TOWN OF BENNETT

LAND USE CODE

ADOPTED December 9, 2014

Effective Date: January 20, 2015

CHAPTER 16

Land Use and Development

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ARTICLE I

General Provisions

Division 1
Purpose and Applicability

Sec. 16-1-10. Title.

This Chapter shall be known as the *Bennett Land Use Code* or *this Chapter* and may be so cited.

Sec. 16-1-20. Effective date.

This Chapter will be in full force and effective upon adoption.

Sec. 16-1-30. Authority and jurisdiction.

(a) This Chapter is adopted pursuant to the authority contained in state statutes. Authority is granted to municipalities to establish a Planning Commission and to regulate subdivisions (Sections 31-23-202 and 31-23-214, C.R.S.); to regulate land use (Section 29-20-101, et. seq., C.R.S.) and zoning (Section 31-23-3, C.R.S.); to provide for planned developments (Section 24-67-101, et. seq., C.R.S.); to provide for vesting of property rights (Section 24-68-101, et. seq., C.R.S; to prohibit or regulate nuisances and to enforce its major street plan within three (3) miles of its boundaries (Sections 31-15-401—31-15-601, C.R.S., and Sections 31-23-212 and 31-23-213, C.R.S.); to adopt a comprehensive plan; and to generally plan for and regulate the use of land.

(b) Whenever a section of state statutes that is referred to in this Chapter is later amended or superseded, this Chapter is deemed amended to refer to the amended section or section that most nearly corresponds to the superseded section.

Sec. 16-1-40. Applicability.

(a) The provisions of this Chapter shall pertain to all land and buildings within the boundaries of the Town. No person shall use, develop or subdivide any tract of land which is located within the Town except in conformity with the provisions of this Chapter.

Sec. 16-1-50. Purpose.

The purpose of this Chapter is to protect the health, safety and general welfare of present and future inhabitants of the Town, and to:

(1) Implement the Town's goals, policies, plans, and programs to preserve and enhance the quality of life of its citizens and to promote economic vitality of its businesses;

(2) Promote superior land use, design and design flexibility;

(3) Support the development of Bennett as a model healthy community of interconnected employment and neighborhood centers;

(4) Maintain and enhance a quality residential environment in the Town;

(5) Provide a diversity of housing types at various densities;

(6) Enhance the sales tax and employment base of the Town by attracting and retaining commercial and industrial development;

(7) Provide adequate services and facilities to support existing and projected areas of population and growth;

(8) Promote logical extensions of and efficient use of the Town's infrastructure;

(9) Protect and preserve the rural nature of open lands;

(10) Provide a safe, efficient and connected multi-modal transportation network;

(11) Ensure that the fiscal impact of subdivision and development is borne by those parties who receive the benefits therefrom.

(12) Support programs and help provide facilities that meet the recreational, cultural, public safety and educational needs of the community;

(13) Promote cooperation and coordination in planning and growth management between the Town and neighboring jurisdictions.

(14) To regulate such other matters as the Planning Commission and Town Board may deem necessary in order to protect the best interest of the public and of private property ownership.

Sec. 16-1-60. Severability.

(a) It is hereby declared to be the intent of the Town that the sections, paragraphs, sentences, clauses and phrases of this Chapter are severable. If any one (1) of these is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, the remainder of this Chapter shall not be affected and will remain valid and in effect.

(b) If the application of any provision of these regulations to any tract of land shall be adjudged invalid, the same shall not affect, impair or invalidate these regulations or the application of any provision thereof to any other tract of land.

Sec. 16-1-70. Interpretation.

(a) In interpreting and applying the provisions of this Chapter, such provisions shall be held to be the minimum requirements for the promotion of public health, safety, morals, convenience and general welfare. It is not intended by this Chapter to interfere with or to annul any easements, covenants or agreements between parties. However, whenever this Chapter imposes greater requirements than are imposed or required by other laws or resolutions or by easements, covenants or agreements between parties, the provisions of this Chapter shall govern.

(b) Where any provision of this Chapter imposes more stringent requirements, regulations, restrictions or limitations than are imposed or required by any other ordinance or by state statutes, the provisions of this Chapter shall govern.

(c) In case of a conflict between this Chapter and any private restrictions imposed by covenant or deed, the responsibility of the Zoning Administrator shall be limited to the enforcement of this Chapter.

Sec. 16-1-80. Rules of construction.

(a) The word *shall* is mandatory and not discretionary.

(b) The word *may* is optional and discretionary.

(c) The word *lot* shall include the words *building site*, *site*, *plot* or *tract*.

(d) A building or structure includes any part thereof.

Sec. 16-1-90. Conformity with Comprehensive Plan.

All applications for development approval, including but not limited to site plans, conditional use permits and subdivision plats, shall be evaluated in relation to its conformance with the policies and embodied within the Comprehensive Plan and all applicable special area plans or master plans.

Division 2
Definitions

Sec. 16-1-210. Definitions.

Questions of definition or working usage shall be interpreted by the Zoning Administrator based on the context of their usage and the intent of the section of the Article in which they occur. For the purposes of this Chapter, the words and phrases used in this Article shall have the meanings defined below unless otherwise specifically provided or unless clearly required by the context.

Abutting land means a parcel of land that has a common property line with another parcel of land.

Adjacent property means any property which abuts any property line of the property under review, or lies on the opposite side of an intervening public right-of-way.

Adult business means any establishment which has the principal purpose of the following: offering books or other printed material, pictures, movies, novelties or activities of a sexual nature; or includes persons who appear in a state of nudity or with exposed breasts or genitalia. Such establishments shall include adult bookstores, adult X-rated motion picture theaters, adult cabarets, topless bars or restaurants, massage parlors and any other uses of the same general character.

Ancillary utility structures and equipment buildings means equipment, including buildings and cabinets, used to protect and enable operation of radio switching equipment, backup power and other devices, but not including antennas, that is necessary for the operation of telecommunication facilities.

Annexation agreement means a contract between a petitioning landowner and the Town in connection with the annexation of land into the Town. An annexation agreement may include provisions for zoning of the property, the physical development of the property, the timing of development, dedications associated with annexation, the allocation of the cost of required public improvements and services and/or other matters relating to the public interest.

Appeal means a request for review by the Board of Adjustment of an administrative interpretation of this Chapter or a request for review by the Board of Trustees of a decision of the Zoning Administrator, as the context requires.

Applicant means any entity, including an individual, partnership, corporation, association, company or public body (including the federal government), or any political subdivision, agency, corporation or instrumentality of the State legally entitled to request an approval pursuant to this Chapter.

Applicant Guide means a document adopted by resolution of the Board of Trustees that details the application requirements for submittals associated with this Chapter.

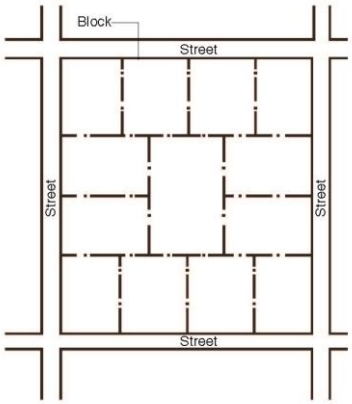
Architectural features means any physical projection or feature that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, including cornices, eaves, sills, box or bay windows, fireplaces, roof overhangs, mansards, unenclosed exterior balconies, marquees, canopies, pilasters and fascias, but not including signs.

Awning means a fixed or movable shelter supported entirely from the exterior wall of a building.

Beacon light means a tower with a light that gives warning.

Block means a group of lots existing within well-defined and fixed boundaries within a subdivision and usually being an area surrounded by streets or other features such as parks, rights-of-way or municipal boundary lines. See Figure 1-1.

Figure 1.1



*Board of Adjustmen*t means a special review board operating under the authority of this Chapter for purposes of hearing and deciding appeals or variances to this Chapter.

Buffer means a strip of land established to:

a. Separate and protect one (1) type of land use from another;

b. Screen one (1) type of land use from objectionable noise, odor, smoke or visual impact; or

c. Provide additional open space.

Building means a structure having a roof supported by columns or walls that is designed, built or occupied as a shelter or enclosure for persons, animals or property.

Building Official means the Chief Building Inspector for the Town, as defined in the currently adopted edition of the Building Code.

Comprehensive Plan means the Comprehensive Plan of the Town as it may be amended from time to time.

Cul-de-sac means a short street having only one (1) end open to traffic and being terminated at the other end by a vehicular turnaround.

Curb cut means a driveway cut through the curb allowing the passage of vehicles.

Curfew means a time by which exterior lighting must be reduced to a specified maximum level or extinguished.

Dedication means the process by which private property is transferred to a public entity for a public use.

Development means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

Development agreement means a contract between a developer and the Town in connection with any discretionary development approval, including, without limitation, rezoning, subdivision and/or PD approval.

Drainage area means an area that is tributary to or conveys water into a watercourse or drainage way.

Drainage study means a document prepared in accordance with the drainage requirements of the Town, which analyzes all drainage features of the land and proposed development in sufficient detail to complete construction plans for all project drainage structures, including grading details, street grades and offsite facilities, as appropriate.

Drainage way means the bed or channel of a creek, canal, swale, gulch or other area where surface water flows which, in most cases, is natural in origin rather than man-made.

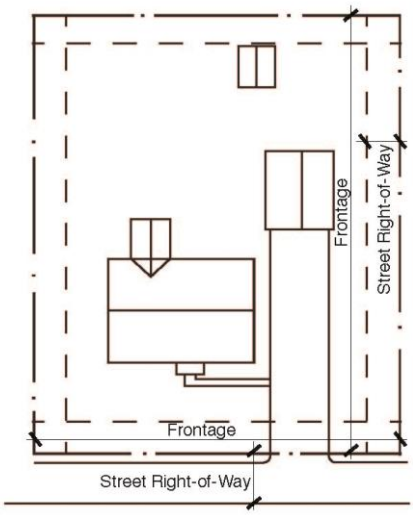
Driveway means a paved or unpaved area used for the ingress and/or egress of vehicles, and allowing access from a street to a building or other structure or facility.

Easement means a right of use over, under, across or through the property of another.

Existing building or *improvement* means a building or improvement that is existing or for which construction is at least thirty percent (30%) complete at the time the underlying property is initially zoned or rezoned.

Frontage means all sides of a lot adjacent to a street. See Figure 1-2.

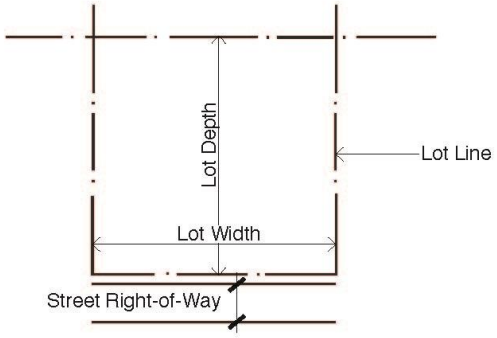
Figure 1.2



Lot means a single parcel of land occupied or to be occupied by a building and its accessory buildings, together with such open spaces as are required under this Chapter.

