within the tract and

immediately adjacent thereto; existing permanent building and utility poles on or immediately adjacent to the site and utility rights-of-way.

(iv) Minimum of 10 (ten) foot topographic contours with elevation labels, at the same scale as the sketch plan.

(v) The approximate location and widths of proposed streets sidewalks, and paths.

(vi) Floodplains as shown on existing FIRM maps, with BFEs shown, if available.

(vii) Preliminary provisions for collecting and discharging surface water drainage. Show location of proposed drainage and detention facilities.

(viii) Preliminary proposals for connection with existing water supply and sanitary sewage systems, or alternative means of providing water supply and sanitary waste treatment and disposal;

(ix) The approximate location, dimensions, and areas of all proposed or existing lots.

(x) The approximate location, dimensions, and area of all parcels of land proposed to be set aside for park or playground use or other public use, or for the use of property owners in the proposed development.

(xi) The location of temporary stakes to enable the Planning Commission and Board of Trustees to find and appraise features of the sketch plan in the field.

(xii) Whenever the sketch plan covers only a part of an applicant's contiguous holdings, the applicant shall submit, at the scale of no more than one hundred (100) feet to the inch, a sketch in pen or pencil of the proposed development area, together with its proposed street system, and an indication of the probable future street system, and an indication of the probable future street and drainage system of the remaining portion of the tract.

3. **Approval Procedure--Sketch Plan.**

(a) The Development Coordinator shall furnish one (1) poster to the applicant to be posted by the applicant on the property proposed to be subdivided at least five (5) days prior to the public input session. At the time of the public input session, the applicant shall submit an affidavit stating that the applicant has placed the poster provided by the Development Coordinator on the property proposed to be subdivided.

(b) Upon receipt of all required submittal materials the Development Coordinator shall place the sketch plan on the next available regular meeting agenda of a joint meeting of the Planning Commission and the Board of Trustees. No notice shall be required in connection with the joint review by the Planning Commission and the Board of Trustees, other than compliance with the requirements of the Colorado Open Meeting Law. The Planning Commission and Board of Trustees may continue their review from time to time until its review is completed.

(c) Following consideration of the application the Planning Commission shall vote to recommend approval, conditional approval or denial of the sketch plan to the Board of Trustees.

(d) Within thirty (30) days of the completion of the public input session the Board of Trustees shall, by Resolution, approve, deny or conditionally approve the sketch plan.

4. **Standards for Approval of Sketch Plan.** No proposed Sketch Plan shall be approved by the Board of Trustees unless the applicant proves by clear and convincing evidence that the property can be developed in conformance with all of the requirements of this Chapter.

(d) **PRELIMINARY PLANS.**

1. **Timing of Submission.** No sooner than thirty (30) days and not later than one hundred twenty (120) days after the date of the approval by the Board of Trustees of the sketch plan, the applicant may apply for preliminary plans approval. If the applicant fails to apply for preliminary plans approval within the 120-day period, the approval of the sketch plan shall lapse and be of no further effect, and a new sketch plan must be submitted for approval by the Planning Commission and the Board of Trustees.

2. **Preliminary Plans Submittal Requirements.** The applicant shall file with the Development Coordinator an application for approval of preliminary plans. The preliminary plans shall conform substantially to the sketch plan approved by the Board of Trustees. The application shall:

(a) Be made on forms available at the office of the Development Coordinator.

(b) Be accompanied by a fee as set forth in Article IX of this Chapter.

(c) Be accompanied by a minimum of ten (10) full-sized (24" x 36") and twenty (20) half-sized (11" x 17") copies of preliminary plans meeting the requirements of Subparagraph 3 of this Paragraph (d).

(d) Comply in all respects with the approved Sketch Plan.

(e) Include an address and telephone number of a person who shall be authorized to receive all notices required by these regulations.

(f) Include the names and address of all persons entitled to receive notice of the consideration of the application, together with a stamped legal-size envelope for each such person to be used to mail notice of the public hearing.

(g) Be presented to the Development Coordinator at least four (4) weeks prior to a regular meeting of the Commission.

(h) Include all requirements as set forth in Article IV.

3. **Approval Procedure--Preliminary Plans.**

(a) Upon receipt of all required submittal materials the Development Coordinator shall place the preliminary plans on the next available regular meeting agenda of the Planning Commission for review and the making of a recommendation to the Board of Trustees. No notice shall be required in connection with the review by the Planning Commission, other than the Planning Commission's compliance with the requirements of the Colorado Open Meeting Law. The Planning Commission shall continue its review until its review is completed.

(b) Following consideration of the application the Planning Commission shall vote to recommend approval, conditional approval or denial of the preliminary plat to the Board of Trustees.

(c) Upon receipt of the written recommendation of the Planning Commission, the Development Coordinator shall schedule a public hearing on the preliminary plat plan before the Board of Trustees to be held not less than twenty (20) nor more than sixty (60) days after the date of receipt of the Planning Commission's recommendation, unless the applicant agrees in writing to an extension of time.

(d) Notice of the public hearing shall be published once in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing. Notice of the public hearing shall also be mailed to all persons entitled to notice by certificate of mail not less than five (5) days prior to the date of the hearing. Unless otherwise indicated in the record of the public hearing, the appearance of a person at the public hearing shall constitute a waiver of notice of the hearing.

(e) The Development Coordinator shall furnish one (1) poster to the applicant to be posted by the applicant on the property proposed to be developed at least five (5) days prior to the public hearing. At the time of the public hearing, the applicant shall submit an affidavit stating that the applicant has placed the poster provided to him by the Development Coordinator on the property proposed to be developed.

(f) Within thirty (30) days of the completion of the public hearing the Board of Trustees shall, by Resolution, approve, deny or conditionally approve the preliminary plans.

4. **Standards for Approval of Preliminary Plans.** No proposed preliminary plans shall be approved by the Board of Trustees unless the applicant proves by clear and convincing evidence that:

(a) The development conforms in all respects to the requirements of this Chapter.

(b) The development conforms in all respects to the requirements of the Town's Zoning Ordinance.

(c) The applicant has taken every effort to mitigate the impact of the proposed developments on the public health, safety, and welfare.

5. **Effective Period for Preliminary Plat.** The approval of a preliminary plan shall be effective for a period of one (1) year from the date that the preliminary plan is approved by the Board of Trustees, at the end of which time the applicant must have submitted a final development plan for approval. If a development plan is not submitted for final approval within the one (1) year period the preliminary plan approval and sketch plan approval shall lapse and shall be null and void, and the applicant shall be required to submit a new sketch plan for review and approval subject to the zoning restrictions and development regulations then in effect.

(e) **FINAL PLANS**

1. **Submittal Requirements.** The applicant shall file with the Development Coordinator an application for approval of final plans. The final plans shall conform substantially with the preliminary plan approved by the Board of Trustees. The application shall:

(a) Be made on forms available at the office of the Development Coordinator.

(b) Be accompanied by a fee as set forth in Article IX of this chapter.

(c) Be accompanied by a minimum of ten (10) full-sized (24”x36”) and twenty (20) half size (11”x17”) copies of construction plans meeting the requirements of Article IV.

(d) Comply in all respects with the approved preliminary plans.

(e) If a subdivision is involved, include the entire subdivision, or section thereof, which derives access from an existing state, county, or local government highway, as required by Section 31-23-214.1, C.R.S.

(f) Be presented to the Development coordinator at least four (4) weeks prior to a regular meeting of the Planning Commission.

(g) Identify all necessary and/or proposed land dedications to the Town for public streets, public utilities, easements, public rights -of-way, parks, or other public uses, and the method for effectuating such dedications, e.g. statutory dedication or by deed.

(h) Be accompanied by a proposed draft development or development improvements agreement.

(i) Be accompanied by a deposit equal to five percent (5%) of the cost estimate of the installation of all required streets, utilities and other public improvements to be used to reimburse the Town for all required construction inspections.

(j) Include an address and telephone number of a person who shall be authorized to receive all notices required by these regulations.

(k) Include the names and address of all persons entitled to receive notice of the consideration of the application, together with a stamped legal-size envelope for each person to be used to mail notice of the public hearing.

2. **Final Development Plans--Contents.**

(a) **General.** The final development plans shall be presented at the same scale and contain the same information as the preliminary plans, except for any changes or additions required by the Board of Trustees approving the preliminary plans. The preliminary plans may be used as the final development plans if they meet these requirements and are revised in accordance with the Board of Trustees Resolution.

(b) **Contents.** The final development plans shall comply in all respects with the requirements of Article IV of this Chapter.

3. **Approval Procedure--Final Plans.**

(a) Upon receipt of all required submittal materials the Development Coordinator shall place the final plans on the next available regular meeting agenda of the Planning Commission for review and the making of a recommendation to the Board of Trustees. No notice shall be required in connection with the review by the Planning Commission, other than the Planning Commission's compliance with the requirements of the Colorado Open Meeting Law. The Planning Commission shall continue its review until its review is completed.

(b) Following consideration of the application the Planning Commission shall vote to recommend approval, conditional approval or denial of the final plans to the Board of Trustees.

(c) Upon receipt of the written recommendation of the Planning Commission, the Development Coordinator shall schedule a public hearing on the final plan before the Board of Trustees to be held not less than twenty (20) nor more than sixty (60) days after the date of receipt of the Planning Commission's recommendation, unless the applicant agrees in writing to an extension of time.

(d) Notice of the public hearing shall be published once in a newspaper of general circulation in the Town at least seven (7) days prior to the hearing. Notice of the public hearing shall also be mailed to all persons entitled to notice by certificate of mail not less than five (5) days prior to the date of the hearing. Unless otherwise indicated in the record of the public hearing, the appearance of a person at the public hearing shall constitute a waiver of notice of the hearing.

(e) The Development Coordinator shall furnish one (1) poster to the applicant to be posted by the applicant on the property proposed to be subdivided at least five (5) days prior to the public hearing. At the time of the public hearing, the applicant shall submit an affidavit stating that the applicant has placed the poster provided to him by the Development Coordinator on the property proposed to be subdivided.

(f) Within thirty (30) days of the completion of the public hearing the Board of Trustees shall, by Resolution, approve, deny or conditionally approve the final plans.

4. **Standards for Approval of Final Plat.** No proposed final plat shall be approved by the Board of Trustees unless the applicant proves by clear and convincing evidence that:

(a) The development conforms in all respects to the requirements of this Chapter.

(b) The development conforms in all respect to the requirements of the Town's Zoning Ordinance.

(c) The applicant has taken every effort to mitigate the impact of the proposed development on the public health, safety, and welfare.

5. **Development Improvements.** The construction of public and other development improvements to be installed as part of a Major Development shall be secured by adequate bond, cash escrow, letter of credit, or other security instrument as approved by the Town, and shall be identified in a development or development improvements agreement that shall be executed by the applicant and the Town as a condition of approval for every Major Development. All development improvements shall be subject to warranty after construction and acceptance. No building permit shall be processed or issued by the Town for any development prior to the submission, review and approval of final construction plans for all development infrastructure and improvements as required by the terms and conditions of the development approval and/or the terms of this code, and the complete and satisfactory installation of such improvements and infrastructure necessary to serve any lot for which a building permit has been sought. All costs reasonably incurred by the Town in reviewing and approving final construction plans, inclusive of engineering and legal fees,

shall be paid by the applicant.

6. **Signing and Recordation of Plans for Major Development.**

   (a) The developer shall incorporate all conditions of approval and submit final documents for execution within eighteen (18) months of Trustee approval, or shall reapply for final approval. The Mayor and Chairperson of the Planning and Zoning Commission shall execute the approved final plan for a Major Development within 30 days after the applicant has submitted same to the Town, along with any and all other documents and evidence, if necessary, demonstrating that all applicable conditions of approval for the development have been satisfied, including the execution of a development or development improvements agreement and the full payment of all fees. No person shall sell, transfer, convey, lease or rent, or negotiate to sell, transfer, convey, lease or rent, any lot or other property within the development until the development plan has been duly recorded in the office of the Chaffee County Clerk and Recorder.

   (b) The Mayor and the Chair of the Planning and Zoning Commission shall sign the reproducible mylar original of the final development plan and two (2) prints of the development plan. The prints will be returned to the applicant's engineer.

   (c) It shall be the responsibility of the Town Clerk to file the approved plan with the county clerk and recorder's office within ten (10) days of the date of signature. Simultaneously with the filing of the final plan, the Town Clerk shall also record the development or subdivision improvements agreement and any agreement for dedications, if any, together with such other legal documents as may be required to be recorded by the Town Attorney. The applicant shall bear the cost of all recordation fees.

7. **Phasing of Major Development Plans.** Prior to granting final approval of a Major Development plan, the Board of Trustees may permit the plan to be divided into two or more phases or sections and may impose such conditions upon the filing of the phases or sections as it may deem necessary to assure the orderly development of the plan. The Board of Trustees may require that the Development Improvement Agreement and performance guarantee be in such amount as is commensurate with the phase or phases of the plan to be filed and may defer the remaining amount of the security until the remaining phases of the plan are offered for filing. The developer may also file irrevocable offers to dedicate streets and public improvements in the sections offered to be filed and defer filing offers of dedication for the remaining phases until those phases, subject to any conditions imposed by the Board of Trustees, shall be granted concurrently with final approval of the plan. If phasing is approved, the approved development plan showing the approved phase shall be filed with the County Clerk and Recorder's office. Such phases must contain at least twenty

five percent (25%) of the total number of lots contained in the approved plan. The approval of all remaining phases not filed with the Clerk and Recorder's office shall automatically expire unless such phases have been approved for filing by the Board of Trustees, all fees paid, all instruments and offers of dedication submitted and development improvement agreements, security and performance bonds, if any, approved and actually filed with the Clerk and Recorder's office within three (3) years of the date of final development approval of the development plan.

8. **Suspension and Invalidation of Final Plan.** If the Town suspends final plan approval for any development plan under these regulations, it shall record a document with the Chaffee County Clerk and Recorder's Office declaring that final approval for the development is suspended and that the further sale, conveyance or development of property within the development is prohibited; except that this prohibition shall not apply to persons or parties who have acquired property from the applicant unless the person or party acquiring property meets the definition of "common ownership" in Section 17-22. If any court of competent jurisdiction invalidates final plan approval for any development, the municipality shall record a document with the Chaffee County Clerk and Recorder's office declaring that the final plan for the development is no longer valid and that further development activity is prohibited.

Sec. 17-31 to 17-35 (Reserved)

ARTICLE IV DEVELOPMENT PLAN STANDARDS

Sec. 17-36 Development Plans - Contents

(a) **General.** The development plans shall include a plat prepared by a licensed land surveyor (if the subdivision of land is involved) and construction plans and design reports prepared by a licensed engineer, and shall substantially conform in all respects to the requirements of the following criteria.

(b) **Substantial Completion:** The lack of information under any item specified herein, or improper information supplied by the applicant, may be cause for disapproval of a preliminary plan.

1. Plat Requirements. Plats are required for all developments involving the subdivision of land, including minor, intermediate and major developments.

(a) **General.** All plats required or authorized by these regulations shall comply with the requirements of Section 38-51-106, C.R.S. To the extent of any conflict between the provisions of such statute and these regulations, the provisions of the statute shall control.

(b) **Preparation.** All plats required or authorized by these regulations shall be prepared by a licensed land surveyor at a scale not more than one (1) inch equals one hundred (100) feet, may be prepared in pen or pencil, and the sheets shall be numbered in sequence if more than one (1) sheet is issued. Sheets shall be twenty-four inches by thirty six inches (24" x 36").

(c) **Features.** All plats required or authorized by these regulations shall show the following:

(i) The location of property with respect to surrounding properties and streets.

(ii) The locations and dimensions of all boundary lines of the property to be expressed in feet and decimals of a foot.

(iii) The location of existing streets, easements, water bodies, streams, and other pertinent features such as railroads, buildings, parks, cemeteries, drainage ditches, and bridges.

(iv) The location and width of all existing and proposed streets and easements, alleys, and other public ways, and easement and proposed street rights-of-way and building set-back lines.

(v) The locations, dimensions, and areas of all proposed or existing lots.

(vi) The location and dimensions of all property proposed to be set aside for park or playground use, or other public or private reservation, with designation of the purpose of those set aside, and conditions, if

any, of the dedication or reservation.

(vii) The name and address of the owner or owners of land to be subdivided, the name and address of the developer if other than the owner, and the name and registration number of the land surveyor who prepared the plat.

(viii) The date of the map, approximate true north point, scale, the basis of bearing and title showing the name of the subdivision.

(ix) Sufficient data to determine readily the location, bearing, and length of all lines.

(x) The location of all proposed monuments.

(xi) Names of the subdivision and all new streets as approved by the Board of Trustees,

(xii) Blocks shall be consecutively numbered in numerical order. The blocks in numbered additions to subdivisions bearing the same name shall be numbered consecutively throughout the several additions.

(xiii) All lots in each block shall be consecutively numbered. Outlots shall be lettered in alphabetical order. If blocks are numbered or lettered, outlots shall be lettered in alphabetical order within each block.

(xiv) An explanation and location of all easements.

(xv) An explanation of reservations, if any.

(xvi) A notation of any self-imposed restrictions, and locations of any building lines proposed to be established in this manner, if required by the Board of Trustees is accordance with these regulations.

(xvii) Endorsement on the plat by every person having a security interest in the subdivision property that they are subordinating their liens to all covenants, servitudes, and easements imposed on the property.

(xviii) All monuments erected, corners, and other points established in the field in their proper places. The material of which the monuments, corners, or other points are made shall be noted at the representation thereof or by legend, except that lot corners need not be shown. The legend for metal monuments shall indicate the kind of metal, the diameter, length, and weight per lineal foot of the monuments.

(xix) The plat certificates as described in Section 17-32 to this Article IV.

(d) **Required Plat Certificates**

(i) **General.** The following certificates and notices shall be shown on the face of the Final Plat. Any other certificates or notices that are deemed necessary for the purposes of the particular plat shall also be included at the time of its submission for execution by the Town.

(ii) **Endorsements.** The preliminary plat shall contain a block for the endorsement thereon of both the owner and the Mayor, which shall be substantially as follows:

Owner Date

Mayor Date

(iii) **Certificates.** The following certificates shall be clearly typed on the plat:

Land Dedications and Owner's Certificate.

KNOW ALL PERSONS BY THESE PRESENTS:

That _____, being the owner or owners of the following described real property situate in the Town of Buena Vista, County of Chaffee and State of Colorado, to wit:

(Legal Description)

has laid out, subdivided and platted the same into lots, tracts, streets, and easements as shown hereon under the name and style of _____ [insert name ofsubdivision], and by these presents does hereby set apart and dedicate to the Town of Buena Vista for public use all of the streets, alleys and other public ways and places as shown hereon, and hereby dedicates those portions of land labeled as utility easements for the installation and maintenance of public utilities as shown hereon. [and/or other purposes, as appropriate to the subject plat].

Executed the ____ day of _____, 20___.

Owner's or Owners' Name(s)

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this day of _____, 20_____ by

(printed name(s) of owner(s)). (If by natural persons, here insert name; if by persons acting in a representative official capacity, or as attorney-in-fact, then insert the name and said capacity of said person and reference document establishing such capacity; if by officer of a corporation, then insert the name of said officer as the president or vice president of such corporation, naming it; if by a general partner of a partnership, then insert the name of said person as a general partner).

Witness my hand and official seal.

(Seal)

Notary Public
My commission expires:

Buena Vista Planning and Zoning Commission Certificate:

This Plat is approved* this ____ day of _____, 20__.

TOWN OF BUENA VISTA PLANNING AND ZONING COMMISSION

By
Chairperson

Buena Vista Board of Trustees Certificate:

This Plat is approved* this ____ day of _____, 20__.

TOWN OF BUENA VISTA, a Colorado municipal corporation

(Seal)

By
Mayor

ATTEST:

Town Clerk

***This approval does not guarantee that the type of soil or flooding conditions of any lot shown hereon are such that a building permit may be issued. This approval is also with the understanding that all expenses involving necessary improvements for all**

utility services, paving, grading, landscaping, curbs, gutters, street lights, street signs, and sidewalks shall be financed by others and not the Town of Buena Vista. Notice is further hereby given that acceptance of this platted subdivision by the Town of Buena Vista does not automatically constitute an acceptance of the roads, rights of way and other public improvements shown hereon for maintenance by said Town. Until such roads and rights of way and improvements meet Town specifications and are specifically inspected and accepted by the Town, the maintenance, construction, and all other matters pertaining to or affecting said roads, rights of way and improvements are the sole responsibility of the subdivider and owners of the land embraced within this subdivision.

Town Clerk's Certificate:

State of Colorado)
) ss.
Town of Buena Vista)

I hereby certify that this instrument was filed in my office at ____ o'clock ___.M., _____20_____, and is duly recorded.

_____
Town Clerk

Surveyor's Certificate:

I, _____, being a registered land surveyor in the State of Colorado, do hereby certify that this Plat of _____ was prepared by me and under my supervision, that both this Plat and the survey are true and accurate to the best of my knowledge and belief, and that the monuments were placed pursuant to 38-51-105, C.R.S.

Dated this ____ day of _____, 20___.

_____
[Surveyor's name]/Registration No.]

Title Company Certificate:

_____ does hereby certify that we have examined the title to all lands shown hereon and all lands herein dedicated by virtue of this Plat and title to all such lands is in the above named Owner free and clear of all liens, taxes and encumbrances, except as follows:

_____

_____
_____.
_____
_____
_____.

Dated this ____ day of _____, 20___.

_____
Agent

Clerk and Recorder's Certificate:

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

I hereby certify that this plat was filed in my office this _____ day of _____, 20___ under Reception No. _____.