Lot area means the total square footage or acreage contained within the boundaries of an individual lot. See Figure 1-3.

Figure 1.3

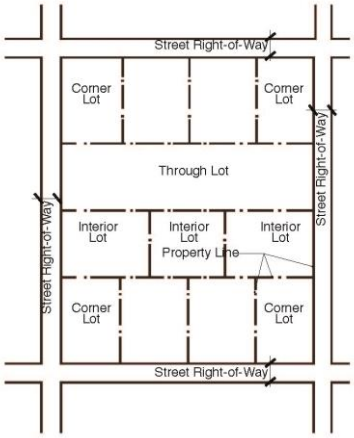


Lot, corner means a lot that has at least two (2) adjacent edges abutting a street. See Figure 1-4.

Lot, interior means a lot with both side lot lines abutting other lots. See Figure 1-4.

Lot line means a property line bounding a lot. See Figure 1-3.

Figure 1.4



Lot, reverse corner means a corner lot having its side street line substantially a continuation of the front lot line of the first lot to its rear.

Lot, through means an interior lot with at least two (2) nonadjacent edges abutting a street. See Figure 1-4.

Lot width means the width of a lot measured along the front setback line. See Figure 1-3.

Lot, zone means a platted lot or a combination of contiguous lots that are intended for a single permitted use and that are considered to be a single lot for the purposes of complying with zoning requirements.

Nonconforming sign means any sign that was legally established prior to the effective date of the existing requirements of this Chapter or subsequent amendment thereof, but that fails by reason of such adoption, revision or amendment to conform to all the present requirements of this Chapter.

Nonconforming structure means a building, structure or portion thereof which lawfully existed at the time of the adoption of the applicable Chapter, but which does not conform to the height or setback regulations of the zone in which it is located.

Nonconforming use means a use that was legally established prior to the effective date of this Chapter or subsequent amendment thereof, but that no longer complies with the use regulations that apply within the zoning district in which the use is located.

Open space means any parcel or area of land or water essentially unimproved with any residential, commercial or industrial uses and set aside, dedicated or reserved for public or private use and enjoyment, including recreational, scenic or environmental purposes. Open space may include agricultural uses and natural features located on a site, including but not limited to meadows, forested areas, steep slopes, floodplains, hazard areas, unique geologic features, ridgelines, unique vegetation and critical plant communities, stream corridors, wetlands and riparian areas, wildlife habitat and migration corridors, areas containing threatened or endangered species and archeological, historical and cultural resources, drainage, detention/retention ponds and required open space and setbacks pursuant to this Chapter.

Open space, common means open space within or related to a development, not individually owned or dedicated for public use but generally owned and maintained by a homeowners' association, that is designed and intended for the common use or enjoyment of the residents of the development and their guests, and may include such complementary structures and improvements as are necessary and appropriate. Common open space may include trail areas, gardens, small parks, scenic areas, buffer areas or similar common areas. Common open space may also include active recreational facilities such as pools, tennis courts, playgrounds and clubhouses. Common open space shall not include driveways, sidewalks and parking areas.

Open space, unobstructed means a landscaped or natural area upon which no structure may be erected or surface area utilized for storage or for vehicular movement or parking.

Performance guarantee means any form of financial guarantee such as a cash deposit, letter of credit or other financial instrument in a form and amount satisfactory to the Town, which is submitted for the purpose of assuring the satisfactory completion of a required improvement.

Person means an individual, partnership, corporation, limited liability company, association, municipality or any other legal entity, public or private.

Petitioner means a person owning an undivided interest in fee of a parcel of land, including a corporate owner, who has signed a petition for annexation of such land to the Town pursuant to Section 31-12-107(1), C.R.S., or a registered elector of the Town who has signed a petition for an election with respect to the annexation of land to the Town pursuant to Section 31-12-107(2), C.R.S.

Planning Commission means the Planning and Zoning Commission of the Town.

Plat, final means a map of a land subdivision prepared in a form suitable for filing of record with necessary affidavits, dedications and acceptances, and in conformance with the requirements of this Chapter.

Porch means a porch or deck, roofed or unroofed open structure projecting from the front, side or rear wall of a building. A porch is considered a part of the principal building and is not permitted to extend into any required building setback.

Principal building means the primary structure located on a lot and designed for a use or occupancy by a permitted principal use in the applicable zoning district.

Property line means the legally described boundary line that indicates the limits of a parcel, tract, lot or block for the purpose of delineating ownership and setback requirements.

Public improvements means rights-of-way, easements, access rights and physical improvements that are accepted by the Town in writing and that become the responsibility of the Town for ownership, maintenance and repair. Unless otherwise provided by this Chapter, public improvements include, but are not limited to, the following: curb and gutter, asphalt pavement, concrete pavement, streets of all types, alleys, survey monuments, pavement striping, sidewalks, pedestrian/bike paths and trails, landscaping, traffic signals, street lights, highways, greenways, rights-of-way, easements, access rights, construction plans, medians, bridges, acceleration and deceleration lanes, culverts, storm drainage facilities, including necessary structures, channels, water lines, sanitary sewer lines, and all other improvements which, upon acceptance by the Town, are intended to be for the use of and enjoyment of the public.

Roofline means the highest point on any building where an exterior wall encloses usable floor area, including floor area provided for housing mechanical equipment.

Roof pitch means the incline slope of a roof or the ratio of the total rise to the total width of a building; i.e., a one-foot rise and three-foot run is a 1:3 pitch roof. Roof slope is expressed in the feet of rise per foot of run.

School District means Bennett School District 29J.

Site specific development plan means the final plat of a subdivision or Final Development Plan of a PD (Planned Development) when approved by the Board of Trustees pursuant to Section 16-1-510 of this Chapter.

Street means a public or private right-of-way containing a drivable surface which provides vehicular access to adjacent properties.

Street, arterial means a street which is intended to carry large volumes of vehicular traffic from collector streets within one (1) part of the Town to highways or to collector streets within another part of the Town.

Street, collector means a street which is intended to carry low volumes of vehicular traffic from local streets to an arterial street or highway.

Street, local means a street which is intended to provide access to the front of individual lots and to carry vehicular traffic to a collector street.

Structure means any physical object constructed or made, the use of which requires permanent location on the ground, or attached to something having more or less permanent location on the ground.

Town means the Town of Bennett, Colorado.

Town staff means any authorized employee of the Town, as well as any person or entity which the Board of Trustees or employees of the Town elect to consult.

Tract means a parcel of land created for purposes of sale and future subdivision, or for ownership by an owner's association or government entity without planned future subdivision. A tract shall not be developed until the requirements of this Chapter are met.

Use means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained or occupied; or 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.

Variance or *waiver* means an adjustment or alternative to the required standards, granted with or without conditions, according to the constraints and process defined in this Chapter.

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.

Zoning Administrator means the Town Administrator or designee thereof, who shall be the individual primarily responsible for administration of this Chapter.

Division 3
Administration and Procedures

Sec. 16-1-305. Building permit requirement.

(a) No building or structure shall be erected, constructed, reconstructed, altered, moved or structurally altered unless a building permit has been issued by the Building Official in conformance with the provisions of the Building Code. In addition, no building permit shall be issued and no use shall commence on any land until:

(1) The land has been the subject of a subdivision plat approved by the Town in accordance with Article 4 of this Chapter; and

(2) The use of the land has been approved by the Zoning Administrator

Sec. 16-1-310. Certificate of occupancy requirement.

No building shall hereafter be changed to a residential, business, commercial or industrial use, nor shall any new structure or building be occupied for a residential, business, commercial or industrial use unless the owner has first obtained a certificate of occupancy from the Building Official. Provided that the use is in conformance with the provisions of this Chapter, a certificate of occupancy shall be issued after all final inspections have been approved and all development impact fees have been paid pursuant to Article VIII of Chapter 4 of this Code.

Sec. 16-1-315. Review process.

(a) Table 1-1, the Review Process Chart, establishes the required review steps applicable to different forms of approval. Applicants should refer to the chart to determine which one (1) or more "APPROVAL REQUESTED" under the left-hand column of the chart applies to their proposed development. The required stages of review and the respective approval authority for each approval type are shown on the lines to the right. Submission requirements and the specific review process for each stage are set out in detail in this Chapter, as referenced. Unless otherwise indicated, amendment or modification of a prior approval follows the procedure for review of the original application.

(b) In the event the Planning Commission or other board, commission or staff with authority recommends denial of an application at any stage, the applicant may choose to proceed to the next stage of review or may resubmit the application at the first stage. In the event the review stage is before the Board of Trustees, the application may not be further processed following a denial. An applicant may appeal certain decisions of the Zoning Administrator as specifically set forth in the provisions of this Chapter.

(c) For certain applications where the Zoning Administrator has administrative approval authority (see Table 1.1), a majority of the Board of Trustees may "call up" the application for review of the Zoning Administrator's decision at the next regularly scheduled Board of Trustees meeting. The Zoning Administrator may also choose to "push up" the decision making authority for any administrative action to the Planning Commission and/or the Board of Trustees.

Table 1.1
Review Process Chart

	Pre-App	***Preliminary Review***			***Final Review***				
Approval Requested	***Staff***	***Staff***	***PC***	***TB***	***Staff***	***PC***	***TB***	***BOA***	***Reference/Notes***
Annexation	ZA	ZA		M			H		See Article I, Division 4
Code amendment		ZA				H	H		See Sec. 16-1-360
Conditional use	ZA	ZA				H	H		See Sec. 16-2-330
Development agreement		ZA					M		See Sec. 16-5-710
Development review fee waiver					ZA		CU		See Sec. 16-1-325
PD-ODP	ZA	ZA				H	H		See Sec. 16-2-350
PD-FDP	ZA	ZA					H		See Sec. 16-2-350
PD amendment (ODP/FDP) - Minor					ZA				See Sec. 16-2-350
PD amendment (ODP) - Major	ZA	ZA				H	H		See Sec. 16-2-350
PD amendment (FDP) - Major	ZA	ZA					H		See Sec. 16-2-350
Rezoning	ZA	ZA				H	H		See Sec. 16-2-360
Service plan	ZA						H		See Sec. 16-5-815
Sexually oriented business license (A & B) and manager's license		ZA			ZA				See Section 16-6-305
Sign permit					ZA				See Section 16-3-310
Sign permit - Revocable (R.O.W.)					ZA/ TE				See Section 16-3-310
Site plan	ZA				ZA		CU		See Sec. 16-2-310; appeal to TB
Subdivision: admin. adjustment	ZA				ZA				See Sec. 16-4-330; appeal to TB
Subdivision: boundary line adjustment	ZA				ZA				See Sec. 16-4-340; appeal to TB
Subdivision: major	ZA	ZA	M			H	H		See Sec. 16-4-360
Subdivision: minor	ZA					H	H		See Sec. 16-4-350
Temporary use permit					ZA		CU		See Sec. 16-2-340; appeal to TB
Water rights dedication		ZA					M		See Article V, Division 4

	Pre-App	*Preliminary Review*			*Final Review*				
Approval Requested	***Staff***	***Staff***	***PC***	***TB***	***Staff***	***PC***	***TB***	***BOA***	***Reference/Notes***
Variance/appeal		ZA						H	See Sec. 16-2-370
Vested rights/site specific development plan	ZA						H		See Article I, Division 5

Key:

BOA Board of Adjustment
CU Call up on request of the TB
H Hearing
M Public meeting
PC Planning and Zoning Commission
PD Planned Development
TB Town Board
TE Town Engineer
ZA Zoning Administrator (Town Administrator or designee)

Sec. 16-1-320. General submittal requirements.

The following requirements are applicable to all submittal applications:

(1) Development submittal requirements are contained in the Applicant Guide. In cases where two (2) or more types of applications are being processed concurrently (e.g., final development plan and final plat) any individual submittal requirement, which may be required for each application, does not need to be submitted more than once.

(2) No application shall be reviewed until the application submittal is determined to be substantially complete by the Zoning Administrator and the required information is submitted to the Town.

(3) No application shall be considered by a Town review authority (Zoning Administrator, Planning Commission and/or Board of Trustees, or designees) unless the application is processed consistent with this Chapter

(4) To the extent required by Section 29-20-108, C.R.S., final Town action on any application of a public utility or a power authority providing electric or natural gas service that relates to the location, construction or improvement of major electrical or natural gas facilities shall be taken within one hundred twenty (120) days after submission of a preliminary application, if a preliminary application is required by this Chapter, or within ninety (90) days after submission of a final application. No timeline under such statute shall begin to run until the submitted application has been determined complete as provided in this Article

(5) The Zoning Administrator may waive specific submittal requirements if said items do not appear necessary to meet the intent of this Chapter or to adequately evaluate the application.

Sec. 16-1-325. Application and review fees.

(a) Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters will be charged to applicants for permits, plat approvals, zoning amendments,

annexation, plan approvals, variances and other administrative relief. The standard fee schedule will be adopted periodically by the Board of Trustees and is available at the Town Hall.

(b) The fees set forth in a standard fee schedule adopted by the Board of Trustees shall be paid by all applicants, with the exception of Town departments or agencies, and are nonrefundable. Upon written request of the applicant at the time the application is submitted, the Zoning Administrator may provide for the waiver of the above noted fees on a case-by-case basis.

(c) In addition to the standard fees, the applicant and the owner of the property which is the subject of the application shall be required to pay any actual costs and expenses incurred by the Town for review, evaluation and processing of the application by consultants, including but not limited to engineering, legal and planning. The Town is authorized to require all applicants to enter into a cost agreement and require a deposit, based upon the estimated costs and expenses, from applicants and/or owners to offset the Town's costs and expenses for review, evaluation and processing of an application, prior to consideration of any application submittal pursuant to this Chapter. Subsequent deposits may be required when the initial deposit is eighty-five percent (85%) depleted. These deposits may exceed the total amount of fees collected using the standard schedule of fees. The Town shall not continue the processing of any application for which the applicant or the property owner has refused to deposit the funds to cover the Town's costs and expenses of review, evaluation and processing; and additional funds shall be deposited as necessary to cover outstanding balances prior to the recording of any approved final documents. Any funds remaining after paying the actual costs and expenses incurred by the Town shall be refunded to the applicant.

(d) The Town may certify to the appropriate County Treasurer any amount due pursuant to this Section as a lien on the property for which the application is submitted to be due and payable with the real estate taxes for the Town if the applicant or the property owner does not pay such amount within thirty (30) days of written request by the Town.

Sec. 16-1-330. Pre-application conference.

Applicants requesting annexation, rezoning, subdivision, planned development, site plan approval, vested rights or a conditional use permit are required to attend a pre-application conference with the Zoning Administrator and/or other Town staff prior to submitting a formal application. See Table 1.1 for the specific application types that require a pre-application conference. The purpose of the pre-application conference is:

(1) To acquaint the applicant with the Bennett Comprehensive Plan, Land Use Code, design and construction manuals and other pertinent documents.

(2) To inform the applicant of the submittal requirements necessary for the application.

(3) To inform the applicant of any associated fees or charges that may be associated with the application.

Sec. 16-1-335. Neighborhood meeting requirement.

Depending on the type and scope of application, the applicant may be required by the Zoning Administrator to attend a neighborhood meeting. The purpose of the neighborhood meeting is to receive input from adjacent property owners and residents concerning the applicant's proposed development plans prior to formal review and action by the Town.

Sec. 16-1-340. Public hearing notice requirements.

(a) The requirements of this Section apply only to public hearings required by this Chapter and as shown on the Review Process Chart in Table 1.1. Where that chart indicates that a public meeting (in contrast to a public hearing) is required, this Section does not apply and notice of such meeting is subject only to the requirements of the Colorado Open Meetings law, Section 24-6-401, et seq., C.R.S. The requirements for public notice are shown below on Table 1.2, except that notice requirements for site specific development plans shall be as provided in Section 16-1-520.

(b) Published Notice. At least fifteen (15) days prior to any public hearing which requires published notice (thirty [30] days for annexation petition hearing – see Section 31-12-108, C.R.S.), the Zoning Administrator shall cause to be published in the legal section of a newspaper of general circulation within the Town a notice of such public hearing. The notice shall specify the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel under consideration by at least two (2) of the three (3) following methods: (1) street address; (2) general description, such as proximity to intersecting streets; or (3) a legal description. The applicant shall reimburse the Town for the cost of publication of the notice of the hearing.

(c) Posted Notice. At least fifteen (15) days prior to any public hearing which requires posted notice, the applicant shall post signs upon the parcel under consideration which provide notice of the kind of action requested; the hearing authority; the time, date and location of the hearing; and the location of the parcel under consideration by at least two (2) of the three (3) following methods: (1) street address; (2) general description, such as proximity to intersecting streets; or (3) a legal description. The signs shall be of a size and form prescribed by the Zoning Administrator and shall consist of at least one (1) sign facing, and reasonably visible and legible from, each adjacent public right-of-way. The applicant shall place the signs on the property (near the property boundary) facing all public roadways, with a maximum of four (4) signs. The applicant shall be responsible for checking the signs during the posting period. If a sign has been moved, been destroyed or fallen, the sign shall be replaced by the applicant. The fact that a parcel was not continuously posted the full period shall not, at the sole discretion of the hearing authority, constitute grounds for continuance where the applicant can show that a good faith effort to meet this posting requirement was made. Within ten (10) days after final Town action on the application, the applicant shall remove the posted signs and return any Town signs to the Town. Property posting is not required where zoning exclusively involves public right-of-way only.

(d) Mailed Notice. At least fifteen (15) days prior to any public hearing which requires notification by mail, the applicant shall mail notice of the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel under consideration by at least two (2) of the three (3) following methods: (1) street address; (2) general description, such as proximity to intersecting streets; or (3) a legal description. The notice shall be of a form approved by the Zoning Administrator. The Zoning Administrator may require that the notice of such hearing also be hand-delivered to the entities intended to be notified. A map with a list of ownership by parcel identification number and mailing address shall be provided by the applicant to the Zoning Administrator at least five (5) days prior to the scheduled public hearing. Failure of a property owner to receive a mailed notice will not necessitate the delay of a hearing and shall not be regarded as constituting inadequate notice. The notice and a vicinity map shall be mailed by the applicant, via first-class mail (certified mail for subdivision plats), to:

(1) Owners of property included within the application;

(2) Owners of property abutting the subject property within three hundred (300) feet, or which is separated from the subject property only by a public right-of-way, railroad right-of-way or water course;

(3) The board of directors of any owners' association existing with respect to any adjoining property; and

(4) Owners of mineral estate. The applicant shall be solely responsible for preparing and mailing notice to mineral estate owners in the manner as codified at Section 24-65.5-101, C.R.S., as amended from time to time. The legislation generally requires that notice of the public hearing be sent to the mineral estate owners not less than thirty (30) days before the date scheduled for the hearing.

(e) Public Notice Time Requirements. Unless otherwise provided in this Chapter, public notice time requirements include the day the notice is posted, appears in the newspaper or is mailed, and shall not include the day of the public hearing.

(f) Public Notice Requirements Chart. Table 1.2 identifies when public notice is required, either by publishing, posting or mailing:

Table 1.2
Public Notice Requirements

	Notice Required		
Approval Request	***Publish***	***Post***	***Mail***
Conditional use permit	X	X	X
PD – ODP	X	X	X
PD – FDP	X	X	X
Rezoning	X	X	X
Subdivision – final plat	X	X	X
Variances and appeals (unless otherwise specified in this Chapter)	X	X	X
Vested Rights/Site Specific Development Plan	X		

Key: PD – Planned Development

Sec. 16-1-345. Enforcement.

(a) It is unlawful to erect, construct, alter, maintain or use any building or land area in violation of any provision of this Chapter. No permit, certificate, license or other approval, the use of which is subject to the provisions of these regulations, shall be issued by any department, agency or board until it has been determined that all substantive requirements have been met and all procedures have been followed. If any person, including but not limited to the officers or agents of a corporation responsible for its action or inaction and the partners or members of a partnership, company or joint venture, shall violate or cause the violation of any of the provisions of this Chapter, they and each of them shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed or continues.

Upon conviction thereof, they shall be liable for a fine of up to the maximum fine set forth in Section 1-4-20 of this Code per violation.

(b) Whenever the Zoning Administrator becomes aware of an alleged violation of this Chapter, Town staff shall investigate the complaint, take whatever action is warranted and inform the complainant in writing of what actions have been or will be taken.

(c) The owner, tenant or occupant of any building, land or part thereof, as well as any architect, builder, contractor, agent or other person who participates in, assists, directs, creates or maintains any situation that is in violation of this Chapter, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

(d) The provisions of this Chapter may be enforced by the following methods, which may be used in conjunction with each other:

(1) Nonissuance or restrictions placed on a building permit;

(2) Nonissuance or restrictions placed on a certificate of occupancy;

(3) Injunctions;

(4) Inspection and ordering removal of violations; and

(5) Criminal liability.

Sec. 16-1-350. Compliance required.