_____
Chaffee County Clerk and Recorder

Notation for approval substantially as follows:

Owner Date

Mayor Date

Title, name, address, and signature of professional engineer, and date.

Sec. 17-37 Construction Plan Requirements

Draft construction plans for all required development improvements or infrastructure for intermediate and major developments shall be prepared and submitted for review as part of the application process for preliminary development approval. Plans shall be prepared by a registered engineer on sheets 24" x 30". Scale shall be minimum 1" = 20' and maximum 1" = 50'. All elevations shall be referred to the U.S.G.S. datum plane. The following, at a minimum, shall be shown:

(a) Existing Conditions – minor, intermediate and major developments

1. Existing topographic contours at 2-feet maximum intervals. The contours shall extend a minimum of 100-feet beyond the property lines. (This item not required for minor developments)
2. Local streets and easements within and adjacent to the development with ROW width shown.
3. Names and locations of surrounding developments.
4. Floodplains as shown on existing FIRM maps, with BFEs shown, if available.
5. Existing drainage facilities and structures, including irrigation ditches, roadside ditches, crosspans, drainageways, gutter flow directions, and culverts. All pertinent information such as material, size, shape, slope, and location shall also be included.
6. The water elevations of adjoining lakes or streams at the date of the survey, and the approximate high- and low-water elevations of such lakes or streams. If the development borders a lake, river, or stream, the distances and bearings of a meander line established not less than twenty (20) feet back from the ordinary high-water mark of such waterways.

(b) Grading and Drainage Plan – minor, intermediate and major developments

1. All contents of Existing Conditions plan shall be included.
2. Existing and proposed topographic contours at 2-feet maximum intervals required for intermediate and major developments. The contours shall extend a minimum of 100-feet beyond the property lines. For minor developments only spot elevations are required, for both existing and proposed features, as available.
3. Define the boundaries of all subdrainage areas within the property;
4. Proposed drainage facilities including detention basins, storm sewers, swales, riprap, and outlet structures.
5. Proposed flow directions
6. Any offsite features influencing development.
7. Such other information as may be required to ensure that storm water originating both from the property and lands lying upgradient from the property will be adequately drained and controlled.
8. For intermediate and major developments- Routing and accumulation of flows at various critical points for the initial and major storm runoff. Use rational method or other acceptable method to determine volumes.

9. Volumes and release rates for detention storage facilities and information on outlet works. Use rational method or other acceptable method to determine volumes.
10. Locations and slopes of cut and fill areas and methods of stabilization and revegetation. Cut and fill slopes shall not exceed 4:1.

(c) Road Plan and Profile- intermediate and major developments, and minor if new roads are proposed. All design and construction must meet the applicable requirements of the "Americans with Disabilities Act" (ADA).

1. Profiles showing existing and proposed elevations along center lines of all roads. Where a proposed road intersects an existing road or roads, the horizontal and vertical alignment along the center line of the existing road or roads within one hundred (100) feet of the intersection shall be shown.
2. Approximate radii of all curves, lengths of tangents, and central angles on all streets shall be shown.
3. Vertical curve information
4. Typical cross section shall be shown for each type of street in the project. For the "Standard Street Cross Sections", the designs will have the entire road/street prism (toe of fill to top of cut) within the necessary right-of way width. In situations where widths of right-of-way beyond the standard minimums would substantially reduce developable areas (lot square footage), then the Town may accept "Easements" for that area outside the required right-of-way but necessary for utility accommodations and maintenance purposes.
5. Planview showing the locations of street pavements including curbs and gutters, sidewalks, sidewalks and sidewalk ramps, drainage swales, easements, rights-of-way, manholes, and catch basins;
6. Locations of sidewalks and sidewalk ramps

(d) Water Plan and Profile - intermediate and major developments, and minor if applicable

1. Plans and profiles showing the location, size, and invert elevations of existing and proposed water lines and fire hydrants;
2. Show connection to any existing or proposed utility systems;
3. Show exact location and size of all water, gas, or other underground utilities or structures, and if utilities cross waterlines show elevations of the utilities;
4. Show existing and proposed locations and sizes of sanitary sewers and storm water collection systems.

(e) Signing and Striping Plan - intermediate and major developments. Shall conform to the current Manual on Uniform Traffic Control Devices for Streets and Highways.

1. Show all proposed street name signs at all intersections.
2. Show the number and type of signs, devices, and markings at all locations.

(f) Storm Water Quality Control Plan - intermediate and major developments

1. Reduce runoff and maximize storm water infiltration, by minimizing continuous impervious area to the extent possible.
2. Preserve riparian habitat and broad shallow drainageways.
3. Infiltration-type structural BMPs should be designed to capture runoff from the first ½ inch of rainfall from the entire development. Additional specialized BMPs should be considered for commercial or industrial sites. To mimic natural conditions, infiltration BMPs should be dispersed across the drainage area rather than concentrated at the outfall.
4. Provide minimum water quality capture volume (WQCV) equal to the first ½ inch of rainfall on the entire development times the sites percent imperviousness, or as described in Volume 3 of the USDCM. The WQCV shall be increased by 20% to account for sedimentation and shall be in addition to the required flood detention volume.

(g) Details- minor, intermediate and major developments, as applicable. Include, at a minimum, details specific to roadway, water, drainage and storm sewer, BMPs, signage, sidewalks and ramps.

(h) Landscaping and tree/vegetation preservation plan - minor, intermediate and major developments

1. Survey or on-site verification documenting existing trees and vegetation within the development site in conformity with the Town of Buena Vista Planting Guide.
2. Location, size, elevation, and other appropriate descriptions of any and each tree with a diameter of eight (8) inches or more, measured twelve (12) inches above ground level.

(i) Cost estimate – include quantities, unit prices, and total prices. Engineering and project management costs shall be listed.

Sec. 17-38 Design Report Requirements.

For major developments, annexed properties, and as required by the Board of Trustees during preliminary plan approval. Complete engineering Design Reports, sealed by a Registered Engineer, shall be submitted to the Town with the Final Plan submittals, and as requested by the Board of Trustees per preliminary plan approval. Scope of the reports shall be generally as described below. The Town may require additional engineering reports as needed during the development review process.

Two (2) copies of each report, prepared and signed by a Professional Engineer registered in the State of Colorado, shall be submitted to the Public Works Department for review. Reports shall be cleanly and clearly reproduced and legible throughout. Blurred or unreadable report contents, or incomplete reports, will be deemed unacceptable and will require resubmittal. Reports shall be typed and bound on 8-1/2" x 11" paper with pages numbered consecutively. Drawings, figures, tables, etc., shall be bound with the report or contained in an attached pocket.

A pre-submittal conference is suggested in cases involving large development or where special conditions or problems have become apparent during the development review process.

The design reports shall include: (a) Geotechnical Report, (b) Water Usage Report (c) Traffic Report, and (d) Drainage Report.

(a) **Geotechnical Report** A licensed engineer shall prepare a geotechnical report for submittal with final plans. This report will be used to substantiate street pavement design and grading plan designs, or for any other plans needing such analysis for a site. The report consists of bore test results, with a map displaying the location of the test.

Design requirements as specified shall be followed at a minimum, unless the geotechnical results display that the soils have any of the following items: shrink-swell potential, ground water, wetness, erosion, flood hazard, corrosion potential, organic layers, and other pertinent issues. If these items are present the engineer shall include recommendations for approval by the Board of Trustees for:

1. Base courses beneath sidewalks, curbs and gutter, and pavement.
2. Material specifications and compaction requirements should be addressed for all roadway materials (subgrade, select, ABC, AC, seals, etc,). The pavement section is to be designed for a 20-year life. Pavement thickness design method shall be current Asphalt Institute Method, or other method acceptable to the Town.

(b) **Water Usage Report** A Water Usage Report shall be submitted which clearly projects the following:

1. Average day, peak and annual estimated domestic water usage demands for the proposed development, separated by type of development (residential, commercial, office, etc.)
2. Peak and annual outdoor watering demands including, but not limited to, residential and open space irrigation.
3. Fire flow requirements based on the currently adopted International Fire Code and as determined by the Fire Department.
4. Include timelines for water consumption based on phasing plans for the approved development.
5. Include a detailed hydraulic analysis for each phase demonstrating the acceptable pressures and fire flows are available in all locations throughout the development.

(c) **Traffic/Access Impact Report**. A traffic/access impact analysis and report is required as part of the submittal for a development which meets any of the following criteria:

- A plan which will generate threshold level traffic. Threshold level traffic is defined as 100 or more peak direction trips to or from the site during either the peak hour of traffic on the adjacent roadway or the peak hour of traffic generation of the site itself.
- A request for annexation to the Town of an area greater than one acre with threshold traffic.
- A request for change of zoning where the development allowed by the new zoning will generate threshold level traffic.
- An analysis and report may also be required for development master plans or other developments to address localized safety and capacity deficiencies, or impact on adjacent neighborhoods. The Town Board shall determine the cases in which such an analysis is required and the points that need to be addressed.

1. **General.** The developer shall submit a Traffic/Access Impact Report, prepared by an engineer, which addresses the impact of the traffic generated by the development upon the traffic flow, congestion, and safety of the surrounding streets and other traffic facilities. The report shall identify the steps to be taken as part of the development to mitigate any adverse effects of the traffic generated by the development. For "phased" developments, the Traffic/Access Impact Report shall consider all phases through final build-out.

   This analysis and report will include roadways and intersections immediately adjacent to the development and those roadways on which at least five percent (5%) of peak hour capacity at an intersection approach will be composed of trips predicted to be generated by the new development.

2. **Contents.** The traffic/access impact analysis shall be performed as a part of the site design process. At a minimum, the following factors shall be included in the traffic analysis report:

   (a) Study purpose and objectives.
   (b) Description of the site and study area, including proposed plans for the site.
   (c) Existing conditions adjacent to the development.
   (d) Anticipated nearby land use developments.
   (e) Accident summary/history for all intersections studied.
   (f) Roadway and driveway geometrics.
   (g) Previous studies and technical references.
   (h) Trip generations, trip distribution, and modal split.
   (i) Capacity analysis of the major street and project site access intersection locations within the study area.
   (j) Projected future traffic volumes (20 year projections).
   (k) Safety, including intersections and driveway sight distance.
   (l) Circulation patterns.
   (m) Traffic control needs.
   (n) Transit needs or impacts.

(o) Transportation system management.
(p) Adequacy of on-site and off-site parking facilities.
(q) Pedestrian and bicycle movements.
(r) Service and delivery vehicle access.
(s) An assessment of the change in roadway operations resulting from the development traffic.
(t) Recommendations for site access and transportation improvements needed to maintain traffic flow to, from, within, and past the site at an acceptable and safe level of service.

3. **Level of Service.** No intersections are allowed that fall below a 'C' level due to the proposed development requires, or if an existing intersection already is rated lower than a level 'C' then that intersection rating may not be reduced by the proposed development. Reductions of any intersection of more than one level of service are not allowed. In the event that a traffic/access impact analysis determines that additional ingress, egress, dedication, signalization, or other action is required to mitigate the impact of the development upon traffic flow, the applicant or developer will be required to take such action or contribute financially to said action in proportion to the nature and extent of the impact of the proposed development prior to any approvals being granted by the Town, or as a condition of any such approvals.

4. **Emergency Access** Traffic analysis must include an analysis to determine whether secondary and/or emergency access is needed. The Town Board of Trustees, during the plat approval process, will make the final decision regarding the need for secondary and/or emergency access based upon the recommendations of the development traffic/access impact analysis and recommendations from the Planning and Zoning Commission, the Town Engineer, and Town Staff.

   The secondary and/or emergency access analysis shall include, but is not limited to, the following criteria:
   (a) Population density projections
   (b) Roadway widths
   (c) Topography
   (d) Vegetation (fuel) types in area
   (e) Response times
   (f) Distance/location of closest major arterial
   (g) Roadway surface
   (h) Layout of roads in development
   (i) Parking along streets or other possible restrictions
   (j) Reliability of primary access point (potential flooded areas, etc.)

5. **Cost Responsibility.** If the Town of Buena Vista prepares a transportation plan for a specific area which is used as the basis of major street layout and area ingress and egress, any subsequent development proposed within that

specific area will reimburse the Town a proportionate share of the cost of the study.

(d) **Drainage Report**

1. **Purpose and scope.** All developments must provide control of storm drainage and protection of water quality in the interest of the health, safety, welfare, and property of the citizens and the Town. The "Urban Storm Drainage Criteria Manual" (USDCM) shall be used as a technical design reference to assist developers and engineers in the preparation of consistent and uniform design calculations. The USDCM, Volumes 1 through 3 and any amendments, may be consulted for all policies and technical specifications not included or modified herein.

   Applicants shall provide, without cost to the Town, a drainage easement of proper width to accommodate drainage from a one-hundred (100) -year storm, for the purpose of maintaining drainage facilities for the transmission of all storm water generated upstream from and within the property. Notwithstanding this requirement, any natural drainageway having an identifiable bed and banks which traverses any applicant's property shall not be encroached upon or altered so as to render the drainageway less suitable to accept and transport storm water which has historically flowed through such drainageway. The width of the storm drainage easement to be provided by the applicant shall be reasonably approved by the Public Works department.

   Proper planning is essential for a coordinated and comprehensive drainage system. A basin-wide approach is required for all work within the Town. New developments are required to conform to the master plans for basins in which the developments are located. If a development is located within a basin that has not previously been analyzed, the Town may require a master drainage plan prior to final development plan approval. Check with Town personnel for availability of existing master plans.

2. **General Requirements**. The following shall be shown, at a minimum:
   - The rate of runoff from the developed area will not exceed the historic rate of runoff based on a ten (10) year and a one-hundred (100) year rainfall event,
   - The first ½ inch of runoff will be retained on site in retention basins or underground structures and allowed to percolate into the ground
   - All storm drainage plans must evaluate the effects of both initial and major storms on the storm drainage system. Consideration should also be given to nuisance runoff from irrigation, snowmelt, etc. The following table lists the initial and major storm frequencies for design and evaluation:

DESIGN STORM FREQUENCIES

Land Uses or Type of Facility	**Initial Storm**	**Major Storm**
Residential, Business, and Industrial	10-year (1)	100-year
Culverts	25-year	100-year
Open Channels, Bridges	See USDCM	100-year (2)
Detention/Retention Ponds	10-year (3)	100-year (3)

(1) Frequency for sizing of storm sewers (most cases).
(2) Freeboard as approved by Town on case by case basis subject to requirements or USDCM.
(3) Detention ponds shall be evaluated and designed for multiple discharges (10- year and 100- year storms).

3. **Preliminary Drainage Report.** A preliminary drainage report is required with all preliminary plan submittals for major developments. The purpose of a preliminary report is to define, on a conceptual level, the nature of the proposed development or project, describe all existing conditions, and propose facilities needed to conform to the requirements.

   All items described below shall be included in the drainage report, at a minimum.

   (a) General location and description of property
      i. Vicinity Map: Town, County, State Highway and local streets within and adjacent to the site
      ii. Township, range, section, 1/4 section, subdivision, lot and block
      iii. Names, locations, and descriptions of surrounding developments
      iv. Project description
      v. Area in acres
      vi. Ground cover and vegetation
      vii. Existing drainageways and storm drains
      viii. Existing major irrigation facilities such as ditches and canals
      ix. Existing creeks and streams within 500’ of property
      x. Proposed land use

   (b) Basins descriptions

i. Description of existing major drainageway planning studies such as flood hazard delineation report, major drainageway planning reports, and flood insurance rate maps (FIRMs).
ii. Major basin drainage characteristics, existing and planned land uses within the basin, as defined by the Planning Department

(c) Drainage facility design
i. Discussion of existing drainage patterns
ii. Discussion of offsite runoff considerations
iii. Discussion of anticipated and proposed drainage patterns
iv. Discussion of design of drainage facilities, maintenance and access aspects of the design
v. Discussion of design controls of the flow on downstream properties
vi. Discussions of drainage problems encountered or anticipated and solutions at specific design points
vii. Discussion of the drainage impact of site constraints such as streets, utilities, transitways, existing structures, and development or site plan
viii. Discussion of public walkways, parks, etc. located in flood areas or greenbelts.
ix. Discussion of easements and tracts for drainage purposes, including the conditions and limitations for use, or opportunity for use by the public

(d) Conclusion. Discuss the effectiveness of drainage design to control storm runoff

(e) References. Reference all criteria, and supporting technical documentation used in the report or that supports the technical methodologies used in the report.

4. **Final drainage report.** Conditions from preliminary report approvals must be addressed by the applicant for consideration of a complete final report. The final drainage report serves to define and expand the concepts shown in the preliminary report and is sufficient to assure conformance to these requirements. The final report shall be submitted prior to or with the Final Plan and must be reviewed and approved by Public Works prior to approval of the final development plan by the Board of Trustees.

The report shall include a cover letter presenting the design for review prepared or supervised by a Professional Engineer licensed in the State of Colorado. The report shall contain a certification sheet as follows:

"This report for the drainage design of (Name of Development) was prepared by me (or under my direct supervision) in accordance with the

Municipal Code of the Town of Buena Vista, and was designed to comply with the provisions thereof. I understand that the Town of Buena Vista does not and will not assume liability for drainage facilities design."

a) Hydrologic Requirements. The following shall be included in the final drainage report, at a minimum.
    i. Identify design rainfall
    ii. Identify runoff calculation method
    iii. Identify detention discharge and storage calculation method
    iv. Identify design storm recurrence intervals
    v. Discussion and justification of other criteria or calculation methods used
    vi. Discussion of detention or retention storage and outlet design, with calculations showing that:
        - The rate of runoff from the developed area will not exceed the historic rate of runoff based on a ten (10) year and a one-hundred (100) year rainfall event,
        - The first ½ inch of runoff will be retained on site in retention basins or underground structures and allowed to percolate into the ground

b) Hydrologic Computations – include the following, if applicable:
    i. Land use assumptions regarding adjacent properties
    ii. Initial and major storm runoff at specific design points such as inlets, outlets, channels, ditches, etc.
    iii. Historic and fully developed runoff computations at specific design points
    iv. Hydrographs at critical design points
    v. Time of concentration and runoff coefficients for each basin.
    vi. Culvert types and capacities
    vii. Storm sewer capacity, including energy grade line (EGL) and hydraulic grade line (HGL) elevations
    viii. Storm inlet capacity including inlet control rating at connection to storm sewer
    ix. Open channel design
    x. Check and/or channel drop design
    xi. Detention/retention pond storage-elevation-outflow information, along with detailed routing calculations for both major and minor storm events.
    xii. Downstream/outfall system compatibility and impact on downstream properties.
    xiii. Include any input and output listings and electronic copy on CD of computer models used.

ARTICLE V VESTED PROPERTY RIGHTS AND DEVELOPMENT AGREEMENTS

Sec. 17-41 Vested Property Rights.

(a) **Purpose.** The purpose of this section is to provide procedures necessary to implement the provisions of Article 68 of Title 24 of the Colorado Revised Statues, as amended, and to exercise local municipal control over the creation and enforcement of vested property rights to the maximum extent allowed by law. In the event Article 68 of Title 24 of the Colorado Revised Statutes should be repealed, or declared invalid or unconstitutional by a court of competent jurisdiction, then this section shall be deemed to be repealed and the provisions hereof shall no longer be effective.

(b) **Vested property right—definition.** *Vested property right* means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

(c) **Site specific development plan—definition.** *Site specific development plan* means a plan which has obtained final development approval under the standards and procedures as contained in this code, inclusive of public notice and public hearing, and which describes with reasonable certainty the type and intensity of use for a specific parcel or parcels of property, and includes all terms and conditions of approval. A sketch plan, preliminary plan, variance, license, zoning, map, exemption, easement, permit, certificate or appropriateness or waiver shall not constitute a site specific development plan, but may be incorporated into and become part of a site specific development plan.

(d) **Designation of site specific development plan for vesting of property rights.** The following site specific development plans will create and cause property rights to vest as provided for in this section:

1. Minor development final plan.
2. Intermediate development final plan.
3. Major development final plan.
4. Planned Unit Development (PUD) final plan.
5. A written development agreement providing for vested rights.
6. Any development approval not specified in this section which is designated as a vested site specific development plan after a public hearing thereon by the board of trustees.

(e) **Conditional approval of site specific development plan.** The board of trustees may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Failure to abide by such terms and conditions shall result in the forfeiture of any vested property rights.

(f) **Limitations – exceptions.** Nothing in this section is intended or shall create a vested

property right beyond such right as defined in Article 68 of Title 24 of the Colorado Revised Statutes. Once established in conformity with this section, however, a vested property right shall preclude any zoning or land use action by the town, inclusive of a citizen-initiated measure, which would alter, impair, prevent, diminish or impose a moratorium on the development or use of property as authorized by an approved site specific development plan, except:

1. With the consent of the development applicant; or

2. Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property which could not reasonably have been discovered at the time of the development or vested rights approval, and which is left uncorrected would pose a serious threat to public health, safety and welfare; or

3. To the extent compensation is paid as provided for in Article 68 of Title 24 of the Colorado Revised Statutes.

Notwithstanding the foregoing, the establishment of a vested property right shall not preclude the application to any land use or development or ordinances or regulations which are general in nature and applicable to all property subject to this code, including, but not limited to, fee assessments, water and sewer tap rationing, and building, fire, plumbing and mechanical codes. Moreover, the vesting of a site specific development plan shall not exempt such plan from inspections, reviews or approvals deemed necessary by the Town to ensure compliance with the terms and conditions of the original development plan approval.

(g) **Public hearing and notice required.** The approval of a site specific development plan creating vested property rights shall require a public hearing preceded by public notice. Such hearing and notice may be combined with any other public hearing and notice otherwise required under this code. If not combined with another notice, notice of a public hearing on the vesting of a property right shall be given by publication in a newspaper of general circulation in the Town not less than seven (7) days in advance of the hearing.

(h) **Effective date of approval—duration of vested property rights.**

1. A site specific development plan and vested property right shall only be deemed established upon the final action of the reviewing body or official designated under this code with authority to grant final development approvals. The effective date of a site specific development plan and vested property right shall be the date on which a final plat, final development plan, development agreement or other applicable document memorializing a development approval and vested right as specified in this section has been duly executed. A site specific development plan which has received final approval subject to conditions, to be satisfactorily performed at some future date shall result in a vested property right unless there is a failure to abide by such conditions, in which event the vested property right shall be forfeited. In the event of amendments to a site specific development plan, the effective vesting date of any

amendment shall be the date of the approval of the original plan unless otherwise specifically provided in the action or document approving and memorializing the amendment.

2. A site specific development plan that has been vested as provided under this section shall remain vested for three (3) years from the plan's effective date. A longer initial vesting period, or an extension in the vesting period, may be granted upon a finding that a longer or extended vesting period will serve the public interest and welfare in view of all pertinent circumstances, including, but not limited to, the size and phasing of any given development, economic cycles, or market conditions.

(i) **Document language.** Each map, plat or other document constituting or memorializing a vested site specific development plan shall contain the following language: "Approval of this plan shall created a vested property right pursuant to Article 68 of Title 24 C.R.S., as amended, subject to the terms and limitations as contained in the Buena Vista Municipal Code." A failure to include this statement shall not invalidate the creation of the vested property right.

(j) **Published notice of approved site specific development plan and vested property right.** As soon as reasonably practicable following final approval of a vested site specific development plan, but in no event later than fourteen (14) days following final approval, notice of same shall be published in a newspaper of general circulation in the town generally advising the public of the approval and identifying the property subject thereto. Such notice shall be substantially in the following form:

> Notice is hereby given to the general public of the approval of a site specific development plan and the creation of a vested property right pursuant to Title 24, Article 68, Colorado Revised Statutes and the Buena Vista Municipal Code pertaining to the following-described project and/or property: (Description of property)

The property shall be generally described in the notice and identify the ordinance or resolution granting such approval. The costs of publishing such notice shall be borne by the applicant.

(k) **Referendum and judicial review.** A vested site specific development plan shall be subject to all rights of referendum and judicial review, except that the thirty (30) day period in which to exercise such rights shall not begin to run until the publication of the notice of approval as provided for in this section.

Sec. 17-42 Development Agreements.

(a) **Development Agreements.** The Town may enter into development agreements. A development agreement may be a site specific development plan as provided in Sec. 17-41 of this article if it is intended to create or memorialize vested property rights.

1. **General.** A development agreement shall constitute a binding contract between a developer and the Town and shall contain those terms and conditions agreed to by the parties and those required by this Sec. 17-42. The town attorney or his designee is authorized to negotiate development agreements on behalf of the municipality.

2. **Extension of Vested Property Rights.** A development agreement may provide, among other things, for the vesting of a property right for a period of time exceeding three years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions.

3. **Third Party Rights.** Except as otherwise expressly provided in the Development Agreement, the Development Agreement shall create no rights enforceable by any party who/which is not a party to the Development Agreement.

4. **Limitation on Liability.** The development agreement shall contain a clause that provides that any breach of the development agreement by the Town shall give rise only to equitable relief under state law and shall not give rise to any liability for damages or violations of the fifth and fourteenth amendments of the U.S. Constitution or similar state constitutional provisions.

5. **Developer's Compliance.** The Development Agreement shall include a clause that the Town's duties under the Agreement are expressly conditioned upon the developer's substantial compliance with each and every term, condition, provision, and covenant of the Agreement, all applicable federal, state and local laws and regulations, and its obligations under the Subdivision Improvement Agreement.

6. **Adoption.** Development agreements designed and intended as a site specific development plan to vest property rights shall be approved and adopted by the Board of Trustees pursuant to the noticing requirements and procedures set forth in Sec. 17-41 of this article. Development agreements not intended or designed to vest property rights shall be approved by the board of trustees by motion or resolution. All development agreements shall be recorded in the office of the Chaffee County Clerk and Recorder along with a corresponding final plat. The cost of noticing and recording a development agreement shall be borne by the developer.

7. **Incorporation as Matter of Law.** All clauses, covenants, and provisos

required by these regulations to be included in a Development Agreement shall be incorporated into the Development Agreement as a matter of law without respect to the intent of the parties.

Sec. 17-43 to 17-45 (Reserved)

ARTICLE VI ASSURANCE FOR COMPLETION AND MAINTENANCE OF IMPROVEMENTS

Sec. 17-46 Improvements and Development Improvements Agreement.

(a) **Completion of Improvements.** All applicants granted development approval shall timely, fully and satisfactorily construct or install all public and other required development improvements and infrastructure as called for in this chapter and or as may have been specified by the Board of Trustees as a condition of final development approval. All improvements and infrastructure intended for public use shall be dedicated and/or transferred to the Town free of all liens and encumbrances. A failure by an applicant to complete, dedicate and/or transfer development improvements and infrastructure as required herein may result in the suspension or withdrawal of approval and authorization for the development.

(b) **Development Improvements Agreement and Guarantee.**

1. **Agreement.** No final development plan shall be executed by the Town and no building permits shall be processed or issued for any lot or property within a development involving or requiring the installation of public or other development improvements absent the preparation and execution of a written development improvements agreement which shall be recorded simultaneously with the final development plan. Such agreement shall, at a minimum, set forth construction specifications for required development improvements, a construction and completion schedule, provide for security and guarantees concerning the timely and satisfactory completion of the improvements, and identify the terms and conditions for the acceptance of the improvements by the Town. The agreement shall also include a requirement that all improvements be maintained by and/or at the cost of the developer for a period of one (1) year following preliminary acceptance, and that the developer will warrant all improvements to be free from defects (inclusive of materials, design and construction) for a period of two (2) years following preliminary acceptance.

2. **Covenants to Run.** A development improvements agreement shall run with the land and bind all successors, heirs, and assignees of the developer.

3. **Security.** All development improvements agreements shall include a requirement for the posting of adequate financial security to insure the timely, complete and satisfactory construction or installation of all development improvements and infrastructure as called for in the agreement. Security shall be in an amount not less than 115% of the estimated cost of completion of all improvements or infrastructure and may be provided by letter of credit, cash escrow, performance bond, or other financial instrument as approved by the Town within its sole discretion.

   (a) **Letter of Credit.** If an applicant posts a letter of credit as security, it

shall (1) be irrevocable; (2) be for a term, inclusive of renewals, sufficient to cover the completion, maintenance and warranty periods as required in Section 17-46(b)(1); and (3) require only that the Town present the letter of credit with a demand and an affidavit signed by the Town Administrator attesting to the Town's right to draw funds under the letter of credit.

(b) **Cash Escrow.** If an applicant posts a cash escrow, the escrow instructions shall provide: (1) that the subdivider will have no right to a return of any of the funds except as provided in Section 17-46(3)(c); and (2) that the escrow agent shall have a legal duty to deliver the funds to the Town whenever the Town Administrator presents an affidavit to the agent attesting to the Town's right to receive funds, whether or not the subdivider protests that right.

(c) **Reduction of Security.** Upon preliminary acceptance of a development improvement or infrastructure, Town shall release all but fifteen percent (15%) of the amount of financial security posted to secure the successful and timely completion of same, so long as the developer is not in default of any provision of the development improvements agreement. The residual 15% retained by the Town shall act as security for the developer's guarantee that the development improvements and infrastructure remain free of defect during the applicable warranty period. The developer may at any time during the preliminary acceptance or warranty period offer to provide a substitute or supplemental form of financial security to that security as originally posted with and/or retained by the Town.

(c) **Temporary Improvement.** The applicant shall build and pay for all costs of temporary improvements required by the Board of Trustees and shall maintain those temporary improvements for the period specified by the Board of Trustees. Prior to construction of any temporary facility or improvement, the developer shall file with the Town a separate Development Improvement Agreement and a letter of credit or cash escrow in an appropriate amount for temporary facilities, which agreement and credit or escrow shall ensure that the temporary facilities will be properly constructed, maintained, and removed.

(d) **Costs of Improvements.** All required improvements shall be made by the developer, at its expense, without reimbursement by the Town or any improvement district except that, as may be allowed under state law, the developer may form or cause to be formed a special district or districts to construct and finance the construction of required public improvements excluding lot improvements on individual lots. If the developer does form or cause to be formed a special district for the purposes identified in this section, the Town shall not release the developer from its obligations under any Development Improvement Agreement nor shall the Town release any security, in whole or in part, until the special district has sold bonds or otherwise certifies to the Town that it has an absolute right to raise

revenues sufficient to construct, maintain, and warrant the quality of the required public improvements.

(e) **Governmental Units.** Governmental units to which these contract and security provisions apply may file, in lieu of the contract and security, a certified resolution or ordinance from officers or agencies authorized to act in their behalf, agreeing to comply with the provisions of this Article.

(f) **Failure to Complete Improvement.** For developments for which no Development Improvement Agreement has been executed and no security has been posted, if the improvements are not completed within the period specified in the development improvements agreement, the sketch plat or preliminary plat approval shall be deemed to have expired. In those cases where a Development Improvement Agreement has been executed and security has been posted and required public improvements have not been installed within the terms of the agreement, the Town may then: (i) declare the agreement to be in default and require that all the improvements be installed regardless of the extent of the building development at the time the agreement is declared to be in default; (ii) suspend final development plan approval until the improvements are completed and record a document to that effect for the purpose of public notice; (iii) obtain funds under the security and complete improvements itself or through a third party; (iv) assign its right to receive funds under the security to any third party, including a subsequent owner of the development for which improvements were not constructed, in whole or in part, in exchange for that subsequent owner's promise to complete improvements in the development; (v) exercise any other rights available under the law.

(g) **Acceptance of Dedication Offers.** The acceptance of streets, parks, easements or other public areas dedicated to the Town other than by appropriate dedication language on a final subdivision plat shall be by resolution adopted by the Board of Trustees.

(h) "As-Built" Plans The following items are required to be completed for acceptance of facilities by the Town:

1. As-builts shall include detailed and accurate information on all improvements completed as part of a project. Locations, dimensions, elevations, types of material, and all other information needed to provide a comprehensive and complete representation of the final project shall be included. Rights of way and easement lines shall also be shown.
2. As-builts shall be submitted on completion of all work within a phase of the development, and the final as-built plans shall be received before final acceptance of that phase.
3. Final "As-Built" drawings shall be submitted before final acceptance of improvements. They shall be stamped "As-Builts" and be signed as such by a Registered Professional Engineer.
4. Final as-builts will be submitted as AutoCAD or DXF drawings, two sets of prints, and reproducible Mylar and will become property of the Town of Buena Vista and a part of permanent Town records.

Sec. 17-47 Inspection of Improvements.

(a) **General Procedure and Costs.** The Board of Trustees shall provide for inspection of required improvements during construction to ensure their satisfactory completion. The applicant shall pay to the Town the reasonable cost incurred by the Town in conducting such inspections. These costs shall be due and payable upon demand of the Town and no building permits or certificates of occupancy shall be issued until all costs are paid. If the Town Engineer finds upon inspection that any required improvement has not been constructed in accordance with the Town's construction standards and specifications, the applicant shall be responsible for correcting or properly completing the improvement.

(b) **Release or Reduction of Security.**

1. **Certificate of Satisfactory Completion.** The Town will not accept any improvement(s) nor release or reduce the amount of any security posted by the developer until the Town Engineer has certified that the required improvement(s) has been satisfactorily completed and the developer's engineer or surveyor has certified to the Town Engineer, through the submission of detailed "as-built" drawings and survey plat illustrating locations, dimensions, materials and other information required by the Town Engineer, that the grade, siting, alignment and all other aspects of the improvement are in accordance with construction plans for the development. Additionally, the developer must affirm by delivery of an opinion of title or other documentation deemed acceptable by Town that the improvements have been completed, are ready for acceptance by the Town, and are free and clear of any and all liens and encumbrances.

2. **Reduction of Security.** Upon preliminary or final acceptance of any improvement or infrastructure, the Town shall reduce or release, as appropriate, the security posted to insure the improvement's or infrastructure's successful construction or installation; except that at no time shall the level of security be reduced below that amount necessary to insure the full and timely completion of improvements and infrastructure not yet completed and accepted, or below fifteen percent (15%) of the amount originally posted until such time as the applicable maintenance and warranty period(s) for the improvement or infrastructure has expired.

Sec. 17-48 (Reserved)

Sec. 17-49 Maintenance of Improvements.

A developer shall maintain all development improvements and infrastructure, until final acceptance of the improvements for maintenance by Town. Removal of snow from streets shall be the responsibility of the Town following preliminary acceptance. Prior to final acceptance, Town, upon reasonable notice to the developer, may undertake emergency repairs to any improvement or infrastructure as deemed necessary by the Town, and charge the reasonable costs thereof to the developer. Town may make

demand and draw upon security posted by the developer for any improvement or infrastructure in order to recover its costs in maintaining or repairing same. The applicant shall be responsible for requesting a final inspection of all public improvements at the end of the two-year warranty period. When the Town finds that the public improvements meet Town requirements, they shall by way of a written letter to the applicant acknowledge acceptance of the public improvements.

Sec. 17-50 Deferral of Waiver of Requirement Improvements.

(a) The Town may defer or waive at the time of final development plan approval, subject to appropriate conditions, the provision of any or all development improvements as the Town may deem necessary due to inadequate or non-existent connecting or supporting facilities or systems, or for other just cause. Decisions to waive or defer otherwise required development improvements may only be made by the Board of Trustees on the record at a public hearing or meeting, and must be supported by expressed findings and reasons.

(b) Whenever it is deemed necessary to defer the construction of any improvement required under these regulations because of incompatible grades, future planning, inadequate or nonexistent connecting facilities, or for other reasons, the developer shall pay its estimated proportionate share of the costs of the future improvements to the Town prior to the execution of the final development plan, or execute a separate development improvements agreement secured by a letter of credit or other financial instrument acceptable to the Town guaranteeing completion of the deferred improvements upon demand of the Town.

Sec. 17-51 Issuance of Certificates of Occupancy.

No certificate of occupancy shall be processed or issued by the County for any lot building within a development prior to the complete and satisfactory installation of all development improvements or infrastructure required to serve such or building, and the payment of any and all development fees then due to Town by the developer.

Sec. 17-52 Consumer Protection Legislation and Conflicts of Interest Statutes.

(a) No building permit or certificate of occupancy shall be granted or issued if a developer or its authorized agent has violated any federal, state or local law pertaining to (i) consumer protection; or (ii) real estate land sales, promotions, or practices; or (iii) any applicable conflicts-of-interest legislation with respect to the lot or parcel of land which is the subject of the permit or certificate until a court of competent jurisdiction so orders.

(b) With respect to any lot or parcel of land described in the immediately preceding section, if a building permit or certificate of occupancy has been granted or issued, it may be revoked by the Town until a court of competent jurisdiction orders otherwise, provided that in no event shall the rights of intervening innocent third parties in possession of a certificate of occupancy be prejudiced by any such revocation.

(c) Any violation of a federal, state, or local consumer protection law, including, but not limited to: Postal Reorganization Act of 1970; the Federal Trade Commission Act of 1970; the Uniform Commercial Credit Code; state "Blue Sky" laws; state development disclosure acts, or any conflicts of interest statute, law, or ordinance shall be deemed a violation of these regulations and subject to all of the penalties and proceedings as set forth in Section 1.13.

Sec. 17-53 to 17-55 (Reserved)

ARTICLE VII REQUIREMENTS FOR IMPROVEMENTS, RESERVATIONS, AND DESIGN

Sec. 17-56 General Improvements.

(a) **Conformance to Applicable Rules and Regulations.** In addition to the requirements established in these regulations, all development plans shall comply with the following laws, rules, and regulations.

1. All applicable statutory provisions.
2. The Town Zoning Code, building and housing codes, the town planting guide and all other applicable rules and regulations of the town and/or other governing jurisdiction.
3. The Town Comprehensive Plan, including all streets, drainage systems, and parks shown thereon.
4. The special requirements of these regulations and any rules of the Health Department and/or appropriate state or local agencies.
5. The rules of the State Highway Department if the development or any lot contained therein abuts a state highway.
6. The standards and regulations adopted by all boards, commissions, agencies, and officials of the Town.
7. Plat approval may be withheld if a development is not in conformity with the above laws, regulations, guidelines, and policies as well as the purposes of these regulations established in Sec. 17-3 of these regulations.

(b) **Adequate Public Facilities.** No final development plan shall be approved unless the Board of Trustees determines that public facilities will be adequate to support and service the area of the proposed development. The applicant shall submit sufficient information and data on the proposed development to demonstrate the expected impact on and use of public facilities by possible uses of said development. Public facilities and services to be examined for adequacy will include roads and public transportation facilities, drainage, and water service.

1. Periodically the Board of Trustees will establish by resolution, after public hearing, guidelines for the determination of the adequacy of public facilities and services. To provide the basis for the guidelines, the Planning Commission must prepare an analysis of current growth and the amount of additional growth that can be accommodated by future public facilities and services. The Planning Commission must also recommend any changes in development plan approval criteria it finds appropriate in the light of its experience in administering these regulations.
2. The applicant for a final development plan must, at the request of the Board of Trustees, submit sufficient information and data on the proposed development to demonstrate the expected impact on and use of public facilities and services by possible uses of said development.
3. Proposed public improvements shall conform to and be properly related to the Town's Comprehensive Plan and all applicable capital improvements

plans.

4. All habitable buildings and buildable lots shall be connected to a public water system capable of providing water for health and emergency purposes, including adequate fire protection.
5. All habitable buildings and buildable lots shall be served by an approved means of wastewater collection and treatment.
6. Drainage improvements shall accommodate potential runoff from the entire upstream drainage area and shall be designed to prevent increases in downstream flooding. The Board of Trustees may require the use of control methods such as retention or detention, and/or the construction of drainage improvements to mitigate the impacts of the proposed developments.
7. Proposed roads shall provide a safe, convenient, and functional system for vehicular, pedestrian, and bicycle circulation; shall be properly related to the Town's Comprehensive Plan; and shall be appropriate for the particular traffic characteristics of each proposed development.
8. All public improvements and required easements shall be extended through the parcel on which new development is proposed. Streets, waterlines, wastewater systems, drainage facilities, electric lines, and telecommunications lines shall be constructed through new development to promote the logical extension of public infrastructure. The Board of Trustees may require the applicant for a development to extend offsite improvements or provide easements to reach the development or oversize required public facilities to serve anticipated future development as a condition of plat approval.

(c) **Self-Imposed Restrictions.** If the owner places restrictions on any of the land contained in the development greater than those required by the Zoning Ordinance or these regulations, such restrictions or reference to those restrictions may be required to be indicated on the development plan, or the Board of Trustees may require that restrictive covenants be recorded with the Chaffee County Clerk and Recorder in a form to be approved by the Town Attorney. When allowed by law, the developer shall grant to the local government the right to enforce the restrictive covenants.

(d) **Plats Straddling Municipal Boundaries.** Whenever access to the development is required across land in another jurisdiction, the Board of Trustees may request assurance from the Town Attorney that access is legally established, and from the Town Engineer that the access road is adequately improved, or that a guarantee has been duly executed and is sufficient in amount to assure the construction of the access road. In general, lot lines should be laid out so as not to cross municipal boundary lines.

(e) **Character of the Land.** Land that the Board of Trustees finds to be unsuitable for subdivision or development due to flooding, improper drainage, steep slopes, rock formations, adverse earth formations or topography, utility easements, or other features that will reasonably be harmful to the safety, health, and general welfare of the present or future inhabitants of the development and/or its surrounding areas,

shall not be subdivided or developed unless adequate methods are formulated by the developer and approved by the Board of Trustees upon recommendation of the Town Engineer, to solve the problems created by the unsuitable land conditions. Such land shall be set aside for uses as shall not involve any danger to public health, safety, and welfare.

(f) **Development Name.** The proposed name of the development shall not duplicate, or too closely approximate phonetically, the name of any other development in the area covered by these regulations. The Board of Trustees shall have final authority to designate the name of the development, which shall be determined at sketch plat approval.

Sec. 17-57 Design Standards.

Variances from any of the above design standards shall be reviewed by the Planning Commission, considered and decided upon by the Board of Trustees. In general, variances shall be considered only when land shape or topography poses a hardship or when a variance shall create an unusually beneficial or aesthetic situation.

(a) **Land.** The following standards shall govern the division and use of land within all proposed developments. Such division and use of land shall be consistent with the Zoning Ordinance and the current Town Comprehensive Plan.

1. **Blocks** - The length of blocks hereafter established shall not exceed one thousand five hundred (1,500) feet or be less than four hundred (400) feet. The width of a block shall be sufficient to permit the depth of two (2) lots between streets. These length and depth requirements may be modified by the Board of Trustees when land ownership, topography or physical shape of the property dictate a reasonable variance from these standards, and when a PUD is proposed and the modification is in compliance with the purposes set forth in Sec. 17-3.