(a) The Zoning Administrator is empowered to cause any building, structure or land to be inspected and examined, and to order, in writing, the remediation of any condition found to exist in violation of any provision of this Chapter. After any such order has been served, no work shall proceed on any building, structure or land covered by such order, except to correct or comply with said order.

(b) The Town Attorney, acting on behalf of the Board of Trustees, may maintain an action for an injunction to restrain any violation of this Chapter.

Sec. 16-1-355. Town nonliability.

The adoption of this Chapter shall not create any duty to any person, firm, corporation or other entity with regard to the enforcement or nonenforcement of this Chapter or for inspections or reinspections authorized in this Chapter. No person, firm, corporation or other entity 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. Nothing in this Chapter shall be construed to create any liability, or to waive any of the immunities, limitations on liability or other provisions of the Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

Sec. 16-1-360. Amendments to Code.

Amendments to the text of this Chapter may be initiated by the Town or by citizen petition.

(1) Requests to amend this Chapter initiated by the Board of Trustees, Planning Commission or Town staff will be prepared as a draft ordinance by Town staff, shall be reviewed and recommended

by the Planning Commission at a public hearing and presented to the Board of Trustees at a public hearing. In this procedure, the Zoning Administrator will be considered to be the applicant.

(2) Any citizen of the Town may petition the Board of Trustees to amend this Chapter by filing a written petition with the Zoning Administrator. In this procedure, the citizen filing the petition will be considered to be the applicant.

Division 4
Annexation

Sec. 16-1-410. Scope.

This Article contains procedures and requirements for all annexations to the Town utilizing the petition method to ensure that petitions are processed in an orderly manner, that municipal services are or can be made adequate and available to the property, and that all statutory requirements relating to annexation per Section 31-12-101, et seq., C.R.S., are fulfilled.

Sec. 16-1-420. Required dedications.

(a) As a condition of annexation, and except as may be specifically provided in an annexation agreement, the Town may require at the time of annexation the dedication of major streets or easements to and through the property being annexed that may be needed in advance of subdivision of the property.

(b) As a condition of annexation, and except as may be specifically provided in an annexation agreement, the petitioners may be required to construct all roads, utilities and other improvements at their sole expense and according to the requirements, standards and specifications of the Town.

(c) As a condition of annexation, and except as may be specifically provided in an annexation agreement, the petitioners may be required to dedicate land and/or water rights, pursuant to Section 16-5-405 of this Chapter for public purposes, or cash in lieu thereof, in accordance with the provisions of this Chapter or as otherwise adopted by ordinance.

Sec. 16-1-430. Annexation agreement.

(a) The Town may require that the petitioners for annexation enter into an annexation agreement with the Town. The annexation agreement may contain provisions for zoning of the property, the physical development of the property, the timing of development, the allocation of the cost of required public improvements and services and/or other matters relating to the public interest.

(b) All executed annexation agreements shall be recorded with the appropriate County Clerk and Recorder.

Sec. 16-1-440. Proposed zoning.

(a) The proposed zoning for the area to be annexed may be addressed in the annexation agreement. The annexation agreement may provide for disconnection of the property if, after annexation, the proposed zoning is materially different than that specified in the annexation agreement.

(b) The Town may zone the property either concurrent with the proposed annexation or within ninety (90) days of recording of the annexation, per Section 31-12-115, C.R.S.

(c) Nothing in this Article shall be construed as preempting the Planning Commission's role in recommending approval of the zoning for the property. The Planning Commission shall conduct a public hearing on any application for the initial zoning of the property separately from the annexation review process, although the zoning and annexation hearings before the Board of Trustees may occur on the same date.

Sec. 16-1-450. Standards for annexation.

In considering a petition for annexation, the Board of Trustees shall consider the following standards:

(1) The property to be annexed is a reasonable and logical extension of the Town and compatible with the goals and policies of the Comprehensive Plan and the Three-Mile Area Plan.

(2) The degree to which areas proposed for annexation due to their configuration, cause excessive police, fire, utility and street costs.

(3) Whether zoning of the area proposed for annexation is reasonable in terms of existing Town zoning classifications and consistent with the Comprehensive Plan and the Three-Mile Area Plan.

(4) The area proposed for annexation should be located where street extensions and water and sewer utility services are possible without undue expense to the Town. Where exceptional costs may be required in serving the area proposed for annexation, financial arrangements to extend streets, water or sewer mains should be agreed upon prior to annexation.

(5) Stormwater drainage shall be considered prior to annexation to ensure that flooding problems within and adjoining the area proposed for annexation will not be increased by development of the land.

(6) Whether annexation of the area is in the best interests of the Town.

Sec. 16-1-460. Effective date.

The property is annexed as of the effective date of the annexation ordinance, except as otherwise provided in Section 31-12-113, C.R.S.

Division 5
Vested Property Rights

Sec. 16-1-510. Request for approval.

If an applicant wishes the approval of a development plan to have the effect of creating vested property rights, the plan shall include a statement that it is being submitted for designation as a site specific development plan, as defined in Section 16-1-210. Failure to include such a statement shall render the approval not a site specific development plan, and no vested property rights shall be deemed to have been created.

Sec. 16-1-520. Notice and hearing.

No site specific development plan shall be approved until after a public hearing before the Board of Trustees, preceded by written notice of such hearing as required by Section 16-1-340 of this Chapter. Such notice may, at the Town's option, be combined with the notice required by Section 31-23-304, C.R.S., for zoning regulations, or with any other required notice. At such hearing, interested persons shall have an opportunity to be heard.

Sec. 16-1-530. Approval, effective date and amendments.

A site specific development plan shall be deemed approved upon the effective date of the Board of Trustees' approval action relating thereto. The approval of the Board of Trustees shall be accompanied by any terms or conditions imposed on the site specific development plan. In the event amendments to a site specific development plan are proposed and approved, the effective date of such amendments, for purposes of duration of a vested property right, shall be the date of the approval of the original site specific development plan, unless the Board of Trustees specifically finds to the contrary and incorporates such finding in its approval of the amendment.

Sec. 16-1-540. Forfeiture of vested rights.

Failure to abide by any terms or conditions imposed by the Town on the approval of any site specific development plan shall constitute a forfeiture of any vested property right created by the plan, unless otherwise specifically agreed by the Town in writing. Such forfeiture shall occur by operation of law, without notice or hearing.

Sec. 16-1-550. Notice of approval.

Every document which constitutes a site specific development plan shall contain the following language:

Approval of this plan creates a
vested property right pursuant to
Article 68 of Title 24, C.R.S., as amended.

Failure to contain this statement shall invalidate the creation of the vested property right. In addition, a notice describing generally the type and intensity of use approved, the specific parcel or parcels of property affected, the terms and conditions of any approval, and stating the date of approval of the site specific development plan and that a vested property right has been created, shall be published once, not more than fourteen (14) days after approval of the site specific development plan, in a newspaper of

general circulation within the Town. Failure of the applicant to publish said notice constitutes a forfeiture of the vested property right.

Sec. 16-1-560. Payment of costs.

In addition to any and all other fees and charges imposed by this Chapter or any ordinance of the Town, the applicant for approval of a site specific development plan shall pay all costs occasioned to the Town as a result of the site specific development plan review, including publication of notices, public hearing and review costs.

Sec. 16-1-570. Other provisions unaffected.

Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions or requirements of the Town pertaining to the development and use of property.

Sec. 16-1-580. Limitations.

Nothing in this Article is intended to create any vested property right, but only to implement the provisions of Article 68 of Title 24, C.R.S. In the event of the repeal of said article or a judicial determination that said article is invalid or unconstitutional, this Article shall be deemed to be repealed and the provisions hereof no longer effective; or in the event only a portion of said article is declared void or unconstitutional, the portion of this Article corresponding thereto shall be deemed repealed and no longer effective.

Division 6
Nonconforming Lots, Uses and Structures

Sec. 16-1-610. Existing nonconformance.

Certain lots, uses of land and structures may be found to be in existence on the effective date of this Chapter which do not meet the requirements of this Chapter but which were either conforming or legally nonconforming uses or buildings under prior ordinances. It is the intent of this Section to allow the continuance of such nonconformities as legal nonconforming lots, uses, or structures upon the terms and conditions set forth hereafter.

Sec. 16-1-620. Nonconforming lots.

Nonconforming lots on record as of January 20, 2015 (the effective date of this Chapter) may be built upon if all other relevant district requirements are met and the approval of the Board of Adjustment is obtained.

Sec. 16-1-630. Nonconforming uses.

A nonconforming use of a building or lot may be continued as follows:

(1) A nonconforming use may not be changed to any other nonconforming use, yet may be changed to a conforming use. A nonconforming use may also be extended throughout any part of a building which was legally constructed or designed for such activity, i.e., a conforming structure, prior to January 20, 2015 (the effective date of this Chapter).

(2) If a nonconforming use has been discontinued for a period of six (6) consecutive months or more, it shall not thereafter be reestablished, and any future use shall be in conformance with the provisions of this Chapter.

(3) A conforming structure or a building containing a nonconforming use which has been damaged by fire or other causes to the extent of fifty percent (50%) or less of the cost of repairing the entire structure or facility may be restored, provided that such work is started within six (6) months of such damage and completed within one (1) year of the time the restoration is commenced. The above provision shall not apply to nonconforming residential uses in the Commercial zoning district; such uses may be restored irrespective of the extent of damage if such repair is commenced within six (6) months from the date of damage and is completed within one (1) year of the time the restoration is commenced. Failure to commence or complete such repair within the time frames required by this paragraph shall constitute a forfeiture of the right to use or occupy the structure as a nonconforming use.

(4) A nonconforming structure or building containing a nonconforming use may not be restored or expanded except in compliance with current standards. Any structural alteration that would reduce the degree of nonconformance or change the use to a conforming use is allowed. Any building declared unsafe by the Building Inspector that contains a nonconforming use may be strengthened or restored to a safe condition.

(5) Nothing herein shall require any change in plans, construction or designated use of a building or structure for which approval of the Town Board has been obtained prior to January 20, 2015 (the effective date of this Chapter), and construction of which shall have commenced within six (6) months

following the date of such approval and completed within one (1) year of the date of such approval. Failure to commence or complete construction within the time frames required by this paragraph shall constitute a forfeiture of the right to construct such building or structure, or designate its use, as legally nonconforming.

Sec. 16-1-640. Nonconforming structures.

(1) A nonconforming building or structure may continue to be occupied or used as follows: A nonconforming structure or building containing a conforming use may be altered or expanded only if such structural alteration would reduce the degree of nonconformance. Maintenance repairs that are needed to maintain the good condition of a building shall be allowed.