2. **Lots** - Lot size shall conform with the Zoning Ordinance as set forth in the Dimensional Requirements of Sec. 16-245 for each zoning use. These requirements may be modified by the Board of Trustees when a PUD is proposed and the modification is in compliance with the purposes set forth in Sec. 17-3. Residential lots shall not have driveway access from arterial or collector streets unless no other alternative exists. Lots with double frontage shall be avoided except where essential to provide separation from major arterials or because of the slope. Side lot lines shall be substantially at right angle or radial to street lines when feasible.

3. **Easements** - If it is necessary or desirable to locate utilities, drainage, pedestrian ways or other public facilities in other locations than street rights-of-way, easements shall be created for such purposes. Such easements shall be located on rear or side lot lines. Use of an easement for principal access to a lot is strongly discouraged and shall be used only

after approval by the Board of Trustees.

4. **Open Space and Park/Pedestrian/Bikeway Dedication Requirement** - Developers of land for residential use shall, at the option of the Board of Trustees, either dedicate land for park/pedestrian/bikeway use, or pay cash in lieu of land dedication as a park and pedestrian/bikeway development fee, or provide a combination of land dedication and fee payment. Lands proposed to be dedicated may be accepted by the Town if these lands help implement the Town Recreation or Trails Master Plan, or if they preserve valuable wildlife habitat, wetlands or natural features. If the Town elects to have the fee paid, it will use these funds to install facilities per the Town Trails and/or Recreation Master lan. The suitability of land to be dedicated will be determined by the Board of Trustees. Factors used in evaluating suitability will include size and shape, topography, geology, flora, fauna, access, location and reasonable adaptability for use as a pocket park, neighborhood or community park and playground, and access to adjacent parks or bikeways.

5. **Trail(s) Land Dedication.** Developers of land containing usable connections for a proposed or existing public pedestrian/bikeway trail as identified in the trails master plan, shall be asked to voluntarily dedicate to the Town such land or easement(s) as would connect or complete the trail. Land voluntarily dedicated for trail development shall be credited against any land dedication requirement otherwise imposed upon the developer by regulations in this article.

6. **Method and amount of land dedication and/or fee payment.**

   (a) **Land Dedication Requirement.** The developer shall convey to the Town by means of a final plat dedication, or shall deed land to be used for public recreation locations designated by the Board of Trustees in the following manner.

      (i) The developer shall dedicate to the Town land in the ratio of 7.5 acres for every one thousand residents of the proposed development or development, or 1 acre per 100,000 square feet of commercial and/or industrial space.

      (ii) For the purpose of the foregoing requirements, the number of residents attributable to each development shall be:

         Single-family dwellings, 2.1 residents per unit
         Two-family dwellings, 3.0 residents per unit
         Multi-family dwellings, 2.5 residents per unit
         For planned unit developer (PUD's) or where the number of units is known because of a proposed master plan, the number of units proposed shall govern.

(b) **Fee Payment in Lieu of Land Dedication.** If the Board of Trustees elects to have a fee paid in lieu of land dedication, either in whole or in part, the applicant shall pay to the Town prior to the recording of the final plat a fee the amount of which is established in accordance with the following methodology:

The Board of Trustees upon recommendations from the Recreation Advisory Board and the Planning and Zoning Commission shall establish the fee that may be accepted in lieu of land dedication each year as of January 31st. The fee shall be based on the average cost of vacant undeveloped residential land on one (1) to ten (10) acre parcels within the corporate limits of the Town provided, however, said fee shall increase five percent (5%) from the preceding year if a new fee has not been established by the Board of Trustees by January 31st of the year or the Board of Trustees finds that the fee structure requires further amendment due to land value increases or decreases.

(b) **Streets.** The following standards shall govern the construction of streets in developments. Furthermore, all streets shall conform with existing street patterns and with the current comprehensive plan. All streets proposed for dedication to the public shall be laid out, graded and paved from curb to curb. Asphalt, drainage control, sidewalks, and buffer shall be installed on all streets except within Minor Developments.

In cases where a previously existing street that has not been brought up to Town specifications is located within a development, such street shall be improved to meet the Town requirements herein. For developments located adjacent to any existing street right-of-way, the developer shall provide at least the portion of adjacency of such street with improvements as required to bring such street up to Town specifications.

AASHTO Policy on Geometric Design of Highways and Streets (Green Book) shall be referenced for any construction policies not included within.

1. **Classification** - Streets shall be classified as arterials, collectors or local streets according to their location, function and traffic volumes. Streets shall be considered collectors or local streets unless anticipated average daily traffic shall exceed two thousand (2,000) vehicles per day, in which case the streets shall be considered arterials. *Collector* streets generally connect to arterials or other collectors, and residential driveways are normally not found on collectors. *Local* streets generally serve neighborhood traffic over very short distances and connect to higher use streets such as *collectors*. The primary purpose of a *local* street is to provide vehicular access to adjacent land.

2. **Grades** - No street grade shall be less than five-tenths percent (0.5%).

Maximum grade permitted shall be:

- Local Streets - eight percent (8%)
- Collector Streets - six percent (6%)
- Arterial Streets - five percent (5%)
- Intersections - no grade exceeding four percent (4%) permitted within two hundred (200) feet of the centerline
- Crown - all streets shall be designed with a two percent (2%) crown, except for locations where the pavement surface must be warped for drainage or intersections, in which case the Town must approve the grade and design.

3. **Road Widths** - All roads shall have a minimum driving lane width of nine feet (9), and maximum width of twelve feet (12). Parking lanes shall be a minimum of eight feet (8) wide, with twenty feet (20) length allotted per vehicle. On-street bicycle lanes, if proposed, shall be a minimum of five feet (5) wide, and shall be striped per MUTCD, and painted with an approved bicyclist stencil every five hundred feet (500), at a minimum.

4. **Horizontal Curves** - Where a deflection angle of more than five degrees occurs in the alignment of a street, a horizontal curve with the following minimum radii shall be included in the design of the street.

Street Classification	Minimum Radius
Local	100'
Collector	200'
Arterial	400'

5. **Vertical Curves** - Where an algebraic change of grade is introduced into the profile of a street, the following minimum design criteria shall be adhered to:

Street Classification	Min.Sight Distance	Min. Vertical Curve Length
Local	150'	100'
Collector	250'	100'
Arterial	400'	200'

At the approval by the Board of Trustees, minimum vertical curve lengths can be modified to minimize excessive flat lengths along a crest or sag of a curve. There shall be a minimum of two hundred feet (200') between changes in grade designed without a vertical curve.

In situations where the geometric design criteria as set out in the above cannot be met for the normally applicable design speed on a given type of street (local, arterial, etc.), then the design speed may be lowered to a design speed suitable for the type terrain and the anticipated traffic

volumes. However, all efforts shall be made to ensure that a "balanced" street network evolves by providing enough streets with 25 mph or higher design speeds to counteract the effect of lowering the speed limits on some streets thereby restricting traffic flow capacities.

6. **Intersections** - No more than two (2) streets shall intersect at one (1) point. Streets shall be designed to intersect as nearly as possible at right angles, and under no circumstances shall a street be designed to intersect another street at an angle of less than sixty degrees (60). Street jogs at intersections shall have a centerline offset of not less than one hundred twenty (120) feet. Curb returns at intersections shall be designed within a minimum radius of twenty (20) feet measured along the face of the curb.

   Intersections spacing on all streets shall follow the following table, at a minimum:

Speed limit(MPH)	Intersection Spacing(feet)
15-30	100
35-45	200
45-50	250

7. **Crosspans** - Crosspans of a minimum width of five (5) feet, six (6) inches in depth, and reinforced with 6x6-10/10 wire mesh reinforcement shall be included to carry surface drainage across intersections. Whenever possible, crosspans shall only be constructed at intersection corners.

8. **Alleys** - Alleys are permitted in developments depending on design layout, at the discretion of the Board of Trustees. In some cases, alleys may be required by the Board of Trustees. Alley design shall provide safe access, a minimum right- of-way width of twenty-five (25) feet, and be improved by the developer with a six (6) inch minimum depth gravel surface. All alley rights-of-way shall be dedicated to the Town.

9. **Cul-de-sacs and Hammerheads**- Whenever a street is designed to terminate in a dead end, a cul-de-sac or hammerhead shall be included at the terminal end of the street. Such street shall not be longer than seven hundred fifty (750) feet measured from the centerline of the intersecting street. The cul-de-sac shall have a minimum right-of-way of one hundred (100) in diameter and a paved turnaround with a minimum outside diameter of eighty (80) feet. There shall be no parking allowed within cul-de-sacs or hammerheads. Hammerheads and ‘Y’s shall have 30’ asphalt measured from the center of the road to the dead-end. Current adopted IFC codes shall govern and supersede the requirements for cul-de-sacs and hammerheads.

10. **Right-of-way Monuments** - Permanent survey monuments shall be shown at each right-of-way line intersection. The monuments shall be a brass cap with a center point set in concrete. Monument setting will be done in conjunction

with paving.

11. **Sidewalks** - Sidewalks are required on all streets except within minor developments. Concrete sidewalks are required on both sides of all streets, and shall be at least five feet (5') wide in both residential and commercial areas. Sidewalks shall be separated from the edge of asphalt, or curb if installed, by a minimum of six (6) feet. In minor residential developments curb, gutter and/or sidewalk shall not be required unless the Board of Trustees determines that one or more of said improvements are necessary to serve the development and/or protect the public health, safety or welfare. In industrial developments the Board of Trustees may require curb, gutter, and sidewalks.

12. **Curb and Gutter/Drainage Collection**. Depending on drainage plan per Sec. 17-32, *local* streets shall have either:

    (a) Six (6) inch vertical curb with gutter, which together shall be minimum of twenty-four (24) inches, maximum of thirty (30) inches, or
    (b) Rollover/mountable curb with gutter, which together shall be minimum of twenty-four (24) inches, maximum of thirty (30) inches, or
    (c) Open section with a minimum width of six (6) feet of rock-lined drywells, thirty-six (36) inches deep, with rock diameters six (6) inches.
    (d) Vegetated drainage swale, minimum width six (6) feet.

    Collector and arterial streets shall have vertical curb and gutter and a minimum six (6) feet buffer between the curb and the sidewalk.

13. **Fee Payment in Lieu of Curb, Gutter or Sidewalk.** If the Board of Trustees in their sole discretion and based upon the small size of a development and/or the absence of curb, gutter and sidewalks immediately adjacent to the development, elects to have a fee paid in lieu of curb, gutter or sidewalks, the developer shall pay to the Town prior to the recording of the final plat a fee the amount of which is established in accordance with the following methodology:

    The Board of Trustees upon recommendations from the Town Engineer and the Planning Commission shall establish the fee that may be accepted in lieu of curb, gutter and sidewalk each year as of January 31st. The fee shall be based on the average costs of installation of curb, gutter and sidewalk within the corporate limits of the Town. The fee shall be assessed as a cost per foot based upon the total linear frontage of all lots within the development adjacent to the publicly dedicated right-of-way including state highway right-of-way and Chaffee County right-of-way whether or not the right-of-way has been improved with a paved driving

surface.

14. **Buffer** Streets with an open section (drywell) or vegetated swale do not require an additional buffer. Streets with a curb require one of the following between the curb and the sidewalk:

    (a) Topsoil to a depth of six (6) inches as required to sustain healthy vegetative growth or appropriate landscaping, and shall be vegetated following the Town planting guide, or

    (b) Six (6) foot minimum wide rock-lined drywells, minimum eighteen (18) inches deep, with rock diameters four (4) to six (6) inches.

    (c) Commercial areas may install hardscape.

15. **Payment of Tree Fee.**- The developer shall pay a fee into the Town's dedicated tree planting fund equal to the cost, as established by the Board of Trustees, of two (2) trees per lot abutting a street within the development. The Adopt-A-Tree Program sponsored by the Town's Tree Board shall be responsible for planting of the trees, which shall be planted in conformance with the requirements and standards in the Town of Buena Vista Planting Guide. The property owner shall provide a survival guarantee of no less than two (2) years.

16. **Street Signs and Markings**- Street name signs shall be installed at all intersections. At all other locations as deemed necessary by the Board of Trustees, the developer shall install street and traffic control signs, devices, and markings. The number and type of signs, devices, and markings shall conform to the current Manual on Uniform Traffic Control Devices for Streets and Highways and current Town regulations.

17. **Street Lighting**

    (a) Street lights shall be installed by the developer for every development. For minor residential developments, street lights shall not be required unless the Board of Trustees determines that they are necessary to serve the development and/or protect the public health, safety or welfare. The Board of Trustees may also reduce or eliminate street lighting requirements for very low density developments.

    (b) The type, intensity and distribution of lighting fixtures shall be determined by recommendation of the Planning and Zoning Commission and decision of the Board of Trustees. All fixtures shall be compatible with the character of the neighborhood and Town as a whole.

(c) All street lighting fixtures shall be full cut-off and designed to direct lighting below a ninety (90) degree horizontal plane extending from the lowest point of the light source.
(d) All street lighting fixtures shall be designed and aimed so that they do not cast or reflect light on adjoining properties.
(e) All street lighting fixtures shall be designed and constructed to minimize or eliminate the direct visibility of the light source from adjoining properties.
(f) All street lighting fixtures shall conform to the following design requirements.

	Street Lights Residential	Street Lights Commercial	Street Lights Industrial
Maximum Initial Horizontal Luminance – Foot candles	2	3	3
Maximum Pole Height – Feet	14’	20’	20’
Maximum Fixtures per Pole	1	2	2
Maximum Lighting Trespass – Foot Candles	0.2	0.3	0.3
Maximum Fixture Wattage Incandescent	75	100	100
Maximum Fixture Wattage HID	70	100	100
Maximum Fixture Wattage Florescent	32	32	32

(g) The Board of Trustees may vary the lighting fixture requirements set forth in this subsection upon written request incorporated into a development application.

18. **Water Distribution System**. All proposed developments shall be served by the Town water supply system in accordance with Chapter 13 of this Code, unless otherwise agreed to by the Town.

(a) Trunk Lines. When public utilities must be oversized to provide for nearby future development, the developer shall install such trunk lines. The cost of the oversized lines shall be shared by the Town, the Sanitation District or other public utility as agreed to in the Development Improvement Agreement and in accordance with such other affected ordinances.

19. **Sewage Collection System.** All proposed developments shall be served by the Buena Vista Sanitation District sanitary sewer system, unless otherwise agreed to by the Town. All sanitary sewer design plans must be approved by Buena Vista Sanitation District prior to final plat approval.

20. **Private Utilities.** All other utilities such as natural gas, electricity, telephone or cable television shall be constructed underground in accordance with applicable codes. Such utilities shall be constructed within street rights-of-way or within easements dedicated for such use.

21. **Street Cuts.** Prior to the paving of any street in all developments, all stubs necessary to connect all utilities to houses or other establishments shall be constructed. Such connection stubs shall be extended to the right-of-way boundary, and no street cut permits shall be issued within the development following street paving unless extraordinary conditions exist.

Sec. 17-58 Standard Specifications.

(a) **General.** All construction of streets, curb, gutter, sidewalks, water distribution system, sanitary sewer system, drainage system, landscaping and other public utilities and improvements shall be in accordance with the specifications and Town ordinances where cited, also in accordance with the "Standard Specifications for Road and Bridge Construction" of the State Department of Highways, Division of Highways, hereafter referred to as the "Colorado Standard Specifications."

(b) **Contents.** Town of Buena Vista Development Standards and Specifications shall be followed. Copies of this document are available from the Public Works Department.

Sec. 17-59 Mobile Home Subdivisions.

Sec. 17-60 (Reserved)

Sec. 17-61 Manufactured Housing.

Nothing in the Chapter shall be construed to prevent the placement of a manufactured home, as defined in Sec. 16-4 of the Buena Vista Municipal Code, anywhere within the Town; provided, however, that such placement shall be made in accordance with and subject to the applicable provisions of the Municipal Code..

Sec. 17-62 to 17-65 (Reserved)

ARTICLE VIII LAND READJUSTMENT

Sec. 17-66 Resubdivision of Land.

(a) **Procedures for Resubdivision.** Whenever a developer desires to resubdivide an already approved final subdivision plat, the developer shall first obtain approval for the resubdivision by the same procedures prescribed for the subdivision of land.

(b) **Resubdivision includes:**

1. Any proposed change in any platted street alignment or any other public improvement.

2. Any proposed material change in the boundaries of a subdivision by way of adding or deleting land or lots to the subdivision, or the reconfiguration, division or aggregation of existing platted lots.

3. Any proposed material change in the amount or boundaries of any land previously dedicated to the Town for public use.

(c) **Waiver.** Whenever the Board of Trustees in its sole discretion, makes a finding on the record that the purposes of these regulations may be served by permitting resubdivision by the procedure established in this Section 17-66(c), the Board of Trustees may waive the requirement of Section 17-66(a). The Board of Trustees after an applicant for resubdivision that includes an express request for waiver, shall publish notice of the application in a local newspaper of general circulation and shall provide personal notice to property owners in the subdivision. The notice shall include:

1. The name and legal description of the subdivision affected by the application;
2. The proposed changes in the final subdivision plat;
3. The place and time at which the application and any accompanying documents may be reviewed by the public;
4. The place and time at which written comments on the proposed resubdivision may be submitted by the public; and
5. The place and time of the public meeting at which the Board of Trustees will consider whether to approve, conditionally approve, or disapprove the proposed resubdivision. No sooner than thirty (30) days and no later than forty-five (45) days after notice is published, the Board of Trustees shall consider the application for resubdivision at a public meeting and shall approve, conditionally approve, or disapprove the application.

(d) **Procedure for Subdivisions When Future Resubdivision is Indicated.** Whenever land is subdivided and the subdivision plat shows one or more lots containing more than one (1) acre of land and there is reason to believe that such lots eventually will be resubdivided, the Board of Trustees may require that the

applicant allow for the future opening of streets and the ultimate extension of adjacent streets. Easements providing for the future opening and extension of streets may be made a requirement of plat approval.

Sec. 17-67 Plat Vacation.

(a) **Owner Initiated Plat Vacation.** The owner or owners of lots in any approved subdivision, including the developer, may petition the Board of Trustees to vacate the plat with respect to their properties. The petition shall be filed in triplicate on forms provided by the Board of Trustees and one (1) copy shall be referred to the governing body by the Planning Commission.

1. ***Notice and Hearing*.** The Board of Trustees shall publish notice in a land newspaper of general circulation and provide personal notice of the petition for vacation to all owners of property within the affected subdivision and shall state in the notice the time and place for a public hearing on the vacation petition. The public hearing shall be no sooner than thirty (30) and no more than forty-five (45) days after the published and personal notice.

2. ***Criteria*.** The Board of Trustees shall approve the petition for vacation on such terms and conditions as are reasonable to protect public health, safety, and welfare; but in no event may the Board of Trustees approve a petition for vacation if it will materially injure the rights of any nonconsenting property owner or any public rights in public improvements unless expressly agreed to by the governing body.

3. ***Recordation of Revised Plat*.** Upon approval of any petition for vacation, the Board of Trustees shall direct the petitioners to prepare a Revised Final Subdivision Plat in accordance with these regulations. The Revised Final Subdivision Plat may be recorded only after having been signed by the Mayor and the Chair of the Planning Commission.

4. ***Developer Initiated Vacation*.** When the developer of the subdivision, or its successor, owns all of the lots in the subdivision, the developer or successor may petition for vacation of the subdivision plat and the petition may be approved, conditionally approved, or disapproved at a regular public meeting of the Board of Trustees subject to the criteria in Section 17-67(a)(2). The petition shall be made in triplicate on forms provided by the Board of Trustees at least thirty (30) days prior to a regular Board of Trustees public meeting and the Board of Trustees shall refer one (1) copy of the petition to the governing body. Regardless of the Board of Trustees action on the petition, the developer or its success or will have no right to a refund of any monies, fees, or charges paid to the municipality nor to the return of any property or consideration dedicated or delivered to the municipality except as may have previously been agreed to by the Board of Trustees, the governing body, and the developer.

(b) **Government Initiated Plat Vacation.**

1. ***General Conditions*.** The Board of Trustees on its motion, may vacate the plat of an approved subdivision when:

   a. No lots within the approved subdivision have been sold within five (5) years from the date that the plat was signed by the Mayor;

   b. The developer has breached a Subdivision Improvement Agreement and the Town is unable to obtain funds with which to complete construction of public improvements, except that the vacation shall apply only to lots owned by the developer or its successor;

   c. The plat has been of record for more than five (5) years and the Board of Trustees determines that the further sale of lots within the subdivision presents a threat to public health, safety and welfare, except that the vacation shall apply only to lots owned by the developer or its successor.

2. ***Procedure*.** Upon any motion of the Board of Trustees to vacate the plat of any previously approved subdivision, in whole or in part, the Board of Trustees shall publish notice in a newspaper of general circulation and provide personal notice to all property owners within the subdivision and shall also provide notice to the governing body. The notice shall state the time and place for a public hearing on the motion to vacate the subdivision plat. The public hearing shall be no sooner than thirty (30) and no later than forty-five (45) days from the date of the publication and personal notice. The Board of Trustees shall approve the resolution affecting the vacation only if the criteria in Section 17-67(a)(2) are satisfied.

3. ***Recordation*.** If the Board of Trustees adopts a resolution vacating a plat in whole, it shall record a copy of the resolution in the Clerk and Recorder's office of Chaffee County. If the Board of Trustees adopts a resolution vacating a plat in part, it shall record a copy of the resolution as described above and cause a Revised Final Subdivision Plat to be recorded which shows that portion of the original subdivision plat that has been vacated and that portion that has not been vacated.

Sec. 17-68 to 17-69 (Reserved)

ARTICLE IX FEES

Sec. 17-70 Fees -- general.

Fees and charges for the submission, processing and review of land use development and permit applications under this code shall be set forth in a Fee Scheduled established by written resolution duly adopted by the Board of Trustees. It is the intention of the Board of Trustees that the fees and charges assessed under this code be reviewed and revised as necessary on an annual basis as part of the town's annual budget process. All fees and charges shall reasonably reflect the actual costs of processing and reviewing lands development and permit application, inclusive of the actual costs incurred by the town for professional planning, engineering, legal and/or other consulting services employed in reviewing and/or approving an application.

Sec. 17-71 Deposits -- development/ PUD review and processing fees.

(a) Applicants for major development/ PUD approval shall post a deposit toward the payment of review and processing fees at the sketch plan, preliminary plat and final plat submittal stages equal to the following.

	Planning fee/hr.	Engineering Fee/hr.	Legal fee/hr
Sketch plan	10 hrs.	7 hrs.	1 hr.
Preliminary Plat	10 hrs.	10 hrs.	3 hrs.
Final Plat	10 hrs.	5 hrs.	5 hrs.

A surveyor will be retained for final plat review, with a fee for 3 hours required.

(b) Applicants for intermediate development/ PUD approval shall post a deposit toward the payment of review and processing fees at the time of application equal to the following:

Planning fee/hr.	Engineering Fee/hr.	Legal fee/hr
10 hrs.	10 hrs.	5 hrs.

(c) Applicants for minor development/ PUD approval shall post a deposit toward the payment of review and processing fees at the time of application equal to the following:

Planning fee/hr.	Engineering Fee/hr.	Legal fee/hr
5 hrs	2.	1hr.

Sec. 17-72 Deposits--development infrastructure/improvements.

An amount equal to five percent (5% of the total estimated cost of installing public infrastructure/improvements required as part of any development or PUD development approval shall be paid by the applicant at the time of final plat submittal as a deposit toward

construction inspection fees. Inspection fees, inclusive of professional planning, engineering, legal and/or other consultant fees, if any, incurred by the town in excess of the five percent (5%) deposit must be paid to the town prior to the town's preliminary acceptance of any such development infrastructure/improvement.

Sec. 17-73 Fees--Administration.

(a) The town Administrator shall publicly post at Town Hall and make available to interested persons the hourly rates charted to the town for planning, engineering and legal services provided by outside professionals in the processing and review of land use development and permit applications. These rates shall also be disclosed to all land development applicants at all pre-application conferences.

(b) The town will periodically issue itemized billing statements to applicants setting forth amounts owed, payment due dates, amounts credited, outstanding balances and/or amounts remaining on deposit. All base application fees shall be nonrefundable and must be paid at the time of application. All fees paid on deposit shall be credited against future billings and amounts deposited in excess of fees subsequently incurred shall be timely refunded, without interest, to the applicant.

(c) All fees or costs for the mailing or publication of notices for public hearings and the recordation of plats and other development or development documents shall be paid by the applicant and be in addition to the application fees.

(d) For any land use application, the Town shall have the right to charge interest at the rate of 1.5% per month (18% per year) on all outstanding balances not paid within thirty (30) days after the mailing of a statement. If any amount remains unpaid for more than sixty (60) days after the mailing of a statement to the applicant, the Town shall have authority to assess all unpaid amounts, including interest, to the Chaffee County Treasurer who shall proceed to collect the same, together with a ten (10) percent penalty in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of such assessments. In the case of withdrawal or denial of a land use application, the applicant shall be responsible for all costs actually incurred by the Town in connection with such application regardless of the stage of the review process at which the application is withdrawn or denied.

(e) To secure payment of costs incurred by the Town, the owner of the land proposed for development, (and the applicant if different), shall be required to sign the following agreement which may be included as part of the Land Use Application form required by the Buena Vista Municipal Code:

By signing below, the applicant and property owner hereby agree to reimburse the Town the actual costs to the Town for engineering, planning, surveying, legal services, and all other costs incurred by the Town in connection with the review and approval of the Land Use Application. I/We also agree to reimburse the Town for the cost of making any correction or additions to the master copy of the official town

map and for any fees for recording any plats and accompanying documents with the County Clerk and Recorder of Chaffee County, Colorado. I/We agree that interest shall be imposed at the rate of 1.5% per month on all balances not paid within thirty (30) days of the date of mailing the billing statement. In the event the Town pursues collection of any amounts due and unpaid, the Town shall be entitled to collect reasonable attorney fees and all costs associated with collection efforts. In addition to all other remedies allowable by law, I agree that in the event any amounts remain due and unpaid for sixty (60) days, the Town shall have the power and authority to certify such amounts, plus a ten percent (10%) penalty, to Chaffee County to be imposed as a tax lien against the real property subject to the development application.

Applicant Property Owner

Date Signed: _____ Date Signed: _____

(f) No land use application shall be accepted by the Town unless the required fees have been paid in full and the application and the agreement have been signed by the property owner and the applicant. In the event that the applicant fails to reimburse the Town for fees and costs as required by this section, the Town Administrator shall have the right, in his or her sole and absolute discretion, to cancel any scheduled hearings or meeting related to the review process and may cease any further review activities until such fees and costs have been fully paid.

Sec. 17-74 to 17-75 (Reserved)

B:\BV\Sub-Ord.02 Revision completed 4-21-98.
Ord. 8, Series of 1999, Revision completed 12-15-99.
Ordinance 3 series 2002. Revision completed 4-12-02
Ordinance 2, series 2003, Revision completed 4-05
Ordinance 15, series 2003, Revision completed 4-05
Ordinance 9, Series 2004, Revision completed 4-05
Ordinance 1, Series 2005, Revision completed 1-06
Ordinance 4, Series 2005, Revision completed 1-06
Ordinance 5, Series 2005, Revision completed 1-06
Ordinance 6, Series 2005, Revision completed 1-06

CHAPTER 18

Building Regulations

ARTICLE I

Building Board of Appeals

Sec. 18-1. Creation of Building Board of Appeals.

In order to determine the suitability of alternate materials and methods of construction, to provide for reasonable interpretations of the various building and construction codes adopted by the Town and to hear appeals from decisions or orders of the Building Official, there shall be and is created a Building Board of Appeals consisting of all of the duly elected, qualified and acting members of the Board of Trustees, or such other persons as the Board of Trustees may appoint. (Prior code 15.20.010; Ord. 1-2001 §1; Ord. 9-2012 §1)

Sec. 18-2. Powers of Building Board of Appeals—appeals and variances.

The Building Board of Appeals shall hear and determine appeals from the decisions and orders of the Building Official concerning the enforcement, interpretation and/or modification of the various building and construction codes adopted by the Town. In addition, the Building Board of Appeals shall have the power, in its discretion, to approve the use of alternate materials and methods of construction, provided that an applicant demonstrates that the proposed design, materials or method of work is at least equivalent to that prescribed in the applicable building code in suitability, strength, effectiveness, fire resistance, desirability, safety and sanitation, together with such other reasonable criteria as may be required by the Building Board of Appeals. Further, whenever there are practical difficulties involved in carrying out the provisions of the various building and construction codes adopted by the Town, the Building Board of Appeals may grant modifications thereto in individual cases, provided that the applicant shall first demonstrate that a special reason or hardship makes the enforcement of the strict letter of the applicable code impractical, and that the requested modification is in conformity with the spirit and purpose of the applicable code and such modification does not lessen any fire protection, health or safety requirement, or any degree of structural integrity. Requests for variances from the provisions of the building and construction codes, or requests to use alternative materials or construction methods, shall be submitted in writing to the Town Clerk and shall be heard and voted upon by the Building Board of Appeals at a public meeting. (Prior code 15.20.020; Ord. 1-2001 §1; Ord. 7-2002 §1)

Sec. 18-3. Appeals from decisions of Building Official.

(a) Appeals to the Building Board of Appeals may be taken by any person subject to and aggrieved by a decision of the Building Official or other Town enforcement official made under this Chapter. Such appeal shall be taken within ten (10) days from the date of the decision sought to be appealed by filing with the Town Clerk a written notice specifying the grounds thereof and paying any applicable filing fee. The Town Clerk shall notify the Building Official of the appeal and promptly transmit to the Building Board of Appeals all papers constituting the record upon which the action or decision being appealed was taken. A timely appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Official certifies to the Building Board of Appeals that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the Building Board of Appeals or by a court of competent jurisdiction for good cause shown on notice to the Building Official.

(b) The Building Board of Appeals shall fix a reasonable time and place for a hearing on an appeal and shall direct the Town Clerk to send notice thereof in writing by regular mail to the parties not less than ten (10) days in advance. Any interested party may appear in person or by agent at the hearing and be heard. Absent good and just cause, the failure of an appellant to attend the hearing on his or her appeal shall constitute an abandonment of the appeal and no further proceedings shall be had thereon. Appeals shall be heard and determined in a reasonably prompt fashion.

(c) The concurring vote of a majority of the entire membership of the Building Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Building Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter. Final decisions of the Building Board of Appeals shall be reduced to writing and signed by the chairperson, shall set forth a plain statement of the grounds and reasons therefor and shall be delivered to the appellant and all other interested persons. (Prior code 15.20.030; Ord. 1-2001 §1; Ord. 9-2012 §2)

Sec. 18-4. Consultants.

The Building Board of Appeals shall have the power to retain or consult with individuals who, in the opinion of the Building Board of Appeals, have special expertise in the particular field involved in an appeal or request for variance, and to give the opinions of such consultants such weight as the Building Board of Appeals shall deem appropriate. (Prior code 15.20.040; Ord. 1-2001 §1)

Sec. 18-5. Delegation of authority.

(a) The Board of Trustees may appoint five (5) persons to comprise and serve as the Building Board of Appeals under this Article as an alternative to the Board of Trustees performing such functions as specified in Section 18-1 above. Appointees need not be qualified electors of the Town and shall be selected on the basis of their experience or expertise, if any, in the construction and building trades. Appointees shall serve four-year terms and may be reappointed to office without limit. The Board of Trustees may also appoint two (2) alternate members who shall serve four-year terms and perform the duties and responsibilities of a regular member in the absence or disqualification of a regular member, or in the event of a vacancy on the Building Board of Appeals.

(b) The Board of Trustees may enter into an intergovernmental agreement for the provision of a Building Board of Appeals for the Town under this Article as an alternative to the Board of Trustees performing such functions as specified in Section 18-1 or the appointment of individuals as specified in Subsection (a) above.

(c) Any Board of Appeals appointed under this Section shall have the same power and authority as described and vested by this Article in the Building Board of Appeals and shall perform its duties and responsibilities consistent therewith. All decisions of the Building Board of Appeals shall be final. (Ord. 1-2001 §1; Ord. 9-2012 §3)

Secs. 18-6—18-20. Reserved.

ARTICLE II

Building Code

Sec. 18-21. Adoption of building codes and specified Chaffee County building regulations.

(a) Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted by reference as the building code of the Town for buildings and structures other than one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three (3) stories in height with a separate means of egress and their accessory structures, Chapters 1 through 35 and Appendix I of the International Building Code, 2006 edition, as amended, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular. The subject matter of the adopted code includes comprehensive provisions and standards regulating the erection, construction, demolition, occupancy, equipment, use, height, area and maintenance of buildings and structures for the primary purpose of protecting the public health, safety and welfare.

(b) Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted by reference as the building code of the Town for one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with separate means of egress and their accessory structures, Chapters 1 through 43 and Appendices A, B, G, H, J and O of the International Residential Code, 2006 edition, as amended, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular; provided, however, that such code is amended by the changes set forth in Section 18-22 of this Article. The subject matter of the adopted code includes regulations for the construction, repair and maintenance of one- and two-family dwellings and townhouses for the purpose of protecting the public health, safety and welfare.

(c) Pursuant to Title 31, Article 16, Part 2, C.R.S., there is also hereby adopted by reference as supplemental building regulations to the Town's building and construction codes, the Chaffee County Minimum Footing and Foundation Requirements, the Chaffee County Insulation and Window Requirements, and the Chaffee County Basic Snow Design Loads and Snow Load Areas Map, adopted and published by the Board of County Commissioners for Chaffee County, Colorado, P.O. Box 699, Salida, Colorado 81201, pursuant to Chaffee County Board of County Commissioners Resolution 2002-9, dated April 16, 2002, to have the same force and effect as if set forth herein in every particular. The subject matter of the adopted regulations includes standards for the construction, repair and maintenance of buildings and structures for the primary purpose of protecting the public health, safety and welfare. (Ord. 9-1993 §1; Ord. 7-2002 §2; Ord. 7-2007 §§2,3)

Sec. 18-22. Amendments and deletions.

(a) The International Building Code (IBC) as adopted by the Town pursuant to Section 18-21 above is amended with respect to the following sections and/or provisions:

(1) Section 101.1 is amended by adding, " … Building Code of The Town of Buena Vista, Colorado ... "

(2) Section 101.4.1, Electrical, is amended in its entirety to read:

"The electric code shall be the National Electrical Code, 2005 Edition. For structures built under the provisions of the IRC, the requirements of Part VIII-Electrical shall be equivalent to the NEC. Any references in this code to the ICC Electrical Code shall instead refer to the 2005 NEC."

(3) Section 101.4.4 is amended by replacing "International Private Sewage Disposal Code" with "Town of Buena Vista On-site Wastewater Treatment System Regulations."

(4) Section 101.4.5, Property maintenance, is amended in its entirety to read:

"All references to provisions of the Property Maintenance Code shall not apply unless specifically adopted by the appropriate governing body."

(5) Section 101.4.6, Fire prevention, is deleted and replaced with the following:

"The International Fire Code as adopted by the Town of Buena Vista Commissioners shall apply."

(6) Section 105.1 is amended by adding:

"A permit application will not be accepted unless it includes the appropriate approval from agencies or departments governing zoning, water supply, wastewater treatment and access."

(7) Section 105.1.1, Annual permit, is deleted.

(8) Section 105.1.2, Annual permit records, is deleted.

(9) Section 105.2.5 is amended by adding to the beginning of the clause:

"Other than cisterns for fire and domestic water supply water tanks, … "

(9.5) Section 105.5, Expiration, is amended by adding:

"105.5.1 Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one (1) year after its issuance, if the work authorized on the site by such permit is suspended or abandoned for a period of one (1) year after the time the work is commenced, or if one (1) year has elapsed between inspections.

"105.5.2 If more than one (1) year has elapsed between inspections, upon a written request for an extension by the applicant, a permit may be extended for additional one-year periods, upon a showing of justifiable cause. Up to two (2) extensions may be requested, provided that a permit may not be valid for more than three (3) years, or for more than two (2) years following the adoption of a new version of the applicable building code, whichever is less, unless a permit has been automatically extended by obtaining an inspection within one (1) year of the last inspection, or a waiver has been obtained from the building official, upon a showing that unusual circumstances or hardship has prevented the issuance of a certificate of occupancy within the above time period and reinstatement would not substantially impair the intent of the building codes.

"105.5.3 With respect to reinstatement of permits where rough-in inspections have been completed, the building official shall act under the code in effect when the permit was originally issued and may charge fees adequate to cover the cost of required inspections. Otherwise, permittees shall pay a new full permit fee."

(10) Section 106.2 is amended by adding:

"Plans shall also include location of utilities, private well and wastewater sites, ditches, rivers, lakes, drainages, slopes greater than 30%, accesses, bridges and road grade."

(11) Section 106.3.2, Previous approvals, is deleted.

(12) Section 108.3 is amended in its entirety to read:

"Valuation shall be established using the procedures outlined in Exhibit I."

(13) Section 202, Definitions, is amended by the addition of the following new or amended definitions:

"**Design Professional.** Colorado State licensed Architect or Engineer.

"**Townhouse**. A single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from the foundation to the roof and with open space on at least two sides. A legal property line shall separate the units along the common walls."

(14) Section 901.1, Scope, is amended in its entirety to read:

"The provisions of this chapter shall specify where fire protection systems are required. The design, installation, and operation of the fire protection systems must be in compliance with Colorado State Law."

(15) Section 901.2, in the exception, is amended by replacing the clause "this code" so that the provision reads:

" … that such system meets the requirements of the fire official having jurisdiction."

(15.5) Section 903.2.7 (Group R.) is hereby deleted and replaced to read as follows:

"**903.2.7.1 Group R-1**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-1 fire area. Exceptions to this provision shall only be permitted if there are adequate life safety alarms, compliant means of egress, and adequate fire separation between uses.

"Exceptions:

"1. Where guestrooms are not more than two stories above the lowest level of discharge and each guestroom has at least one door that leads directly to an exterior exit access that leads directly to approved exits.

"2. Single family, duplex homes, or Town homes used as temporary vacation rentals or bed and breakfasts that have received approval from the local jurisdiction and pass a yearly fire inspection.

"**903.2.7.2 Group R-2**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-2 fire area where more than two stories in height, including basements, or where having more than 16 dwelling units and each guestroom has at least one door that leads directly to an exterior exit access that leads directly to approved exits.

"Exception: A residential sprinkler system installed in accordance with Section 903.3.1.2 shall be allowed in buildings, or portions thereof, of Group R-2.

"**903.2.7.3 Group R-4**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-4 fire area with more than eight occupants."

(16) Section 1608.2, Ground snow loads, is amended by adding:

"Snow load shall be determined by the map and table located at Exhibit J.1 and J.2."

(17) Section 1609.3, Basic wind speed, is amended by replacing the clause so that the provision reads:

"Basic wind speeds determined by the local jurisdiction shall be 90 mph for a three-second gust."

(18) Section 1805.2.1 is amended in its entirety to read:

"Depth of footing for frost protection shall be governed by Exhibit K."

(19) Section 2701.1, Scope, is amended by replacing the clause so that the provision reads:

" … of the 2005 National Electrical Code."

(20) Section 3410.2, Applicability, is amended by replacing the bracketed language in the insert area with the following:

"the effective date of adoption of building codes within the jurisdiction."

(b) The International Residential Code (IRC) as adopted by the Town pursuant to Section 18-21 above is amended with respect to the following sections and/or provisions:

(1) Section R101.1 is amended by adding:

" … Dwellings of the Town of Buena Vista, Colorado, and … "

(2) Section R101.4 is amended by adding:

"For structures built under the provisions of the IRC, the requirements of Part VIII-Electrical shall be equivalent to the NEC. Any references in this code to the ICC Electrical Code shall instead refer to the 2005 NEC."

(3) In Section R102.7, references to the International Property Maintenance Code and the International Fire Code shall be deleted.

(4) Section R105.1 is amended by adding the following:

"A permit application will not be accepted unless it includes the appropriate approval from agencies or departments governing zoning, water supply, wastewater treatment and access."

(5) The title of Section R105.2 is changed to "Work exempt from permit," and the section is amended as follows:

"Building:

"1. … floor area does not exceed 200 square feet. No sleeping use is permitted.

"4. … exceed 2 to 1. Fire and domestic water cisterns require a cistern permit.

"5. … and raised platforms and decks less than 30" above grade."

(6) Section R105.3.2 is deleted.

(6.5) Section R105.5 is amended by adding the following:

"R105.5.1 Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within one (1) year after its issuance, if the work authorized on the site by such permit is suspended or abandoned for a period of one (1) year after the time the work is commenced, or if one (1) year has elapsed between inspections.

"R105.5.2 If more than one (1) year has elapsed between inspections, upon a written request for an extension by the applicant, a permit may be extended for additional one-year periods, upon a showing of justifiable cause. Up to two (2) extensions may be requested, provided that a permit may not be valid for more than three (3) years, or for more than two (2) years following the adoption of a new version of the applicable building code, whichever is less, unless a permit has been automatically extended by obtaining an inspection within one (1) year of the last inspection or a waiver has been obtained from the building official, upon a showing that unusual circumstances or hardship has prevented the issuance of a certificate of occupancy within the above time period and reinstatement would not substantially impair the intent of the building codes.

"R105.5.3 With respect to reinstatement of permits where rough-in inspections have been completed, the building official shall act under the code in effect when the permit was originally issued and may charge fees adequate to cover the cost of required inspections. Otherwise, permittees shall pay a new full permit fee."

(7) Section R106.2 is amended by adding the following:

"Plans shall also include utilities, private well and wastewater sites, ditches, rivers, lakes, drainages, slopes greater than 30 degrees, access, bridges and road grade."

(8) Section R108.3 is amended in its entirety to read:

"Valuation shall be established using the procedures outlined in Exhibit I."

(9) Section R109.1.1, Foundation inspection, is amended by adding the following:

"After initial pre-pour inspection, the building official may allow photo documentation of corrections for defects in lieu of a re-inspection prior to pour, provided the inspection report states photo documents will be permitted."

(10) Section R110.1, is amended by adding the following to "Exceptions":

"2. Accessory buildings or structures without habitable space or decks, porches, or minor remodels (remodels other than room additions)."

(11) Section R202, Definitions, is amended by the addition of the following new or amended definitions:

"**Design Professional**. Colorado State licensed Architect or Engineer.

"**Townhouse**. A single-family dwelling unit constructed in a group of two or more attached units in which each unit extends from the foundation to the roof and with open space on at least two sides. A legal property line shall separate the units along the common walls."

(12) Insert Table R301.2(1):

"Ground Snow Load	see Chaffee County Table
Wind Speed	90 mph 3 second gust
Seismic design category	C
Weathering	severe
Frost depth	varies (see Exhibit K to Ordinance 7-2007)
Termite	none to slight
Winter design temp	(-16 Fahrenheit)
Ice barrier underlayment required	no
Flood hazard	see FEMA maps
Air freezing index	1166
Mean annual temp	43.9 Fahrenheit"

(13) Section R311.5.3.3 is amended by adding the following to "Exceptions":

"3. Interior risers may allow passage of a 6" diameter sphere."