(2) If a nonconforming building is damaged such that the cost of repair exceeds seventy-five percent (75%) of the cost of replacing the entire structure, it shall be restored only in compliance with the requirements of this Chapter. Where the cost of repair is seventy-five percent (75%) or less of the cost of replacing the entire structure, it may be repaired to its former nonconforming state; provided, however, that any such repair is commenced within (6) months from the date of damage and is completed within one (1) year of the time the restoration is commenced. Failure to commence or complete such repair within the time frames required by this paragraph shall constitute a forfeiture of the structure's legally nonconforming status.

(3) Nothing herein shall require any change in plans or construction of a building or structure for which approval of the Town Board has been obtained prior to January 20, 2015 (the effective date of this Chapter), and construction of which shall have commenced within six (6) months following the date of such approval and completed within one (1) year of the date of such approval. Failure to commence or complete construction within the time frames required by this paragraph shall constitute a forfeiture of the right to construct such building or structure as legally nonconforming.

Sec. 16-1-650. Nonconforming signs.

Whenever one (1) of the following conditions occurs or exists, a sign which is nonconforming to the regulations of this Chapter shall be brought into conformance or the use thereof shall terminate:

(1) Whenever an alteration of the sign is made or sought to be made that is not permitted pursuant to Section 16-3-540.

(2) Whenever there is a request made for a permit to change the sign.

(3) When any such sign or nonconforming portion thereof is destroyed by any means to an extent of more than fifty percent (50%) of its value.

ARTICLE II: ZONING

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ARTICLE II
Zoning

Division 1
Purpose and Applicability

Sec. 16-2-10. Purpose.

The purpose of this Article is to create a vital, cohesive, well-designed community in order to enhance the Town's small-town character and to:

(1) Encourage the most appropriate use of land and promote a logical growth pattern;

(2) Regulate and restrict the location and use of buildings, structures and land for residence, business, trade, industry or other purposes;

(3) Regulate and determine the size of building lots, yards and other open spaces;

(4) Promote good design and arrangement of buildings or clusters of buildings and uses in residential, business and industrial development;

(5) Encourage innovative, quality site planning, architecture and landscaping that reflect improvements in the technology of land development;

(6) Ensure adequate buffering between adjacent different land uses;

(7) Aid in preserving and enhancing the overall community image as future development and redevelopment occurs;

(8) Prevent the overcrowding of land, poor quality in development, waste and inefficiency in land use, danger and congestion in travel and transportation and any other use or development that might be detrimental to the stability and livability of Bennett;

(9) Improve neighborhood appearance and customer convenience by providing adequate parking provisions; and

(10) Promote the health, safety, morals and general welfare of Town residents.

Sec. 16-2-20. Applicability.

(a) No building or structure shall be erected nor shall any existing building or structure be moved, altered or extended except in conformity with the provisions of this Article.

(b) No part of any required yard, open space, off-street parking space or loading space shall be reduced in size or area, except as otherwise provided in this Article;

(c) No yard or lot existing at the time of adoption of the ordinance codified in this Article shall be reduced in size or area below the minimum requirements set forth herein. Yards and lots created after said effective date shall meet at least the minimum requirements established by this Article;

(d) This Article shall not apply to utilities located in a public or private right-of-way;

(e) The uses and occupancies permitted in this Article shall also be subject to the regulations of the International Building Code, the International Fire Code, and other ordinances of the Town, except as provided in this Article; and provided, however, whenever the regulations in this Article require a greater size of yards or lots, or require a lower height of building or less number of stories, or impose other higher standards than required by other applicable ordinances or laws, the provisions of this Article shall govern.

(f) Prior to issuance of a building permit, conditional use permit, site plan approval or granting of a change in use, the applicant shall demonstrate that the property will comply with all applicable provisions of this Chapter.

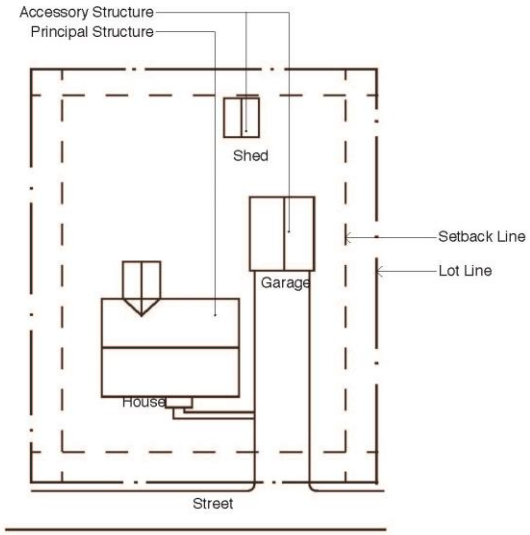
Division 2
Definitions

Sec. 16-2-210. Definitions.

The words and phrases used in this Article shall have the meanings defined below:

Accessory building or *structure* means a building or structure detached from a principal building and customarily used with, and clearly incidental and subordinate to, the principal building or use, and located on the same lot with such principal building. See Figure 2-1.

Figure 2.1



Accessory Dwelling Unit (ADU) means an apartment integrated within a single-family dwelling, or located in a detached accessory building or structure located on the same lot as a single family dwelling. For purposes of calculating residential density, each ADU shall count as one-half (½) dwelling unit.

Accessory use means a use incidental to or subordinate to the principal use of a lot or contiguous lots in the same ownership or commonly associated with the principal use and integrally related to it.

Agriculture means the keeping or maintenance for sale, lease or personal use of plants and animals, including but not limited to forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; cattle, sheep, swine, horses and goats; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation program.

Alley means the public right-of-way within a block upon which the rear of a building lot generally abuts. Its use is for secondary access to the lot and/or service purposes. An alley shall not be considered a street.

Animal hospital, *large* means any facility which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals treated

include cattle, horses, pigs, goats, sheep, swine and any other farm animals. Accessory uses may include the confinement of animals for medical reasons, grooming and destruction.

Animal hospital, small means any facility which is maintained by or for the use of a licensed veterinarian in the diagnosis, treatment or prevention of animal diseases wherein the animals are limited to dogs, cats or other comparable household pets. Accessory uses may include the confinement of animals for medical reasons, grooming and destruction.

Apartment means a type of multi-family dwelling unit, typically renter rather than owner-occupied. See definition of *multi-family dwelling* below in *Dwelling, multi-family*.

Artificial turf means a manmade substitute for organic turf, lawn, or sod which effectively simulates the appearance of a well-maintained lawn.

Assisted living facility means a residential facility that provides meals and assistance with daily activities, such as dressing, grooming, and bathing, for the elderly or adults who are unable to manage these activities themselves.

Automobile wrecking means a building, structure, parcel of land or portion thereof, where two (2) or more motor vehicles not in running condition, or parts thereof, are stored in the open and are not being restored to operation, or any land, building or structure used for wrecking or storing of such motor vehicles or farm machinery, or parts thereof, stored in the open and not being restored to operating condition.

Bar/tavern means an eating/drinking establishment providing or dispensing by the drink for on-site consumption fermented malt beverages and/or malt, special malt, vinous or spirituous liquors, and in which the sale of food products, such as sandwiches and light snacks, is secondary (also known as a *tavern*). A bar/tavern may include provision of live entertainment and/or dancing; however, a bar/tavern shall not include any sexually-oriented business use.

Bed and breakfast establishment means an owner-occupied single-family dwelling where up to a maximum of five (5) rooms may be rented for overnight lodging. The five (5) lodging rooms may be in addition to bedrooms used by a resident family.

Borrow pit means an excavation dug to provide material (borrow) for fill elsewhere.

Building means any permanent structure built for the shelter or enclosure of persons, animals, chattels or property of any kind, which is governed by the following characteristics:

a. Is permanently affixed to the land.

b. Has one (1) or more floors and a roof.

Business services mean retail or service establishments whose customers are primarily other businesses.

Candela means a unit of measurement equal to the amount of light given out through a solid angle by a source of one (1) candela radiating equally in all directions.

Cemetery means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes. A cemetery may include a funeral home or mortuary or a columbarium, but shall not include a crematory.

Conditional use means the use of land that is permitted in a zoning district with possible imposition of special conditions to mitigate possible adverse impacts, as provided for in Section 16-2-3330 of this Chapter.

Contractor's office means a mobile trailer or any temporary structure used by a construction contractor for headquarter purposes during construction of a subdivision or structure.

Convenience store means a general retail store that sells goods and services and that may include the sale of food products, gasoline, groceries and sundries.

Corner vision clearance triangle means a triangular space at the street comer of a corner lot, free from obstruction to vision.

Courier services means an establishment primarily engaged in the delivery of individually addressed letters, parcels and packages.

Crematory means any establishment at which human or other remains are cremated.

Day care center, adult means a facility, whether nonprofit or for-profit, that provides care, protection and supervision for eight (8) or more adults on a regular basis away from their primary residence for less than twenty-four (24) hours per day.

Day care center, child means an institutional facility, by whatever name known, which is maintained for the whole or part of a day for the care of six (6) or more children under the age of sixteen (16) years who are not related to the owner, operator or manager, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day-care centers, day nurseries, nursery schools, preschools, play groups, day camps, summer camps, centers for developmentally disabled children and those facilities which give twenty-four-hour-per-day care for dependent and neglected children, but specifically excludes any home day care as defined below. Child day care centers are also those facilities for children under the age of six (6) years with stated educational purposes which are operated in conjunction with a public, private or parochial college or a private or parochial school, except that the term shall not apply to a kindergarten maintained in connection with a public, private or parochial elementary school system of at least six (6) grades.

Day care, home means a facility for child care in the permanent residence of the provider for the purpose of providing day care and training for a child or children away from their primary residence for less than twenty-four (24) hours per day. A day care home shall provide care, protection and supervision to no more than six (6) children at one (1) time, including the children of the provider. Care may also be provided for no more than two (2) additional children of school age (five [5] to eighteen [18] years of age) attending full-day school. Operation of a day care home is subject to the Child Care Licensing Act, Section 26-6-101, et. seq., C.R.S., and considered for purposes of this Chapter to be a home occupation.

Detention facility means and includes:

a. Facilities for the judicially required detention or incarceration of people, where inmates and detainees are under twenty-four-hour supervision by sworn officers, except when on an approved leave; or

b. Group homes, halfway houses or alternatives to incarceration for individuals previously convicted of sexual assaults, sexual abuse or other sex-related criminal offenses; or

c. Group homes, halfway houses or alternatives to incarceration containing any individual who will be subject to the issuance of an arrest or escape warrant if he or she leaves the facility.

Provided that the use otherwise complies with this definition, a *detention facility* may include, by way of illustration, a prison, jail, probation or detention center or juvenile detention home. Detention facilities, except for *group homes for juvenile offenders*, do not qualify as either a household living or group living facility, and are not allowed in any zoning district.