(14) Section R312.2 is amended by adding the following to "Exceptions":

"3. A 6-inch sphere for exterior decks and balconies shall be permitted upon written request and when approved by the building official."

(15) Section R319.1.4, Wood columns, is amended by adding the following:

" … wood. Heavy timber or log columns may be used when approved by the building official."

(16) Section R320, Protection against termites, is deleted.

(17) Section R322.1, Scope, is amended to read:

"Where there are seven or more …. "

(18) Section R402.1, Wood foundations, is amended in its entirety to read:

"Shall be designed by a licensed Design Professional in accordance with IRC Chapter 4 and have prior approval of the building official."

(19) Section R403 is amended to begin with the following statement:

"The Chaffee County Minimum Footing/Foundation Requirements (see Exhibit K to Ordinance 7-2007) shall be used to construct such footings and foundations described in this section, or a design professional may use the provisions of this section to design these elements."

(20) Section R403.1.4 is amended to include the following:

"**Exception**: Where topsoil and vegetation have been removed and soils are stable and included in Group I or II of Table R405.1, footings are not required to be 12" into undisturbed ground."

(21) Section R404.4.7.1 is amended to include the following:

"**Exception**: ICF walls of detached accessory buildings and garages without habitable space and attached garages with a 1-hour separation from the dwelling unit do not require a thermal barrier."

(22) Section R408.4 is amended to add the following:

"An unobstructed pathway from the access to each remote end of the structure must be maintained, in addition to an 18" clearance throughout."

(23) Section M1503.1, General, is amended by the addition of the following:

"In spaces where a gas outlet is provided for a range, hoods or downdraft vents shall be installed at ranges and shall discharge…"

(24) Section G2406.2 is amended by adding the following:

" … except with prior approval of the building official and where…"

(25) Section G2411.1 is deleted and replaced by the following:

"As required by E3509.7."

(26) Section G2414.5.2 is amended in its entirety to read:

"Copper tubing, fittings or pipe shall not be installed downstream of the riser."

(27) Section G2415.4 is amended by the addition of the following:

"Gas piping shall daylight immediately prior to penetrating the foundation."

(28) G2427.8 is amended so the provision reads:

"The bottom of the vent terminal and air intake shall be located at least 18" above grade."

(29) Section P2708.1 is amended by deleting Exception 2.

(30) Section E3501.3 is amended by adding the following:

" … structure. Townhomes shall be considered separate structures."

(31) Section E3501.6.2, Service disconnect location, is amended so the provision reads as follows:

"The service disconnecting main shall be installed at a readily accessible location outside of a building at the point of entrance of the service conductors or at the location of the meter, transformer or pedestal when approved by the AHJ."

(32) Table R302.1 of the adopted International Residential Code is amended to add an asterisk after the side setback dimension for "Minimum Fire Separation Distance" for Walls and Projections that are not fire resistance rated, as follows:

"* For Planned Unit Developments that have been approved prior to the adoption of the 2006 International Residential Code and have vested approvals permitting fire separation less than the IRC requirements, the minimum side yard setback for walls may be three (3) feet and the maximum projection distance of a sill, belt course, cornice, buttress, ornamental feature and eave into the side yard may be two (2) feet if the following conditions have been met:

"(1) Exterior walls are finished with noncombustible siding such as fiber cement, stucco, or stone,

"(2) Roofs are made of metal or other fire resistant material,

"(3) Soffits and overhangs are painted with fire-resistant paint, and

"(4) The property owner has signed a disclaimer at the time of building permit application, that holds the Town of Buena Vista harmless in the event of a fire that may have been a result of noncompliance with the 2006 International Residential Code. Such disclaimer may run in perpetuity with the property and shall be filed of record as a deed restriction at the office of the Chaffee County Clerk and Recorder."

(33) Section R302.1, Exterior walls, is amended so the provision reads as follows:

"Exterior walls of residential structures in the B-1 OT and PUD zone districts with a fire separation distance less than 3 feet (914 mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projections:

"1. At a point one-third the distance to the property line from an assumed vertical plane located where protected openings are required.

"2. More than 12 inches (305 mm) into areas where openings are prohibited.

"Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

"Exception: tool and storage sheds, playhouses and similar structures exempted from permits by Section 105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line."

(34) Section R302.2, Openings, is amended so the provision reads as follows:

"Openings of residential structures in the B-1, OT and PUD zone districts shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance of less than 3 feet (914 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

"Exceptions:

"1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

"2. Foundation vents installed in compliance with the code are permitted."

(35) Section R302.3, Penetrations, is amended so the provision reads as follows:

"Penetrations located in the exterior wall of a dwelling in the B-1, OT or PUD zone districts with a fire separation distance less than 3 feet (914 mm) shall be protected in accordance with Section 321.3.

"Exception: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance"

(Ord. 7-2007 §3; Ord. 6-2008 §2; Ord. 13 §§2—4, 2009; Ord. 27-2010 §§1, 2; Ord. 1 §1, 2012)

Sec. 18-23. Copies on file.

At least one (1) true and certified copy of the code or codes adopted in this Article shall be filed and maintained in the office of the Town Clerk for public inspection during regular business hours.

Copies of such codes shall also be made available for copying or purchase by the public at reasonable cost. (Ord. 9-1993 §1; Ord. 7-2002 §3)

Sec. 18-24. Violations of building code.

It shall be unlawful for any person, owner, occupant or contractor to erect, construct, enlarge, alter, repair, move, improve, remove, rehabilitate, convert, demolish, use, occupy, equip or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of any of the provisions of this article and the Town's electrical codes or regulations. Violations of this article and/or the electrical codes shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. A separate offense shall be deemed committed for each day, or portion of a day, that a violation of this article occurs or continues unabated. (Ord. 9-1993 §1; Ord. 7-2002 §3)

Sec. 18-25. Fees.

(a) Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update from time to time a permit fee schedule taking into consideration the time and cost to the Town in reviewing building permit applications and building plans and for building inspections. All fees established by the Town Administrator must be approved by resolution by the Board of Trustees. The Town Clerk shall prominently post and otherwise make available to interested persons copies of the fee schedule at Town Hall.

(b) Notwithstanding the provisions contained in Subsection (a) above, during those time periods in which the Town and Chaffee County have executed and implemented an intergovernmental or other agreement providing for the delivery by Chaffee County of building inspection services, including plans review and building code enforcement, to the Town, then unless otherwise provided for in such intergovernmental or other agreement, the building permit fee schedule and fees for building permits issued under this article shall be the same as the fee schedule and fees adopted by Chaffee County. The Town Clerk shall prominently post or otherwise make available to interested persons copies of the Chaffee County fee schedule and fees utilized by the Town at Town Hall. (Ord. 13-1997 §4; Ord. 7-2002 §2)

Sec. 18-26. Multifamily design review standards.

All new multifamily residential structures containing four (4) or more dwelling units, including, but not exclusive of, apartments, townhomes or condominiums, shall be reviewed and approved pursuant to the following standards prior to the issuance of a building permit. Multifamily residential structures containing less than four (4) dwelling units shall be exempt from the requirements of this Section.

(1) All applicants for a building permit shall submit an original and five (5) copies of a site plan along with the building permit application illustrating the following information. A site plan may consist of more than one (1) page.

a. The site plan shall be prepared and signed by a licensed land surveyor in ink and shall accurately depict all dimensions at a scale of 1" = 20'.

b. The site plan shall depict a north arrow, the subject lot or parcel, monumented corners, lot lines, graphic scale, setback lines, all easements and rights-of-way (public or private) crossing or abutting the subject property, lot area by square footage, abutting streets or alleys, contour intervals at not more than two (2) feet where slope is less than ten percent (10%), the approximate location of structures off the subject property but within ten (10) feet of the subject property's boundary lines, one-hundred-year flood plain and existing drainage swales.

c. The site plan shall also depict all buildings on, or to be constructed on, the subject property (inclusive of configuration, height and site coverage by square footage), the number and dimensions of all individual residential dwelling units, the location and size of parking spaces, sidewalks, internal walkways, yard/open space (by square footage), dedicated public areas, landscaping improvements (inclusive of trees), unstable soil areas, water and sewer and other utility lines, drainage systems and/or drainage flow patterns, and any public improvements.

(2) All site plans must be approved by the Development Coordinator prior to the issuance of a building permit, and shall be incorporated therein as part of the permit. The Development Coordinator may refer all site plans to the Town Engineer and/or Planning and Zoning Commission for review and comment. Appeals of decisions or actions taken by the Development Coordinator under this Section may be made to the Board of Adjustment utilizing the procedures set forth in Section 16-43 of this Code.

(3) The construction of any multi-family residential structure subject to this Section shall conform to the site plan as approved by the Development Coordinator and, notwithstanding any provision within the Town's building codes and/or regulations, no certificate of occupancy may issue for such structure, or the dwelling units contained therein, absent full conformity with the site plan.

(4) The design standards established in Sections 17-57 and 17-58 of the 1996 Buena Vista Subdivision Code, Chapter 17 of this Code, shall be utilized and applied where appropriate in reviewing and approving site plans under this Section.

(5) To the extent any conflict or inconsistency should exist or arise between the provisions contained in this Section and any provisions contained in the Town's building codes, the provision that is most protective of the public safety and furthers the purposes of this Section shall control. (Ord. 14-1997 §14; Ord. 7-2002 §2)

Sec. 18-27. Connection to municipal water and sanitary sewer systems required.

No building permit shall issue for any new building, structure or facility that uses water unless such building, structure or facility is connected to the Town's municipal water system and the sanitary sewer system, unless the Buena Vista Sanitation District specifically grants an exception. Additionally, no existing building, structure or facility that uses water and is not connected to the municipal water system or the sanitary sewer system may be expanded or rebuilt absent connection to both the municipal water system and/or the sanitary sewer system unless the Buena Vista Sanitation District specifically grants an exception. All proposed connections or enlargements of any connection to the municipal water system and/or sanitary sewer system must be approved in advance in writing by the Town and/or sanitation district, respectively. (Ord. 1-2006 §2)

Secs. 18-28—18-40. Reserved.

ARTICLE III

Electrical Code

Sec. 18-41. Adoption of National Electrical Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted by reference NFPA 70 – National Electric Code (NEC), 2011 Edition, published by the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169-7471, to have the same force and effect as if set forth herein in every particular. The subject matter of the adopted code includes comprehensive provisions and standards regulating the design, construction, quality of materials, erection, installation, alteration, repair, location, replacement, addition to, use or maintenance of electrical systems as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said electrical code. (Ord. 24 §1, 2012)

Sec. 18-42. Amendments and deletions.

Section 230.70(A)(1) entitled "Readily Accessible Location" is hereby amended to read as follows:

> "The service disconnecting means shall be installed at a readily accessible location outside of a building or structure at the point of entrance of the service conductors or at the location of the meter, transformer or pedestal when approved the AHJ."

(Ord. 24 §1, 2012)

Sec. 18-43. Copy on file.

At least one (1) true and certified copy of the code adopted in this Article shall be filed and maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of such code shall also be made available for copying or purchase by the public at the Town Hall at a reasonable cost. (Ord. 24 §1, 2012)

Sec. 18-44. Violations and penalties.

It shall be unlawful for any person, owner, occupant or contractor to erect, construct, enlarge, alter, repair, move, improve, remove, rehabilitate, convert, demolish, use, occupy, equip or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of any of the provisions of this Article and the Town's electrical code or regulations. Violations of this Article and/or the electrical code shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. A separate offense shall be deemed committed for each day or portion of a day that a violation of this Article occurs or continues unabated. (Ord. 24 §1, 2012)

Sec. 18-45. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish, and update from time to time, a permit fee schedule, taking into consideration the time and cost to the Town in reviewing applications and plans for electrical installation and for inspections thereof. All fees established by the Town Administrator must be approved by resolution by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at the Town Hall. (Ord. 24 §1, 2012)

Secs. 18-46—18-60. Reserved.

ARTICLE IV

Mechanical Code

Sec. 18-61. Adoption of International Mechanical Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted as the mechanical code of the Town, Chapters 1 through 15 and Appendix A of the International Mechanical Code, 2006 edition, as amended, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular; provided, however, that such code be amended by the changes set forth in Section 18-62 below. (Ord. 9-1993 §2; Ord. 13-1997 §2; Ord. 7-2007 §6)

Sec. 18-62. Amendments and deletions.

The International Mechanical Code as adopted by the Town pursuant to Section 18-61 above is amended with respect to the following sections or provisions:

(1) Section 101.1 is amended by adding:

"…Mechanical Code of the Town of Buena Vista, Colorado…"

(2) Section 505.1, Domestic systems, is amended by adding:

"Where a gas outlet is supplied for domestic ranges and similar appliances, such appliances shall have a means to exhaust fumes and vapors to the outside. Where domestic range hoods and domestic appliances equipped with downdraft exhaust are…"

(Ord. 9-1993 §2; Ord. 13-1997 §2; Ord. 7-2007 §6)

Sec. 18-63. Copy on file.

At least one (1) copy of the Uniform Mechanical Code, certified to be a true copy, has been and is now on file in the office of the Town Clerk and may be inspected by any interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. The code as finally

adopted shall be available for sale to the public through the office of the Town Clerk at a moderate price. (Ord. 9-1993 §2)

Sec. 18-64. Violations of Mechanical Code.

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 the Mechanical Code, and such nuisance may be abated as provided by law. Further, any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed, continued or permitted. Upon conviction of any such violation, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 9-1993 §2)

Sec. 18-65. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update from time to time a permit fee schedule taking into consideration the time and cost to the Town in reviewing applications and plans for mechanical installations and for inspections thereof. All fees established by the Town Administrator must be approved by resolution by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at Town Hall. (Ord. 13-1997 §2)

Secs. 18-66—18-80. Reserved.

ARTICLE V

Plumbing Code

Sec. 18-81. Adoption of International Plumbing Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted as the plumbing code of the Town, Chapters 1 through 13 and Appendices C, E and F of the International Plumbing Code, 2006 Edition, as amended, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular; provided, however, that such code be amended by the changes set forth in Section 18-82 below. (Ord. 9-1993 §3; Ord. 13-1997 §3; Ord. 7-2007 §7)

Sec. 18-82. Amendments and deletions.

The International Plumbing Code adopted by the Town pursuant to Section 18-81 above is amended with respect to the following sections or provisions:

(1) Section 101.1, is amended by adding:

" … Plumbing Code of the Town of Buena Vista, Colorado … "

(2) In Section 417.4, Exception 2 is deleted. (Ord. 9-1993 §3, Ord. 13-1997 §3; Ord. 7-2007 §7)

Sec. 18-83. Copy on file.

At least one (1) copy of the Uniform Plumbing Code, certified to be a true copy, has been and is now on file in the office of the Town Clerk and may be inspected by an interested person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted. The code as finally adopted shall be available for sale to the public through the office of the Town Clerk at a moderate price. (Ord. 9-1993 §3)

Sec. 18-84. Violations of Plumbing Code.

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 the Plumbing Code, and such nuisance may be abated as provided by law. Further, any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed, continued or permitted. Upon conviction of any such violation such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 9-1993 §3)

Sec. 18-85. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update from time to time a permit fee schedule taking into consideration the time and cost to the Town in reviewing applications and plans for plumbing installations and for inspections thereof. All fees established by the Town Administrator must be approved by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at Town Hall. (Ord. 13-1997 §3)

Secs. 18-86—18-100. Reserved.

ARTICLE VI

Energy Conservation Code

Sec. 18-101. Adoption of International Energy Conservation Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted as the energy conservation code of the Town, Chapters 1 through 6 of the International Energy Conservation Code, 2006 Edition, as amended, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth in every particular; provided, however, that such code be amended by the changes set forth in Section 18-102 below. (Ord. 7-2007 §8)

Sec. 18-102. Amendments and deletions.

The International Energy Conservation Code adopted by the Town pursuant to Section 18-101 above is amended with respect to the following sections or provisions:

(1) Section 101.1 is amended by adding:

" … Energy Conservation Code of the Town of Buena Vista, Colorado … "

(Ord. 7-2007 §8)

Sec. 18-103. Copy on file.

At least one (1) true and certified copy of the code adopted in this Article shall be filed and maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of such codes shall also be made available for copying or purchase by the public at a reasonable cost. (Ord. 7-2007 §8)

Sec. 18-104. Violations and penalties.

It shall be unlawful for any person, owner, occupant or contractor to erect, construct, enlarge, alter, repair, move, improve, remove, rehabilitate, convert, demolish, use, occupy, equip or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of any of the provisions of this Article and the Town's energy conservation code or regulations. Violations of this Article and/or the energy conservation code shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. A separate offense shall be deemed committed for each day, or portion of a day, that a violation of this Article occurs or continues unabated. (Ord. 7-2007 §8)

Sec. 18-105. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update, from time to time, a permit fee schedule taking into consideration the time and cost to the Town in reviewing applications and plans for any usage to which this energy conservation code is applicable and for inspections thereof. All fees established by the Town Administrator just be approved by resolution by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at the Town Hall. (Ord. 7-2007 §8)

Secs. 18-106—18-120. Reserved.

ARTICLE VII

Fire Code

Sec. 18-121. Adoption.

The International Fire Code, 2006 Edition, of the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001, is adopted by reference as a primary code, as amended below. (Ord. 14 §1, 2011)

Sec. 18-122. Amendments and deletions.

(1) Section 101.1 (Title) is hereby amended to read as follows:

"These regulations shall be known as the Buena Vista Fire Prevention Code (BVFPC) hereinafter referred to as 'this code.' "

(2) Section 101.2.1 (Appendices) is hereby amended to read as follows:

"All appendices, except Appendix 'A' shall be applicable."

(3) Section 102.6 (Referenced codes and standards) is hereby amended to read as follows:

"The codes and standards referenced in this code shall be those that are listed in Chapter 45 and such codes and standards shall be considered part of the requirements of this code to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply. Whenever amendments have been adapted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well. Reference to codes such as electrical, plumbing, and mechanical shall refer only to the currently adopted code of that time."

(4) Section 103.1 (General) is hereby amended to read as follows:

"The Chaffee County Department of Building Safety is established as the enforcing jurisdiction with respect to the structure related portions of active building permits only. The Buena Vista Fire Department is established as the enforcing entity for all other provisions of this code, specifically including fire prevention and fire suppression supply requirements."

(5) Section 104.1 (General) is hereby amended to read as follows:

"The fire code official is hereby authorized to enforce the provisions of this code and shall have the authority to render interpretations of this code, and to adopt policies, procedures, rules and regulations in order to clarify the application of its provisions. Such interpretations, policies, procedures, rules and regulations shall be in compliance with the intent and purpose of this code and shall not have the effect of waiving requirements specifically provided for in this code. In all cases referencing records, the code official shall also ensure that the Fire Department and the Department of Building Safety are copied on all matters of record pertaining to the Fire Codes."

(6) Section 105 (Permits) is hereby repealed and replaced to read as follows:

"The Chaffee County Department of Building Safety is responsible for issuance of construction permits in accordance with the requirements of the Building Codes adopted by the Town of Buena Vista. Conflicts between the Town Building Codes and the Fire Codes requirements for application, issuance, posting, inspection and enforcement for construction permits shall defer to the adopted Town Building Codes."

(7) New Sections 106.2.1 and 106.2.2 are hereby added to read as follows:

"**106.2.1 Inspection requests.** It shall be the duty of the General Contractor to notify the fire code official when work is ready for inspection. It shall be the duty of the General Contractor to provide access to and means for inspections of such work that are required by this code.

"**106.2.2 Approval required.** Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the fire code official. The fire code official, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or notify the permit holder or his or her agent wherein the same fails to comply with this code. Any portions that do not comply shall be corrected and such portion shall not be covered or concealed until authorized by the fire code official."

(8) Section 108.1 (Board of Appeals established) is hereby amended to read:

"Appeals shall be in accordance with Article I of Chapter 18 of the Municipal Code of the Town of Buena Vista."

(9) New Sections 109.2.2.1, 109.2.2.2 and 109.2.2.3 are hereby added to read as follows:

"**Section 109.2.2.1.** Every notice of violation pursuant to this chapter shall set forth a time by which compliance with the notice violation is required. The time specified shall be reasonable according to the circumstances of the particular hazards or condition to which the notice and order pertains. Immediate compliance may be required in any case which represents extreme or imminent danger to persons or property.

"**Section 109.2.2.2.** Except for cases where immediate compliance is required, violations pursuant to this Chapter may be appealed as set forth in Section 108.1.

"**Section 109.2.2.3.** In cases where immediate compliance is required, the notice of violation so stating shall be final."

(10) Section 109.3 (Violation penalties) is hereby repealed and reenacted to read as follows:

"Persons who violate a provision of this code or 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 punished pursuant to Section 1-72 of the Buena Vista

Municipal Code. Each day that a violation continues after due notice has been served shall be deemed a separate offense."

(11) Section 111.4 (Failure to comply) is hereby amended to read as follows:

"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 punished pursuant to Section 1-72 of the Buena Vista Municipal Code."

(12) Section 307.1 is hereby amended to read as follows:

"Open burning shall be permitted, except as restricted by the open burning regulations of Chaffee County and any burning restrictions Chaffee County has in effect, which shall be applicable throughout the Town of Buena Vista."

(13) Section 307.2 is deleted.

(14) Section 307.3 is amended by the deletion of the term "by the permit holder."

(15) Section 307.4 is amended by the amendment of Exceptions 1 and 2 to read as follows:

"Exceptions:

"1. Fires in metal containers, fireplaces with a spark arrestor screen, outdoor gas fireplaces, BBQ grills, or commercially produced clay containers with chimney used for warming fires that are not less than 15 feet from a structure.