Development plan, *final* means a plan of a planned development (PD), together with written materials, showing the character and layout of the tract, including the exact location, square footage and dimension of lots, buildings or building envelopes, yards, courts, parking, fences, common open space and other features; the use of each building and area; the architectural elevations of buildings indicating height, materials and color; detailed landscape plan; streets, curb cuts and alleys; and utilities, drainage and other easements.

Development plan, *outline* means a conceptual plan of a proposed planned development (PD), together with written materials, showing the general character and layout of the development parcel, including the approximate location and density/intensity of uses, the approximate location of public and common open space, the location of existing and proposed streets and alleys, and the relationship of the development to adjacent areas that it may affect.

Drive-up facility (also known as a *drive-in* or *drive-through* facility) means an establishment that, by design, physical facilities, service or packaging procedures, encourages or permits customers to receive services, obtain goods or be entertained while remaining in their motor vehicles.

Dwelling, *multi-family* means a residential building on one (1) lot containing at least three (3) dwelling units, designed for or occupied by families living independently of each other.

Dwelling, *single-family* means a residential building on one (1) lot designed for the occupancy of one (1) family.

Dwelling, *two-family* means a dwelling containing two (2) attached dwelling units, totally separated from each other by an unpierced wall extending from foundation to roof, with both units contained on one (1) lot.

Dwelling unit means one (1) or more rooms connected together, but structurally divided from all other rooms in the same structure and constituting a separate, independent housekeeping unit for permanent residential occupancy by humans, with facilities for sleeping, cooking and eating, and with sanitary facilities.

Establishment means a place of business, industry or professional office with its furnishings and staff.

Events center means a publicly or privately owned building devoted to assembly of people for social, professional or recreational activities such as meetings, weddings or conferences.

Family means and includes:

a. One (1) or more persons related by blood, marriage or adoption, living together as a single household unit; or

b. A group of not more than five (5) persons not related by blood, marriage or adoption, living together as a single household unit.

c. A family foster home, licensed by the State, or certified by the Arapahoe County Department of Human Services or Adams County Department of Social Services, or a state-licensed child placement agency, and having no more than four (4) foster children, shall also be considered a *family*.

d. A *family* shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3–412.5, C.R.S., unless related by blood, marriage or adoption.

Farmers and artisans market means a temporary retail sales operation where farmers, local growers, producers, ranchers and artisans can sell their produce and products directly to the public. These items may include, but are not limited to: wool, wool products, natural fibers and products from natural fibers, fleece, flowers, herbs, fruits, vegetables, meats, dairy, honey, cheese, beverages, paintings, ceramics and arts and crafts. Farmers and artisans markets may include related events, such as farm and fiber animals for exhibition and/or demonstration. Fiber animals may include rabbits, goats, sheep, alpaca, llamas and yaks. Food vendors and beverages may be sold for the purpose of serving the public attending the market.

Farm-life activities and entertainment means displays, contests and constructions involving the agricultural products of a farm, such as corn mazes, hay tunnels, cooking contests, pumpkin patches, etc., and related activities showcased by festivals, contests, events and admissions, including but not limited to hay rides, chuck wagons, community square dances, tractor and horse pulls, sleigh rides, etc.

Financial services means establishments that provide retail banking services, mortgage lending and similar financial services to individuals and businesses. This classification includes those institutions engaged in the on-site circulation of cash money and check-cashing facilities, but shall not include bail bond brokers. This classification also includes Automated Teller Machines (ATMs) located within a fully enclosed space or building, or along an exterior building wall intended to serve walk-up customers only.

Floor Area Ratio (FAR) means the amount of gross floor area of all principal buildings on a lot or block, as the case may be, divided by the total area of such lot, or the block size, respectively, on which such buildings are located. For mixed-use blocks, the residential square footage shall be added to the commercial development for a total block FAR.

Foot-candle means a unit of light or luminance. One (1) foot-candle (f.c.) equals one (1) lumen per square foot of area. When metric units are used, lux is the unit of light quantity. One (1) lux equals one (1) lumen per square meter of area. One (1) foot-candle equals approximately 10.8 lux. For the purpose of establishing consistent measurements, both foot-candles and lux are measured at finished grade.

Full cut-off means a luminaire designed so that light is aimed downward. No light emission is allowed above a horizontal plane through a luminaire's lowest light-emitting part.

Fully shielded light fixture means a light fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal plane as determined by a photometric test or certified by the manufacturer. Any structural part of the light fixture providing this shielding must be permanently affixed to the light fixture.

Funeral home or *mortuary* means an establishment in which dead bodies are prepared for burial or cremation and in which wakes and funerals may be held. *Funeral home* or *mortuary* does not include a crematory.

Garage, detached means any detached building or portion of a building, including carports, in which private or pleasure-type motor vehicles are stored or kept.

Glare means the sensation produced by a bright source within the visual field that is sufficiently brighter than the level to which the eyes are adapted to cause annoyance, discomfort or loss in visual performance and visibility; blinding light. The magnitude of glare depends on such factors as the size, position, brightness of the source, and the brightness level to which the eyes are adapted.

Golf course (excluding miniature golf) means a large unobstructed acreage, involving enough room over which to walk or ride, point-to-point, over a generally prescribed course and to strive to send a ball long distances with variable accuracy without unreasonably endangering other players or intruding upon them.

Greenhouse/nursery means a building/structure in which plants and gardening supplies are kept within an enclosed building or a fully screened enclosure; also a retail business selling plants and garden supplies in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only. Stock in trade shall be comprised primarily of live plant material, with hardscape materials, such as railroad ties, boulders, landscape gravel and crushed rock, limited to a relatively small percentage of sales.

Gross floor area (GFA) means the total area in square feet of all floors of a building measured from exterior walls.

Group home means a group living facility in which six (6) or more individuals can live together and receive supportive services and are supervised by persons who live in the residence. A group home shall have not more than twelve (12) residents, including supervisory personnel, except as otherwise provided by this Code. Except for group homes for juvenile offenders, group homes shall not include detention facilities, which are not allowed in any zoning district. In addition, a group home shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., except as otherwise provided in this Code. In the event a group living facility for handicapped persons does not meet the definition of *group home* as contained herein, but requires reasonable accommodation pursuant to the Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601, et seq.), such group living facility shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., as amended, except as otherwise provided herein.

Group home for developmentally disabled means a state-licensed group living facility serving not more than eight (8) persons exclusively for the care of persons with developmental disabilities, as

defined and regulated by the Colorado Department of Human Services, Division for Developmental Disabilities Services, and the Colorado Department of Public Health and Environment. A group home for developmentally disabled persons shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.

Group home for elderly means a group living facility of up to eight (8) persons sixty (60) years of age or older who do not require medical attention associated with a residential health care facility. Group homes for elderly persons shall be either:

a. Licensed as an assisted living residence or alternative care facility by the Colorado Department of Public Health and Environment; or

b. Certified as an adult foster care facility by the Arapahoe County Department of Human Services or Adams County Department of Social Services. A group home for elderly persons shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.

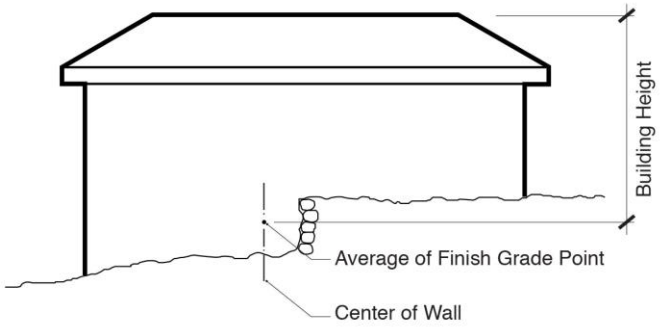
Group home for juvenile offenders means a group living facility licensed or certified by the State, housing residents placed by the Arapahoe County Department of Human Services or Adams County Department of Social Services or the Colorado Department of Human Services, Division of Youth Corrections, for purposes of rehabilitation, special care, supervision or treatment for social, behavioral or disciplinary problems. A group home for juvenile offenders shall not have more than fourteen (14) residents, plus additional required staff, and shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.

Group home for mentally ill means a state-licensed group living facility serving not more than eight (8) persons exclusively for the care of persons with mental illness, as defined and regulated by the Colorado Department of Public Health and Environment. A group home for mentally ill persons shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.

Group living facility means a residential occupancy of all or part of a structure by a group of people that does not meet the definition of household living, motel/hotel or detention facility. In group living facilities, tenancy is arranged on a monthly or longer basis, there is generally a common eating area and the size of the group may be larger than a household. *Group living facilities*, by way of illustration, may include assisted living facilities, group homes, group homes for juvenile offenders, group homes for developmentally disabled persons, group homes for elderly persons, group homes for mentally ill persons and nursing homes. *Group living facility* shall not include detention facilities for adult offenders (persons eighteen [18] years old and older), and *group living facility* shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., except as otherwise provided herein.

Height, building means the vertical distance from the average of the finished ground level at the center of all walls of a building to the highest point of the roof surface, exclusive of chimneys, ventilators, pipes and similar apparatus. See Figure 2-2.

Figure 2.2



Heliport means an area provided for the landing or taking off of a helicopter.

Home occupation means any business use which is conducted principally within a dwelling by the occupants thereof, and no others, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of the dwelling, excluding therefrom such uses as a medical clinic, hospital, barber shop, beauty parlor, tea room, animal hospital, retail sales, repair services or any similar use generating more than occasional and minimal vehicular and pedestrian traffic.

Horizontal plane means an imaginary line drawn across the bottom of a light fixture above which no light shall be emitted.

Hospital means an institution providing health services, primarily for in-patients and medical or surgical care of the sick or injured, including related facilities such as laboratories, out-patient facilities, training facilities, central service facilities and staff offices.

Household living means a residential occupancy of all or part of a structure by an individual or a group of people who meet the definition of a family, and where tenancy is arranged on a month-to-month or longer basis.

IESNA means the Illuminating Engineering Society of North America.

Illuminance means the amount of light falling onto a unit area of surface (luminous flux per unit area) measured in lumens per square meter (lux) or lumens per square foot (foot-candles).

Initial horizontal luminance means the lumen rating of a lamp when the lamp is new and has not depreciated in light output (rated lamp lumens). Lamp lumen depreciation equals 1.0. The measurement is taken horizontal to the ground.

Junk means products subject to being dismantled or recycled that include but are not limited to, scrap lumber, scrap metals and materials, discarded furniture, fixtures, appliances, motor vehicles, parts and tires and all wrecked, abandoned, demolished, dismantled, and inoperable motor vehicles, machinery, trailers and other goods that are so worn or deteriorated as to make them unusable in their existing condition.

Junk yard means any outside area in the Town at which any person shall store or accumulate junk as defined herein.

Kennel means any establishment or other place where one (1) or more animals, such as dogs and cats, are boarded, trained, bred, kept or fed for money or any other consideration, or for sale. A kennel does not include the breeding or boarding of animals as an accessory to a principal permitted agricultural use or a pet shop or a veterinary office or clinic, as defined herein.