"2. The minimum required distance from a structure shall be 25 feet: (a) when burning yard waste/refuse in a metal container with a spark arrestor screen, (b) when using fire pits for recreational fires, or (c) where the pile size of other than yard waste is 3 feet or less in diameter and 2 feet or less in height."

(16) Section 901.2 (Construction documents) is hereby amended to read as follows:

"The Colorado Department of Public Safety (CDPS) shall have the authority to require construction documents and calculations for all fire protection systems and to require permits be issued for the installation, rehabilitation or modification of any fire protection system. Construction documents for fire protection systems shall be submitted to CDPS for review and approval prior to system installation."

(17) 901.2.1 (Statement of compliance) is hereby amended to read as follows:

"Before requesting final approval of the installation, where required by the Colorado Department of Public Safety (CDPS), the installing contractor shall furnish a written statement to the fire code official that the subject fire protection system has been installed in accordance with approved plans and has been tested in accordance with the manufacturer's specifications and the appropriate installation standard. Any deviations from the design standards shall be noted and copies of the approvals for such deviations shall be attached to the written statement."

(18) Section 903.2.7 (Group R.) is hereby deleted and replaced to read as follows:

"**903.2.7.1 Group R-1**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-1 fire area. Exceptions to this provision shall only be permitted if there are adequate life safety alarms, compliant means of egress, and adequate fire separation between uses.

"Exceptions:

"1. Where guestrooms are not more than two stories above the lowest level of discharge and each guestroom has at least one door that leads directly to an exterior exit access that leads directly to approved exits.

"2. Single family, duplex homes or Town homes used as temporary vacation rentals or bed and breakfasts that have received approval from the local jurisdiction and pass a yearly fire inspection.

"**903.2.7.2 Group R-2**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-2 fire area where more than two stories in height, including basements, or where having more than 16 dwelling units and each guestroom has at least one door that leads directly to an exterior exit access that leads directly to approved exits.

"Exception: A residential sprinkler system installed in accordance with Section 903.3.1.2 shall be allowed in buildings, or portions thereof, of Group R-2.

"**903.2.7.3 Group R-4**. An automatic sprinkler system shall be provided throughout all buildings with a Group R-4 fire area with more than eight occupants."

(Ord. 14 §1, 2011)

Sec. 18-123. Copy on file.

At least one (1) certified copy of the International Fire Code, 2006 Edition, as adopted is on file in the office of the Town Clerk and may be inspected during regular business hours. (Ord. 14 §1, 2011)

Sec. 18-124. Violations and penalties.

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 the Fire Code, and such nuisance may be abated as provided by law. Further, any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Article is committed, continued or permitted. Upon conviction of any such violation, such person shall be punished as provided in Article IV of Chapter 1 of this Code. (Ord. 14 §1, 2011)

Secs. 18-125—18-140. Reserved.

ARTICLE VIII

Alarm Systems

Sec. 18-141. Intent.

The Board of Trustees finds and determines that:

(1) The imposition of a fee for an excessive number of false fire alarms generated by automatic fire alarm systems is proper to both compensate the Town for the time and expense associated with responding to such alarms, as well as to deter a person owning an automatic fire alarm system from permitting an excessive number of false alarms to be generated by such system.

(2) The unregulated use of exterior audible burglary, robbery, fire or similar alarms can create a substantial annoyance and inconvenience to persons residing near to such an alarm.

(3) The imposition of reasonable restrictions upon such exterior audible alarms would be in the public interest, and the regulations contained in this Article are reasonable and will protect the public welfare while not unreasonably interfering with the right of a property owner to use an exterior audible alarm to protect his or her property.

(4) The requirements and provisions of this Article are reasonable and are necessary for the protection of the public health, welfare and safety. (Prior code 8.08.010; Ord. 9-1990 §1)

Sec. 18-142. Definitions.

As used in this Article:

Alarm system or *fire alarm system* means a system which automatically detects a fire condition and actuates a fire alarm signal device.

Emergency alarm inspection means an inspection by the Fire Department to determine the cause of any fire alarm signal.

Emergency alarm inspection fee means a fee which is imposed upon the owner of a building or structure when the building or structure's fire alarm system exceeds two (2) Category II fire alarms within any thirty (30) day period.

Exterior audible alarm means a device designed for the detection of burglary, robbery, fire or similar occurrences on premises which is designed to generate an audible sound outside of the premises when it is activated.

Fire alarm, *alarm* or *fire alarm signal* means a signal indicating an emergency requiring immediate action, as an alarm for fire from a manual box, smoke detector, heat detector, water flow alarm, automatic fire alarm system, tamper alarm, trouble alarm or other emergency signal as defined by the Fire Department. Fire alarm signals shall be classified as follows:

a. Category I Alarms. Any alarm requiring a Fire Department response where the alarm system operated properly under the following conditions:

1. Any alarm caused by a malicious or mischievous action;

2. Any accidental alarm caused by a person over whom the owner of the building or structure had no control; or

3. An accidental smoke or fire condition in the building or structure.

No emergency alarm inspection fee shall be charged for Category I alarms.

b. Category II Alarms. Any alarm requiring a Fire Department response under the following conditions:

1. Any alarm caused by the failure, lack of maintenance, improper maintenance or installation of the alarm system equipment, hardware or wiring;

2. Any alarm caused by the act or omission of an agent, employee or contractor of the management. Failure by a remote station monitoring center shall be considered a user error; or

3. Any alarm which, after its investigation by the Fire Department (with input from interested parties), has no apparent cause.

Category II Alarms are determined to be unnecessary, and an emergency alarm inspection fee shall be assessed in connection with such alarms as provided in Section 18-145.

Fire Department means the Buena Vista Volunteer Fire Department. (Prior code 8.08.020; Ord. 9-1990 §1)

Sec. 18-143. Fire alarm systems; generally.

All fire alarm systems located within the Town shall be subject to the provisions of this Article. It shall be the responsibility of the Fire Department to inspect and approve such fire alarm systems and to investigate and determine the cause of all fire alarms. The Fire Department shall promptly conduct an emergency alarm inspection with respect to each alarm requiring a Fire Department response. A written report shall be provided to the responsible party detailing the results of the emergency alarm inspection. (Prior code 8.08.030)

Sec. 18-144. Fire alarm systems; performance standards.

(a) It shall be the duty of the fire alarm system owner to maintain, repair and correct a system generating unnecessary alarms. The owner is also responsible for educating all persons, whether employees or contract agents, who may affect the performance of the alarm system.

(b) All alarm systems shall be afforded a thirty (30) day adjustment period commencing with the Fire Department date of acceptance of the fire alarm system. The adjustment period is provided so that the system can be brought to maximum reliability. The emergency alarm inspection fee will not be assessed during this adjustment period. (Prior code 8.08.040)

Sec. 18-145. Emergency alarm inspection fee.

Any person having a fire alarm system shall pay to the Town an emergency alarm inspection fee of two hundred fifty dollars ($250.00) for each Category II alarm in excess of two (2) Category II alarms occurring within any thirty (30) day period. It is unlawful for any such person to fail or refuse to pay such fine, and any person convicted of failing or refusing to pay such fine shall be punished as provided in Section 1-72 of this Code; provided that the person convicted shall pay the emergency alarm inspection fee assessed in addition to any fine imposed by the Court. If, within thirty (30) days following the occurrence of any Category II alarm in violation of this Section caused by malfunction of the fire alarm system, the person owning the fire alarm system provides the Fire Department with a letter of certification or service order demonstrating to the satisfaction of the Fire Department that the system has been properly repaired, such person shall receive a refund or abatement of one-half (½) of the emergency fire alarm inspection fee assessed for such alarm. Letters of certification or service orders received by the Fire Department more than thirty (30) days following the occurrence of the Category II alarm shall not entitle the owner of the system to any refund or abatement of the emergency fire alarm inspection fee. (Prior code 8.08.050)

Sec. 18-146. Limitation on exterior audible alarms.

It shall be unlawful for the owner of any real property, or any person in charge or control of any real property located within the Town, to fail to silence any exterior audible alarm located in, on or about such property within three (3) minutes after such alarm shall have been activated. (Ord. 9-1990 §1)

Secs. 18-147—18-160. Reserved.

ARTICLE IX

Flood Damage Prevention

Sec. 18-161. Designation of official floodplain map.

The Flood Boundary and Floodway Map of the Town, Community-Panel Number 080030 0001, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, is approved and adopted as the official floodplain map of the Town. (Prior code 1.14.010)

Sec. 18-162. Inspection of floodplain map.

The official floodplain map shall be maintained by the Town Clerk at the Town's offices and shall be open to inspection by the public during normal business hours. (Prior code 1.14.020)

Sec. 18-163. Statutory authorization.

The Legislature of the State has, in Sections 31-15-103 and 31-15-401, C.R.S., delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Board of Trustees of the Town does ordain as hereafter set forth in this Article. (Prior code 15.16.010)

Sec. 18-164. Findings of fact.

(a) The flood hazard areas of the Town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from damage also contribute to the flood loss. (Prior code 15.16.020)

Sec. 18-165. Statement of purpose.

It is the purpose of this Article to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions to specific areas by provisions designed to:

(1) Protect human life and health;

(2) Minimize expenditure of public money for costly flood-control projects;

(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) Minimize prolonged business interruptions;

(5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

(6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) Ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) Ensure that those who occupy the areas of special flood hazards assume responsibility for their actions. (Prior code 15.16.030)

Sec. 18-166. Methods of reducing flood losses.

In order to accomplish its purposes, this Article includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel floodwaters;

(4) Controlling filling, grading, dredging and other development which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas. (Prior code 15.16.040)

Sec. 18-167. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

Appeal means a request for a review of the Town Administrator's interpretation of any provision of this Article or a request for a variance.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

Base flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the ordinance codified in this Article.

Expansion to existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters; and/or

b. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance Rate Map (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

Floodway means the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Historic structure means any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior; or

2. Directly by the Secretary of the Interior in states without approved programs.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Article.

Manufactured home means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term *manufactured home* does not include a *recreational vehicle*.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

New construction means structures for which the *start of construction* commenced on or after the effective date of the ordinance codified in this Article.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the ordinance codified in this Article.

Recreational vehicle means a vehicle which is:

a. Built on a single chassis;

b. Four hundred (400) square feet or less when measured at the largest horizontal projections;

c. Designed to be self-propelled or permanently towable by a light duty truck; and

d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of construction includes substantial improvement and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building or manufactured home that is principally aboveground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the *start of construction* of the improvement. This term includes structures which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

b. Any alteration of a *historic structure*.

Variance means a grant of relief from the requirements of this Article which permits construction in a manner that would otherwise be prohibited by this Article. (Prior code 15.16.050; Ord. 3-1990 §§1, 2, 3, 4, 5, 6, 7, 8, 9, 10)

Sec. 18-168. Lands to which this Article applies.

This Article shall apply to all areas of special flood hazards within the jurisdiction of the Town. (Prior code 15.16.060)

Sec. 18-169. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the Town of Buena Vista," dated March 30, 1982, with an accompanying Flood Insurance Rate Map (FIRM), is adopted by reference and declared to be a part of this Article. The Flood Insurance Study and FIRM are on file at the office of the Town Administrator. (Prior code 15.16.070)

Sec. 18-170. Compliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article and other applicable regulations. (Prior code 15.16.080)

Sec. 18-171. Abrogation and greater restrictions.

This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another code section, ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Prior code 15.16.090)

Sec. 18-172. Interpretation.

In the interpretation and application of this Article, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Prior code 15.16.100)

Sec. 18-173. Warnings and disclaimer of liability.

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This Article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town,

any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder. (Prior code 15.16.110)

Sec. 18-174. Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 18-169. Application for a development permit shall be made on forms furnished by the Town Administrator and may include, but not be limited to: Plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials and drainage facilities; and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

(2) Elevation in relation to mean sea level to which any structure has been floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the flood-proofing criteria in Section 18-178(5)b; and

(4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. (Prior code 15.16.120)

Sec. 18-175. Designation of the Town Administrator.

The Town Administrator is appointed to administer and implement this Article by granting or denying development permit applications in accordance with its provisions. (Prior code 15.16.130)

Sec. 18-176. Duties and responsibilities of the Town Administrator.

Duties of the Town Administrator shall include, but not be limited to:

(1) Permit review.

a. Review all development permits to determine that the permit requirements of this Article have been satisfied;

b. Review all development permits to determine that all necessary permits have been obtained from federal, state or local governmental agencies from which prior approval is required; and

c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 18-179(1) are met.

(2) Use of other base data. When base flood elevation data has not been provided in accordance with Section 18-169, the Town Administrator shall obtain, review and reasonably

utilize any base flood elevation and floodway data available from any federal, state or other source as criteria for requiring that new construction, substantial improvements or other development in Zone A are administered in accordance with Section 18-178(5).

(3) Information to be obtained and maintained.

a. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement;

b. For all new or substantially improved floodproofed structures:

1. Verify and record the actual elevation (in relation to mean sea level) to which the structure has been floodproofed, and

2. Maintain the floodproofing certificate required in Section 18-178(5); and

c. Maintain for public inspection all records pertaining to the provisions of this Article.

(4) Alteration of watercourses.

a. Notify adjacent communities and the Colorado Water Conservation Board prior to any alteration or relocation of a watercourse, and summit evidence of such notification to the Federal Emergency Management Agency; and

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Interpretation of FIRM boundaries. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 18-177. (Prior code 15.16.140)

Sec. 18-177. Variance procedures; appeals.

(a) Appeal Board.

(1) The Board of Trustees shall hear and decide appeals and requests for variances from the requirements of this Article.

(2) The Board of Trustees shall hear and decide appeals when it is alleged there is an error in any requirements, decision or determination made by the Town Administrator in the enforcement or administration of this Article.

(3) Those aggrieved by the decision of the Board of Trustees, or any taxpayer, may appeal such decisions to the District Court, as provided by law.

(4) In passing upon such applications, the Board of Trustees shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article and:

a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger of life and property due to flooding or erosion damage;

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

d. The importance of the services provided by the proposed facility to the community;

e. The necessity to the facility of a waterfront location, where applicable;

f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

g. The compatibility of the proposed use with the existing and anticipated development;

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(5) Upon consideration of the factors of Paragraph (4) above and the purposes of this Article, the Board of Trustees may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.

(6) The Town Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency.

(b) Conditions for variances.

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base level, provide that items a through k in Paragraph (a)(4) above have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justifications required for issuing the variance increase.

(2) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued

designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(3) Variances shall not be issued within any designated floodway if any increases in flood levels during the base flood discharge would result.

(4) Variances shall not be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Paragraph (a)(4) above or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk from the reduced lowest floor elevation. (Prior code 15.16.150; Ord. 3-1990 §11)

Sec. 18-178. General standards for flood hazard reduction.

In all areas of special flood hazards, the following standards are required:

(1) Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.

b. All manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Specific requirements may be:

1. Over-the-top ties be provided at each of the four (4) corners of the manufactured home, with two (2) additional ties per side at intermediate locations, with manufactured homes less than fifty (50) feet long requiring one (1) additional tie per side;

2. Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points, with manufactured homes less than fifty (50) feet long requiring four (4) additional ties per side;

3. All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds; and

4. Any additions to the manufactured home be similarly anchored.

(2) Construction materials and methods.

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities.

a. All new and replacement water-supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) Subdivision proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage;

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

d. Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

(5) Specific standards. In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 18-169 or Section 18-176(2), the following provisions are provided:

a. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to or above the base flood elevation.

b. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be floodproofed so that below the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this Paragraph. Such certifications shall be provided to the official as set forth in Subparagraph 18-176(3)b.

c. Manufactured homes.

1. Manufactured homes shall be anchored in accordance with Subsection (1)b above.

2. All manufactured homes that are to be placed or substantially improved within Zones A1-30, AH and AE on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

3. All manufactured homes which are to be placed or substantially improved on sites in existing manufactured home parks or subdivisions within zones A1-30, AH and AE that are not subject to the provisions of Subparagraph 2 above shall be elevated so that either (i) the lowest floor of the manufactured home is at or above the base flood elevation, or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than thirty-six (36) inches in height above grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Prior code 15.16.160; Ord. 3-1990 §§12, 13)

Sec. 18-179. Floodways.

Located within areas of special flood hazard established in Section 18-169 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) If Subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 18-178. (Prior code 15.16.170)

Secs. 18-180—18-200. Reserved.

ARTICLE X

Liability

Sec. 18-201. Liability.

The adoption of this Chapter, and the various building, technical and fire codes provided for herein, shall not create any duty to any person with regard to the enforcement or nonenforcement of this Chapter or said codes. No person shall have any civil liability remedy against the Town, or its officers, employees or agents, for any damage arising out of or in any way connected with the adoption, enforcement or nonenforcement of this Chapter or said codes. Nothing in this Chapter or in said codes shall be construed to create any liability, or to waive any of the immunities, limitations on liability, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq*., C.R.S., or to waive any immunities or limitations of liability otherwise available to the Town, or its officers, employees or agents. (Ord. 9-1993 §5)

Secs. 18-202—18-220. Reserved.

ARTICLE XI

Fences and Walls

Sec. 18-221. Intent.

The intent of the provisions contained in this Article is to set forth reasonable regulations governing the appearance, location, type and maintenance of fences and walls so as to promote their appearance and safety and their conformity with zoning standards applicable to the zone district in which they may be situated. (Ord. 4 §1, 2012)

Sec. 18-222. Definitions.

As used in this Article, the following terms shall have the meanings provided below:

Fence means a man-made barrier constructed or installed to demarcate or create a boundary, partition or enclosure, whether solid or otherwise, and/or used to protect, confine, screen or conceal and includes, without limitation, freestanding walls and retaining walls.

Retaining wall means a man-made wall or similar barrier usually constructed at a grade change to contain or restrain the lateral force of adjacent or uphill soil or other material so as to prevent slumping, sliding, erosion or falling.

Screening wall means a fence designed, installed and/or intended to block or obscure observation or vision. (Ord. 4 §1, 2012)

Sec. 18-223. Permits; exemptions.

(a) The installation or construction of fences six (6) feet or less in height shall not require a fence or building permit. Except as otherwise provided in this Section, fences in excess of six (6) feet in height, or retaining walls in excess of forty-eight (48) inches in height, shall require a building permit. Every landowner or person installing a fence or retaining wall along a lot line or other property boundary shall confirm the accurate location of the lot line or other property boundary prior to the installation of such fence or wall. No fence or wall shall be installed across a property line without the notarized, written consent of the owner of the abutting property.

(b) Notwithstanding the provisions of Subsection (a) above, no fence or building permit shall be required for the following types of fences except as otherwise specified below:

(1) A seasonal or temporary fence, regardless of height, constructed of lightweight wire, vinyl- or plastic-coated wire, cloth-like fabric or similar lightweight material which is installed immediately adjacent to a garden, ornamental tree or other landscaping for the sole purpose of preventing damage from grazing wildlife.

(2) Temporary fences used to secure or protect construction sites or open excavations. Such fences shall be six (6) feet in height unless a taller fence is necessary to safely secure the site.

(3) Temporary fences used to contain, direct or control crowds at outdoor events.

(4) Temporary fences constructed of wood, vinyl, plastic or cloth-like fabric and installed during the winter snowfall season for snow control.

(5) Open-mesh chain-link fences to a maximum height of ten (10) feet installed by a school or government agency on school or other publicly owned or managed land to demarcate, enclose or protect playing fields or equipment (including baseball field fencing and/or walls), outdoor pools, parks or playgrounds or mechanical equipment; except that fences in excess of six (6) feet in height shall be required to obtain a building permit.

(c) Building permits for fences over six (6) feet shall be issued by the Building Official or such other officer designated by the Town Administrator to enforce the provisions of this Article.

(d) Appeals from any administrative decision entered under the terms of this Article, including a denial of a permit, shall be made to the Building Board of Appeals in accordance with Article I of this Chapter. (Ord. 4 §1, 2012)

Sec. 18-224. Fencing materials; prohibitions.

The following regulations shall apply to all fences, regardless of the zone district in which they are located:

(1) Fences and screening walls shall be constructed from durable, low-maintenance materials. Acceptable fence materials shall include:

a. Masonry (brick) with stucco or other acceptable finish, or constructed masonry units with an indigenous pattern or finish.

b. Stone or rock.

c. Wood from milled lumber that is pressure-treated or milled, or treated native wood; except that slab lumber shall not be acceptable without special review of the construction details.

d. Wrought iron and other manufactured metal.

e. Chain-link fence constructed with round metal posts and top rail (color shall be dark or natural, if coated).

f. Other alternative materials that can withstand exposure to the weather, subject to review and approval by the Building Official or such other officer designated by the Town Administrator to enforce the provisions of this Article.

(2) Live vegetation hedges may be used in place of a fence or wall where appropriate or desirable and do not require a building permit if they exceed six (6) feet in height. No live vegetation shall be installed so as to block or obstruct vision within a sight distance triangle defined in Section 16-4 of this Code.

(3) Barbed wire, razor wire or concertina wire fences, electrified fences and fences with embedded glass shards or utilizing sharp protrusions are prohibited unless required for security purposes by a government agency. These fences shall be authorized pursuant to the procedures set forth in Subsection 18-225(c) below regarding administrative special fence permits.

(4) No fence, hedge or wall shall be installed closer than eighteen (18) inches to the closest edge of a public trail. (Ord. 4 §1, 2012)

Sec. 18-225. Construction standards for fences and screening walls; required screening.

(a) Residential districts. Except as otherwise provided elsewhere in this Code, the following height and construction standards shall apply to all fences and screening walls in residential zone districts:

(1) Fences in a front, side or rear yard setback that abuts a public street (excluding public alleys) shall not exceed a height of forty-two (42) inches except if authorized by a special fence permit for a demonstrated unique security need.

(2) Fences in rear yards and fences in side yards extending up to the front yard setback line shall not exceed a height of six (6) feet. Any portion of a side yard fence extending beyond a front yard setback line shall not exceed a height of forty-eight (48) inches.

(3) Notwithstanding any other provision in this Section, any fence or live vegetation hedge located within a sight distance triangle defined in Section 16-4 of this Code shall not exceed a height of thirty-six (36) inches, and any fence so located shall not be installed or be of a type or design that blocks or obstructs vision within a sight distance triangle.

(4) Fencing enclosing or protecting an athletic court (e.g., tennis court) may exceed six (6) feet in height subject to the issuance of a building permit under the Town's building code.

(5) In addition to the regulations set forth in this Subsection (a), multifamily properties located in residential districts shall be subject to the regulations contained in Subsection (b) below.

(6) All fences not classified as temporary fences shall be securely and permanently installed into the ground to prevent the fence from leaning or falling down.

(b) Nonresidential districts. Except as otherwise provided elsewhere in this Code, the following height and construction standards shall apply to all fences and screening walls in nonresidential (i.e., business and industrial) zone districts and on multifamily properties regardless as to zone district:

(1) Fences used or required for purposes other than for screening (e.g., security or boundary fences) shall not exceed eight (8) feet in height, except if authorized by special fence permit for a demonstrated unique security need, and no fence shall be installed or be of a type or design so as to block or obstruct vision within a sight distance triangle defined in Section 16-4 of this Code. All fences in excess of six (6) feet in height shall require a building permit.

(2) Trash and refuse collection areas on nonresidential or multifamily properties shall be enclosed on not less than three (3) sides with a six-foot-high solid wood or masonry screening wall, styled and colored to match or correspond with the material and color of any adjacent primary building wall.

(3) No screening fence or wall utilized to screen stored or other materials shall be constructed within fifteen (15) feet of a residential property or zone district boundary line, and no screened material shall be stored or stacked so as to exceed the height of the screening.

(4) Screening fences and walls shall be constructed of materials and installed in such a manner as to create a completely opaque screen through which no portion or silhouette of the material and/or items being screened are visible (except that five percent [5%] open space resulting from shrinkage is allowed). Chain-link and/or wire fencing equipped with interwoven plastic, wood or metal slats shall not qualify as an appropriate or allowable screening fence.

(5) All fences not classified as temporary fences shall be securely and permanently installed into the ground to prevent the fence from leaning or falling down.

(c) Administrative special fence permit. The Town Administrator may grant a permit for fences and walls that do not conform with the restrictions set forth in this Article as follows:

(1) Procedure. The following application review procedure shall be followed:

a. The application shall include a statement justifying the need for the administrative special fence permit, describing any hardship and explaining the benefit gained from the request for the fence or wall.

b. The applicant shall post the property in a conspicuous location for ten (10) days with a sign provided by the Town Administrator. Such sign shall describe the proposal, give directions for submitting comments to the Town Administrator during the ten-day posting period and state that the Town Administrator's decision shall be posted at the same location for ten (10) days after being rendered.

c. In deciding to approve, approve with conditions or disapprove the application, the Town Administrator shall consider relevant comments of all interested parties submitted in writing during the ten-day posting period.

d. The Town Administrator may condition an approval to minimize adverse impacts on adjacent properties or to protect the public health, safety and welfare.

e. The decision of the Town Administrator shall be in writing and delivered to the applicant. If the Town Administrator approves the application, the decision shall be posted in a conspicuous location on the property for ten (10) days on a sign provided by the Town Administrator. Such sign shall describe how an appeal from the decision of the Town Administrator may be filed, provide contact information for obtaining the standards and criteria that will govern the appeal, list the date the decision was posted on the property and state that any appeal must be filed within ten (10) days of the posting.

f. The applicant or any interested party may appeal the Town Administrator's decision by delivering written notice of appeal to the Town Clerk. If the Town Administrator denies the application, the appeal must be filed within ten (10) days of the decision of the Town Administrator. If the Town Administrator approves the application (with or without conditions), the appeal must be filed within ten (10) days of the decision of the Town Administrator being posted on the property. The appeal shall state the specific grounds for the appeal.

(2) Criteria. An administrative special fence permit application shall be approved only if the following findings are made:

a. The proposed fence or wall will not adversely affect traffic safety or reasonable use of adjacent property;

b. If the fence is oversized, in the front setback the portion of the fence above forty-eight (48) inches in height shall be two-thirds (⅔) open over its entire area;

c. The fence is necessary to provide security, privacy or protection from wildlife or traffic impacts, such as noise or lights;

d. The fence does not detract from the safety or pedestrian character of the right-of-way; and

e. The fence is not in any front setback area adjacent to a parkway. (Ord. 4 §1, 2012)

Sec. 18-226. Retaining walls.

(a) All retaining walls shall be designed and constructed and/or installed to resist and contain loads due to the lateral pressure of the material or slope to be retained, in accordance with accepted engineering practices.

(b) The construction and/or installation of a retaining wall in excess of forty-two (42) inches in height shall require a building permit and require that the structural design be certified by a duly registered and licensed professional engineer.

(c) No retaining wall shall be constructed or installed so as to create an unsightly appearance, erosion or scarring. (Ord. 4 §1, 2012)

Sec. 18-227. Swimming pool fences.

All rigidly framed or noninflatable above-ground pools exceeding eighteen (18) inches in depth and all below-ground swimming pools, excepting portable hot tubs and inflatable or other similar temporary pools that are filled by a hose, shall be completely enclosed by a fence not less than four (4) feet in height with openings not wider than four (4) inches unless the yard or site in which the pool is situated is already fully enclosed by a fence at least four (4) feet in height. All gates shall be equipped with child-resistant, self-latching and self-closing devices that are located no lower than forty (40) inches above grade. (Ord. 4 §1, 2012)

Sec. 18-228. Fence maintenance standards.

(a) All fencing shall be maintained in a structurally safe and visually acceptable manner. For purposes of this Section, *visually acceptable manner* shall mean, without limitation, that the paint, if any, on a fence is not peeling or excessively chipped or faded; that rot, rust or corrosion is not prominent or severe; that slats, bricks, stones, wire, posts or other fence material or equipment are not broken or missing; and/or that the fence is not leaning or falling down. Vegetation growing on or supported by a fence shall be maintained in a healthy condition and shall be regularly pruned and trimmed so as to prevent the deterioration, collapse or other structural failure of the fence.

(b) Dilapidated, broken, unsightly, structurally unsound or unsafe fences shall be removed or repaired upon written notice served by the Town on the owner. The notice shall specify the nature of all repairs or replacements needed to be undertaken and a reasonable time period by which such repairs or replacements shall be completed. The notice may be served by regular or certified mail or by hand delivery. (Ord. 4 §1, 2012)

Secs. 18-229—18-250. Reserved.

ARTICLE XII

Fuel Gas Code

Sec. 18-251. Adoption of International Fuel Gas Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted as the fuel gas code of the Town, Chapters 1 through 8 and Appendices A and B of the International Fuel Gas Code, 2006 Edition, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular; provided, however, that such code is amended by the changes set forth in Section 18-252 below. (Ord. 7-2007 §9)

Sec. 18-252. Amendments and deletions.

The International Fuel Gas Code adopted by the Town pursuant to Section 18-251 above is amended with respect to the following sections or provisions:

(1) Section 101.1 is amended by adding:

"…Fuel Gas Code of the Town of Buena Vista, Colorado…"

(2) Section 303.3, Prohibited locations, is amended by adding:

"…except with prior approval of the building official and where…"

(3) Section 310.1, Gas pipe bonding, is amended in its entirety to read:

"As required by the 2005 National Electrical Code."

(4) Section 403.5.2, Copper and brass tubing, is amended in its entirety to read:

"Copper tubing, fittings or pipe shall not be installed downstream of the riser."

(5) Section 404.4, Piping through foundation wall, shall be amended by adding:

"Gas piping shall daylight immediately prior to penetrating the foundation."

(6) Section 503.8. 3. is amended to read:

" … The bottom of the vent terminal and air intake shall be located at least 18" above grade."

(Ord. 7-2007 §9)

Sec. 18-253. Copy on file.

At least one (1) true and certified copy of the code adopted in this Article shall be filed and maintained in the office of the Town Clerk for public inspection during regular business hours.

Copies of such code shall also be made available for copying or purchase by the public at a reasonable cost. (Ord. 7-2007 §9)

Sec. 18-254. Violations and penalties.

It shall be unlawful for any person, owner, occupant or contractor to erect, construct, enlarge, alter, repair, move, improve, remove, rehabilitate, convert, demolish, use, occupy, equip or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of any of the provisions of this Article and the Town's fuel gas code or regulations. Violations of this Article and/or the fuel gas code shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. A separate offense shall be deemed committed for each day, or portion of a day, that a violation of this Article occurs or continues unabated. (Ord. 7-2007 §9)

Sec. 18-255. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update from time to time a permit fee schedule, taking into consideration the time and cost to the Town in reviewing applications and plans for any usage to which this fuel gas code is applicable and for inspections thereof. All fees established by the Town Administrator must be approved by resolution by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at the Town Hall. (Ord. 7-2007 §9)

Secs. 18-256—18-270. Reserved.

ARTICLE XIII

Existing Building Code

Sec. 18-271. Adoption of International Existing Building Code.

Pursuant to Title 31, Article 16, Part 2, C.R.S., there is hereby adopted as the existing building code of the Town, Chapters 1 through 15 and Appendices A and B of the International Existing Building Code, 2006 Edition, published by the International Code Council, Inc., 500 New Jersey Avenue, N.W., Sixth Floor, Washington, D.C. 20001, to have the same force and effect as if set forth herein in every particular; provided, however, that such code is amended by the changes set forth in Section 18-272 below. (Ord. 7-2007 §10)

Sec. 18-272. Amendments and deletions.

The International Existing Building Code adopted by the Town pursuant to Section 18-271 above is amended with respect to the following sections or provisions:

(1) Section 101.1 is amended by adding:

" … Existing Building Code of the Town of Buena Vista, Colorado … "

(Ord. 7-2007 §10)

Sec. 18-273. Copy on file.

At least one (1) true and certified copy of the code adopted in this Article shall be filed and maintained in the office of the Town Clerk for public inspection during regular business hours. Copies of such code shall also be made available for copying or purchase by the public at a reasonable cost. (Ord. 7-2007 §10)

Sec. 18-274. Violations and penalties.

It shall be unlawful for any person, owner, occupant or contractor to erect, construct, enlarge, alter, repair, move, improve, remove, rehabilitate, convert, demolish, use, occupy, equip or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of any of the provisions of this Article and the Town's existing building code or regulations. Violations of this Article and/or the existing building code shall be punishable by a fine not to exceed one thousand dollars ($1,000.00) or a term of imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. A separate offense shall be deemed committed for each day, or portion of a day, that a violation of this Article occurs or continues unabated. (Ord. 7-2007 §10)

Sec. 18-275. Fees.

Every permit issued under this Article shall be subject to the full and timely payment of a fee. The Town Administrator shall establish and update from time to time a permit fee schedule, taking into consideration the time and cost to the Town in reviewing applications and plans for any usage to which this existing building code is applicable and for inspections thereof. All fees established by the Town Administrator must be approved by resolution by the Board of Trustees. The Town Administrator shall prominently post and otherwise make available to interested persons copies of the fee schedule at the Town Hall. (Ord. 7-2007 §10)

Secs. 18-276—18-290. Reserved.

ARTICLE XIV

Construction of Hangars at the Buena Vista Municipal/Central Colorado Regional Airport

Sec. 18-291. Intent.

These standards shall be known as the Airport Hangar Construction and Design Standards as cited in the Airport Layout Plan. The purpose of these design standards is to ensure consistent high-quality construction and to protect and enhance the investment of all those locating within the Airport Layout Plan area. These standards provide a basis for directing and evaluating the planning and architectural design of improvements to each hangar lot. (Ord. 7 §2, 2009)

Sec. 18-292. Applicability.

As a condition of all ground leases and subleases, tenants shall comply with all local codes, ordinances and regulations enacted by the Town as well as all applicable rules and regulations of the Federal Aviation Administration (FAA). The Airport Manager must give prior written approval for any of the work items listed below. If emergency work is necessary to protect or minimize further damage to the improvements or building contents, the emergency work may be completed and notification provided to the Airport Manager as soon as possible after the fact. Upon notification, the tenant is responsible to provide to the Airport Manager a written description of the work conducted or a set of plans of the work that was completed.

(1) New hangar construction.

(2) Additions, remodeling or structural alterations.

(3) Demolition of hangars.

(4) Boring under or open cutting of leasehold driveways, taxi lanes or access roads.

(5) New or replacement water and sanitary sewer services.

(6) Outdoor signs, permanent or temporary, and replacement signs.

(7) Fencing.

(8) Reroofing.

(9) Filling, grading or excavation on leasehold property. (Ord. 7 §2, 2009)

Sec. 18-293. Development review process.

The following review process applies to Section 18-292 above. All submittals shall be sent to the Airport Manager for completeness review prior to submittal to the Airport Design Review Committee (DRC) for final review and approval.

(1) Plan submittal. The tenant shall submit five (5) copies of a plan for construction. The plan shall include a written description of the proposed development, site plans, structural plans, material specifications and an estimated time frame for completion. The contents of the final plan package will depend upon the type and extent of construction. Drawings shall be twenty-two (22) inches by thirty-four (34) inches unless previously approved by the DRC.

(2) Plan revisions (if required). If the Airport Manager requests plan revisions after the preliminary review of the construction plan package, the tenant must complete the plan revisions and forward five (5) copies to the Airport Manager for final review before plans are forwarded to the DRC for further consideration.

(3) Approval.

a. Airport Design Review Committee. The Board of Trustees has appointed an Airport Design Review Committee (DRC) to govern the approval process for future development and redevelopment on the Municipal Airport. Prior to any improvements occurring, the DRC will review and approve plans and specifications of any development. The DRC shall consist of the members of the Airport Board as appointed by the Board of Trustees.

b. Processing requirements of the Airport Design Review Committee.

1. Preapplication meeting. The applicant will meet with the Airport Manager to determine how best to facilitate the project.

2. Application submittal. Following submittal of plans revised during preliminary review by the Airport Manager, the DRC will review, as soon as possible but no more than thirty (30) days from the date of revised submittal, and approve or deny the application. All applications will be evaluated based upon the Airport Hangar Construction and Design Standards and comments/recommendations of the Airport Engineer.

Upon complete approval of the final plan package by the DRC, the Airport Manager will send an approval letter to the tenant and the Planning Department. This letter is required prior to issuance of construction permits.

Appeals of any decision of the DRC may be made to the Board of Trustees as provided in Article I of this Chapter.

(4) FAA approval.

a. For any construction or alteration of buildings on airport property, the tenant must submit an FAA Form 7460-1, Notice of Proposed Construction or Alteration, for review and approval. The submittal must include information on building locations, crane or equipment heights and whether the construction and/or equipment are permanent or temporary. A copy of the original 7460-1 shall be submitted to the Airport Manager, who will forward it to the FAA. Construction will not be allowed to start until the FAA has approved the Form 7460-1 submittal. Applicants should anticipate a minimum of thirty (30) to ninety (90) days for the FAA to review Form 7460-1. Copies of the FAA Form 7460-1 are available from the Airport Manager's office.

b. When hangar construction or alteration begins, FAA Form 7460-2, Notice of Actual Construction or Alteration, should be submitted to the Airport Manager, who will forward it to the FAA.

c. Any construction or alteration of hangars is subject to FAA inspection before, during and following construction. (Ord. 7 §2, 2009)

Sec. 18-294. Permitting and construction.

(a) A building permit is not required for Airport DRC approval of a tenant's plans. However, a tenant is required to obtain a building permit prior to beginning construction. Copies of all permits

obtained from local municipalities and/or any other appropriate jurisdictions must be submitted to the Airport Manager prior to starting construction.

(b) Copies of all structural plans, site plans and materials specifications shall be provided to the Town for review and approval prior to the issuance of a building permit. The County will review the plans for compliance with all applicable building codes under a separate review.

(c) The Town or its agent shall make inspections during construction of any approved building. No changes to or variations from approved plans and specifications shall be permitted unless approved in writing by all reviewing agencies.

(d) Construction of any approved structure or material component thereof may not commence until the following documents or proofs thereof are provided to the Town for review and approval:

(1) Contractor's comprehensive general liability insurance and automobile liability insurance policies in an amount not less than seven hundred fifty thousand dollars ($750,000.00) for injuries, including accidental death, to any one (1) person and subject to the same limit for each person, and in an amount of not less than one million five hundred thousand dollars ($1,500,000.00) on account of one (1) occurrence. Contractor's property damage liability insurance shall be in an amount of not less than five hundred thousand dollars ($500,000.00).

(2) Property insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interest of the lessee, the contractor and subcontractors in the work, shall insure against perils of fire and extended coverage and shall include an "all risk" insurance for physical loss or damage, including, without duplication of coverage, theft, vandalism and malicious mischief.

(3) A performance, material and labor payment bond payable to the Town in an amount equal to the entire cost of the project. A one-year maintenance bond equal to ten percent (10%) of the amount of the performance, material and labor payment bond shall be required upon substantial completion of the work.

(4) Any failure on the part of the lessee to comply with Town requirements or any failure to complete a construction project according to the approved plans and specifications or within a reasonable time as determined by the Town shall be cause for the Town to revoke any ground lease with the lessee of the project and require that the structure be removed from the airport property. In addition to the foregoing remedies, the Town shall retain all other remedies provided by the lease terms or applicable law.

(5) All electrical and plumbing elements shall be installed by a licensed contractor. (Ord. 7 §2, 2009)

Sec. 18-295. Design standards.

The following are the design standards for all construction at the Buena Vista Municipal Airport:

(1) Exterior.

a. All exterior surfaces shall be of prefinished aluminum, steel, decorative masonry or precolored laminate. No painted wood, unfinished materials or excessive glass walls will be permitted. No damaged materials will be allowed.

b. All exterior colors and materials shall be of neutral tones and colors and must be submitted for review and approval by the DRC.

c. The front, rear and all sides of all buildings shall be of compatible design and aesthetics.

d. All roofs shall be metal or cement tile and match the exterior type.

e. Building materials shall not cause glare or reflections that will interfere with flight operations, airport operations or ground circulation.

f. All new construction shall be of high quality and utilize material and finishes which will have a minimum twenty-year warranty.

(2) Floor construction. All floors must be constructed of concrete.

(3) Doors. Bi-fold doors are recommended because of their ease of operation. Approved swing-out, overhead or sliding doors may also be used. All pedestrian doors must be of prefinished metal or fiberglass construction in metal jambs. No wood doors or jambs will be permitted on exterior access areas. The minimum width of any pedestrian door shall be no less than thirty-six (36) inches except doors embedded in bi-fold doors.

(4) Grading. Grading must be designed with consideration given to the existing drainage of the building area. No site will be developed and no use permitted that will result in water runoff causing ponding, flooding, erosion or deposit of minerals on adjacent property. Drainage shall not negatively impact adjacent properties and shall flow into the airport's natural or developed drainage. Drainage from roofs shall not cause erosion or affect adjacent properties. Plan submittal shall include a drainage plan that will require review and approval of the DRC.

(5) Sanitary sewer and water connections.

a. If tenants choose to have sanitary sewer and water available at their hangar, they must connect to available sanitary sewer and water system.

b. Tenants who connect to the public sanitary sewer and water system are responsible for all costs associated with the installation and maintenance of their connection from the utility lateral line to their hangar.

(6) Exterior lighting. Lighting shall be shielded to prevent discharge of illumination, light scatter or source glare above a horizontal plane and to eliminate glare for aircraft pilots. Lighting shall also be mounted to minimize glare to pilots of aircraft and personnel on surrounding taxiways, taxi lanes and aprons. Plan submittal shall include exterior lighting information.

(7) Landscaping. For commercial hangars where water is available and landscaping is desired, a landscaping plan is required with the final plan submittal for review and approval by the DRC, Town Water Department and other appropriate referral agents (i.e., Airport Engineer). No

trees, berry-producing shrubs or other vegetation that provides cover and reproductive habitat for wildlife shall be allowed. Any grasses planted are the responsibility of the tenant to keep mowed and trimmed so as to minimize the provision of cover and concealment for wildlife.

(8) Signage. Except as modified by the provisions that follow, signs at the airport shall comply with the applicable Town Sign Code, Section 16-242 of this Code.

a. Signs, if installed, shall be installed at a height visible to taxiing pilots.

b. Illuminated signs shall be backlit, not by floodlight, and approved as a special use as required by Subsection 16-242(h) of this Code.

c. Signs may be mounted on the side of a building or over doors.

d. Signs must conform to the Town code for signage in I-1 zoning districts.

e. All buildings shall post occupant identification and emergency contact information. (Ord. 7 §2, 2009)

Secs. 18-296—18-310. Reserved.

CODE COMPARISON TABLE

Prior Code	New Code
1.01.010	Deleted
1.01.020	Deleted
1.01.030	Deleted
1.01.040	Deleted
1.01.050	Deleted
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15.04.040 ..... Deleted
15.06. ..... R. Ord. 9-1993
15.06.040 ..... Deleted
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15.16.070 18-169
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