Lamp means a generic term for a source that produces optical radiation (i.e. "light"), often called a bulb or tube.

Lamp watts mean the rated watts of the lamp, not including the watts of external auxiliaries.

Landscape lighting means lighting not mounted to poles or buildings, for the purpose of illuminating trees, shrubbery and other natural external elements.

LED means light-emitting diode.

Light pollution means light scattered by the atmosphere that interferes with the appreciation or observation of night skies.

Light trade and technical uses means the fabrication, assembly, packaging or repair, rental or servicing of any commodity, the sale of which is permitted within the subject zoning district.

Light trespass means unwanted light that falls on neighboring properties or produces glare or distraction for observers away from the area for which the light is intended (also called "nuisance glare").

Lighting means light produced by man-made sources, including electric lamps, gas lamps, and similar sources.

Lighting equipment means equipment specifically intended to provide electric illumination, including but not limited to luminaires, poles, posts and related structures, electrical wiring, and other necessary or auxiliary components.

Lighting system means, on a site, all man-made lighting sources, associated infrastructure, and controls.

Limited equipment rental means the rental of equipment primarily intended for individual use and minor residential gardening and construction projects. This use does not include the rental, storage or maintenance of large construction equipment (see definition of *vehicle/equipment sales and rentals).*

Lumens (lm) means unit of luminous flux; used to measure the amount of light emitted by lamps. One (1) foot-candle is one (1) lumen per square foot.

Luminaire means the complete lighting unit assembly (fixture), consisting of a lamp, or lamps and ballast(s) (when applicable), together with the parts designed to distribute the light (reflector, lens, diffuser), to position and protect the lamps, and to connect the lamps to the power supply.

Main entry means the primary or principal entrance, place of ingress or egress used most frequently by the public.

Manufactured home means a structure that is:

a. Installed on a permanent, engineered foundation;

b. Partially or entirely manufactured in a factory;

c. A minimum of fourteen (14) feet in width and thirty-six (36) feet in length;

d. Complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401, et seq.); and

e. To the extent applicable, complies with all building and safety codes adopted by the Town and set forth in Chapter 18 of this Code.

Manufacturing means establishments involved in the manufacturing, processing, fabrication, packaging or assembly of goods. Natural, man-made, raw, secondary or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site.

Manufacturing, primary means establishments engaged in the initial processing or treatment of raw material or manufacturing of products which require additional processing, fabrication or assembly for ultimate use by the consumer.

Manufacturing, secondary means establishments engaged in the manufacture of products for final utilization or consumption. This usually involves the secondary processing, fabrication or assembly of semi-finished products from a primary manufacturing industry.

Mini-storage and warehousing means provision of storage space for household or commercial goods within an enclosed building with direct public access to individual storage spaces.

Mobile home means any detached single-family dwelling with all the following characteristics:

a. Designed for long-term occupancy and containing sleeping accommodations, a flush toilet, tub or shower/bath and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems; and

b. Designed to be transported on its own wheels.

Mobile home park means any parcel of ground upon which two (2) or more mobile homes are occupied as dwelling units.

Motel/hotel means a building or group of buildings that contain living or sleeping accommodations in guest rooms for transient occupancy and may or may not have individual entrances from outside.

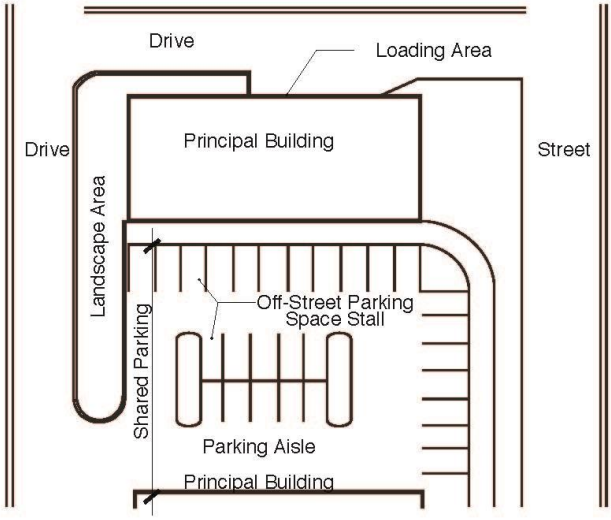
NITS means one (1) candela per meter squared. This is a standard unit of measurement for luminance which is the amount of brightness leaving a surface.

Nursing home means a state-licensed group living facility regulated as a skilled nursing facility, as defined in Section 25-1-107.5, C.R.S.

Off-street loading means a site or portion of a site devoted to the loading or unloading of motor vehicles or trailers, including loading berths, and parking areas designated for loading only. See Figure 2.3.

Off-street parking means a site or portion of a site devoted to the off-street parking of motor vehicles, including parking spaces, aisles, access drives and landscaped areas. See Figure 2-3.

Figure 2.3



Office means establishments providing executive, management, administrative or professional services, including medical or dental services, but not involving the sale of merchandise, except as incidental to a permitted use.

Ornamental lighting means lighting that is not a sign and does not impact the function and safety of an area, but is purely decorative, or used to illuminate architecture and/or landscaping, installed for aesthetic effect.

Outdoor retail display means the temporary outdoor display of goods, materials or other things for sale or rent during a retail business's regular business hours.

Outdoor storage means storage of materials, merchandise, stock, supplies, machines, operable vehicles, equipment, manufacturing materials or chattels of any nature that are not kept in a structure having at least four (4) walls and a roof, regardless of how long such materials are kept on the premises. This definition shall not apply to items for sale to the general public such as new and used cars, recreational vehicles, boats, landscape and building materials, where such items are permitted for sale in the zoning district in which they are located. *Outdoor storage* shall not apply to the storage of wrecked or inoperable vehicles. (See definition of *junk yard*.) In addition, *outdoor storage* does not include outdoor parking of motor vehicles regularly used in connection with the operation of an establishment or parked for less than forty-eight (48) hours for maintenance service.

Parking area means an area, other than a street or alley, designed or used primarily for the temporary parking of vehicles.

Parking, shared means joint use of a parking lot or area for more than one (1) principal use. See Figure 2-3.

Parking stall or space means a surfaced area, enclosed in the main building or in an accessory building or unenclosed, that is designated and used for off-street parking. See Figure 2-3.

Pawnshop means a shop that lends money at interest in exchange for personal property deposited as security.

Permitted use means a use which is listed as a use permitted by right in any given zone district in this Chapter. Uses permitted by right are not required to show need for their location.

Personal services means establishments engaged in the provision of informational, instructional, personal improvement, personal care and similar services.

Principal building or structure means a building or structure which constitutes, by reason of its use, the primary purpose for which a lot is used.

Principal use means the primary or predominant use of any lot or parcel, such use possibly occurring in more than one (1) building or structure. Generally, the establishment of any one (1) use listed as permitted by right or conditionally in this Article would constitute the establishment of a principal use on a given lot or parcel.

Public building means any building held, used or controlled exclusively for public purposes by any department or branch of government, state, county, municipality or special district, without reference to the ownership of the building or of the realty upon which it is situated.

Recreation or amusements facilities, private or public means any indoor or outdoor establishment that is maintained or operated for the amusement, patronage or recreation of the general public.

Recreation field means an area consisting of an outdoor field devoted to active sports or recreation, such as football, soccer, baseball, softball, tennis, miniature golf, sport stadiums or the like, intended for public use or for the use of private members.

Recreational vehicle means a vehicle designed to provide temporary living quarters and which is built into, as an integral part of, or as a permanent attachment to, a motor vehicle chassis or van, and shall not include trailers of any kind, but shall include a motor home. *Recreational vehicle* also means any travel trailer that is mounted on wheels and designed to be towed by a motorized vehicle, and contains windows and sleeping, cooking and heating equipment that were built-in as an integral part of the original design and construction of the vehicle.

Recycling facilities means the collection of material for reuse such as aluminum cans, glass, paper, etc.

Refuse collection facilities means a site where the collection of discarded food waste, or any other unwanted or useless material is disposed of by burying it in natural or excavated holes or depressions.

Rental services means a retail business that rents to the general public merchandise, such as furniture, appliances and similar goods, that are housed inside a building.

Research and development, general includes research, development and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products. Such uses shall not violate any odor, dust, smoke, gas, noise, radiation, vibration or similar pollution standard as specified herein.

Restaurant means an eating/drinking establishment where the principal business is the sale of food and beverages in a ready-to-consume state where fermented malt beverages, malt, special malt and vinous and spirituous liquors may be produced on the premises as an accessory use. See also *fast food restaurant*.

Restaurant, fast food means an eating/ drinking establishment that may be either a freestanding operation, or a non-freestanding operation incorporated into a building within which one (1) or more other compatible and complimentary uses exist, and whose principal business is the sale of pre-prepared or rapidly prepared food to the customer in a ready-to-consume state for consumption either within the restaurant building or for carry-out with consumption off the premises, and whose design or principal method of operation includes two (2) or more of the following characteristics:

a. The elimination, in whole or in part, of table service, thus requiring customers to place orders at the counter where the orders are filled;

b. The food is usually served in edible containers or in paper, plastic or other disposable containers;

c. The facilities for on-premises consumption of food are insufficient for the volume of food sold by the establishment;

d. The restaurant provides a drive-up facility for placing and receiving food orders.

Retail business means establishments that sell, lease or rent consumer, home and business goods, but excluding merchandise/retail uses classified or defined more specifically in this Article (e.g., vehicle-related sales).

Rooming, lodging or boarding house means a group living facility where meals, lodging, or both, are provided for compensation for five (5) or more persons, but not more than eight (8) persons, not including members of the proprietor's immediate family who might be residing in the same building. The word *compensation* shall include compensation in money, services or anything of value. A boarding, lodging or rooming house shall not include more than one (1) person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S. See also *group living facility*.

Salvage means any personal property which is or may be stored or accumulated, salvaged for resale, reduction or similar disposition, or which is possessed, transported, owned, collected, accumulated, dismantled or assorted for any of the aforesaid purposes. Without limiting the aforesaid definition of salvage, the term shall include used or salvaged iron, brass, lead, copper and other base metal of metals, and their compounds or combination, used or salvaged rope, lumber, appliances, brick, tile, plumbing fixtures, rags, glass, rubber and similar articles, and used motor vehicles or machinery used, owned or possessed for the purpose of wrecking or salvaging parts therefrom.

Salvage yard means any outside area in the Town at which any person shall store or accumulate salvage as defined herein.

Setback means the required minimum distance between the lot line and the closest projection of a building or structure along a line at right angles to the lot line. Setbacks shall be unobstructed from the ground to the sky except as otherwise specifically allowed in this Chapter.

a. *Front setback*. A setback that extends across the full width of a lot or site, the depth of which is the distance between the front lot or property line and the closest projection of a building or structure along a line at right angles to the front lot line, excluding allowable projections set forth in this Chapter. Corner lots have two front setbacks (see definition of *Yard*).

b. *Rear setback*. A setback that extends across the full width of a lot or site, the depth of which is the distance between the rear lot line and the closest projection of a building or structure along a line at right angles to the rear lot line, excluding allowable projections set forth in this Chapter.

c. *Side setback*. A setback on that portion of a lot that is not adjacent to a private or public street. It extends from the rear line of the required front setback, or the front property line of the site where no front setback is required, to the front line of the required rear setback, or the rear property line of the site where no rear setback is required, the width of which is the distance between the side lot or property line and a line parallel thereto on the site.

Setback line means the line that is the required minimum distance from any lot line and that establishes the area within which the principal structure must be erected or placed. See Figure 2-4.

Service station means any building, land area or other premises used for the retail dispensing or sales of vehicular fuels; minor towing, servicing and repair of automobiles and light trucks; and including as an accessory use the sale and installation of lubricants, tires, batteries and similar vehicle accessories. Body and fender work, transmission work, engine overhaul work or repair of heavy trucks or vehicles are excluded from this use. If a use that fits this definition also includes the sale of ready-to-eat food products (not intended for on-premises consumption), groceries and sundries, such use shall be classified as a *convenience store* as provided above.

Site plan means a plan describing with reasonable certainty the type and intensity of a proposed permitted use for a specific parcel of property, in accordance with Section 16-2-310 of this Chapter.

Special event means and includes:

a. Any organized event, specifically including, but not limited to, a circus, carnival, fair, party or celebration which reasonably may be expected to attract more than one hundred (100) persons at any one (1) time, or which otherwise may reasonably be expected to increase the risk of:

1. Damage to public or private property, beyond normal wear and tear;

2. Injury to persons;

3. Public or private disturbances or nuisances;

4. Unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel;

5. Significant additional police, fire, trash removal, maintenance or other public services demands; or

6. Other significant adverse effects upon the public health, safety or welfare.

b. Exclusions. The term *special event* shall not include any event sponsored in whole or in part by the Town or another political subdivision of the State, or any organized activities conducted at sites or facilities typically intended and used for such activities. Examples of such exempt activities include, but are not necessarily limited to, sporting events such as golf, soccer, softball and baseball tournaments conducted on courses or fields intended and used for such activities; wedding services conducted at reception halls or similar facilities; funeral services conducted at funeral homes or cemeteries; religious services, wedding services and funeral services conducted at places of worship; or activities occurring within, or upon the grounds of, a private residence or upon the common areas of a multi-family residential development.

Stable means a building for housing domestic animals or livestock.

Strobe light means a scientific instrument that provides a flashing light synchronized with the periodic movement of an object; it can make moving objects appear stationary.

Structure means a combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land or water.

Telecommunications facilities means radio or television broadcasting towers, telecommunications towers, and antenna satellite dish arrays (free-standing or tower mounted). A telecommunication facility does not include residential television antennas, satellite dish antennas, or amateur radio antennas.

Temporary use means a land use that is only permitted for a specified period of time.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one (1) or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

Translucent means permitting light to pass through but diffusing it so that persons, objects, etc., on the opposite side are not clearly visible. Frosted window glass is translucent but not transparent.

Trash transfer station means a facility or site at which the exchange or deposit of trash is made for ultimate transfer to a landfill.

Utilities, major include generating plants, electrical substations, switching buildings and water or wastewater treatment plants. *Major utility* also includes overhead electrical transmission lines and distribution feeder lines that collect and transmit over 110 kV of power. *Major utility* does not include uses more specifically defined in this Chapter, including telecommunications facilities.

Utilities, minor means above- and below-ground electrical transmission lines (except as included in the definition of *major utility* above); above- and below-ground natural gas lines; flood control or drainage facilities; transportation or communications utilities and similar facilities of public agencies or public utilities; utilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, poles or cables; switch boxes; transformer boxes;

cap banks; and underground water and sewer lines. Such minor utility facilities generally do not have employees on-site, and the services may be publicly or privately provided. *Minor utility* does not include uses more specifically defined in this Chapter, including telecommunications facilities.

Vehicle/equipment repair, major means repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles or boats, including the sale, installation and servicing of related equipment and parts. This use includes auto repair shops, body and fender shops and transmission and engine overhaul shops. This use excludes junk yards, vehicle dismantling or salvage and tire retreading or recapping.

Vehicle/equipment sales and rentals means sale or rental of automobiles, motorcycles, trucks, tractors, trailers, construction or agricultural equipment, mobile homes, boats and similar equipment, including incidental storage and incidental maintenance.

Vehicle repair, minor means limited repair of automobiles, motorcycles and light trucks that may include tune-ups, brakes, mufflers, automobile glass replacement and other minor repair customarily done in service stations, but in no case shall *minor vehicle repair* include auto/truck body and fender work or repair of heavy equipment or trucks or repair shops where vehicles are stored in an inoperable condition for more than twenty-four (24) hours.

Vehicle storage means storage of parking tow-aways, impound yards and storage lots for automobiles, trucks, buses and recreational vehicles. *Vehicle storage* includes only the storage of operable vehicles.

Veterinary offices or clinics means an establishment that provides medical treatment and care to animals, and which may include temporary or overnight boarding of animals that are recuperating from treatment. A veterinary clinic or office does not include a kennel, as that term is defined above.

Wholesale establishment means a use engaged in enclosed wholesale of manufactured products, supplies and equipment, including accessory offices and showrooms. Products may be picked up on site or delivered to the customer. Other accessory uses may include product repair, parking, minor fabrication services and repackaging of goods.

Xeriscape means a landscaping method employing predominantly live, low-water-consuming plant materials.

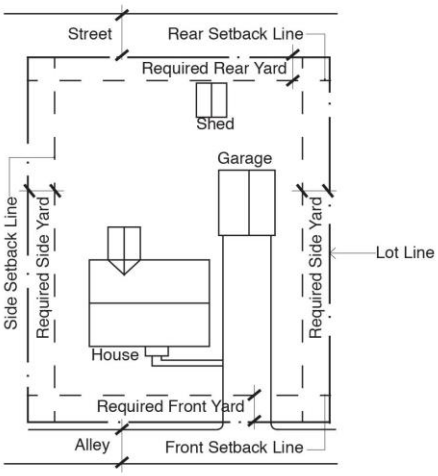
Yard means an open space unoccupied and unobstructed from the ground upward. See Figure 2.4.

a. *Front yard* means that portion of a lot that abuts a street and that extends across the width of the lot between the property line along that street and the front setback line. Corner lots have two (2) front yards.

b. *Rear yard* means that portion of a lot between two (2) side lot lines that extends across the width of the lot between the rear setback line and the rear lot line.

c. *Side yard* means that portion of a lot that extends from the front setback line to the rear setback line between the side setback line and the side lot line, or that portion of a lot that is between a lot line and a setback line, but is not a front or rear yard.

Figure 2.4



Zoning district means an area or area within the limits of the Town for which the regulations and requirements governing development, including use, lot, area of buildings and other requirements, are uniform.

Zoning Map means the official zoning map adopted by the Town by ordinance, as amended.

Sec. 16-2-310. Site plan requirement.

(a) A site plan is a detailed development plan for a property, which generally permits an evaluation of the intended use, and such design elements as circulation, parking and access; open space and landscaping; building location and configuration; grading and drainage; setbacks and screening; public improvements; and other elements, which determine if the proposal has been planned consistently with the intent of this Chapter. A site plan shall be required for:

(1) All permitted and conditional uses located in all zoning districts with the exception of individual, detached single-family and two-family dwelling units.

(2) Any change is use.

(3) Any site that has been vacant, or for a use that has not been operational, for six (6) months or longer.

(b) The Zoning Administrator shall have the authority to waive the requirement for a site plan upon a determination that such site plan is not necessary.

(c) The Zoning Administrator shall have the authority to specify which criteria of this Chapter shall apply to each site plan application.

(d) An applicant for site plan approval shall submit copies of the required application materials in accordance with the Applicant Guide.

(e) The Zoning Administrator may elect to send the materials out for referral in accordance with the Applicant Guide. The comment period shall not exceed twenty-one (21) days.

(f) Within five (5) days following the date that referral comments are due, the Zoning Administrator shall approve, approve with conditions or deny the application and inform the applicant in writing as to the decision and criteria for the decision. All review criteria and conditions shall be based on requirements of this Chapter, other published Town ordinances and technical criteria and Town policies.

(g) Within fifteen (15) days after the Zoning Administrator's denial of a site plan application or approval with conditions, the applicant may appeal the decision to the Board of Trustees by filing a written notice of appeal with the Town Clerk. The notice shall state the basis for the appeal. Upon receipt of such notice of appeal, the site plan application shall be scheduled for de novo review before the Board of Trustees at a public hearing. Notice of the public hearing shall be in accordance with Section 16-2-130 of this Chapter. Upon completion of the public hearing, the Board of Trustees may approve, deny or approve with conditions the site plan application, and the Board of Trustees' decision shall be final.

Sec. 16-2-320. Permitted Uses.

A permitted use is a use allowed by right in a zone district, subject only to site plan approval. A permitted use is not required to demonstrate need for its location, and therefore does not require approval to locate in a zone district in which it is permitted. Permitted uses are specified in the Land Use Table in Section 16-2-470.

Sec. 16-2-330. Conditional Uses.

(a) This Section is intended to provide additional criteria to be used in determining whether a proposed conditional use is compatible and beneficial to the surrounding properties and inhabitants and that the proposed conditional use is not detrimental to the surrounding properties and inhabitants. Conditional uses are specified in the Land Use Table in Section 16-2-470.

(b) In order for a conditional use to be approved, there must also be a specific finding by the Board of Trustees that the proposed use is compatible and beneficial to the surrounding properties and inhabitants and not detrimental. The following criteria shall be considered in determining whether or not to grant a conditional use:

(1) Will the proposed use be in harmony and compatible with the existing or planned uses of the surrounding neighborhood;

(2) Will the proposed use be consistent with the Bennett Comprehensive Plan;

(3) Will the proposed use result in density or intensity of use that will be inappropriate for the site or incompatible with existing or planned uses in the surrounding area;

(4) Will the proposed use cause significant adverse or undesirable impacts to the surrounding area, including but not limited to visual impacts, air emissions, noise, light, vibrations, glare, heat, odors, water pollution, electromagnetic interference and other nuisance effects;

(5) Will the proposed use incorporate and integrate architectural and landscape features to appropriately mitigate impacts from the proposed use;

(6) Will the proposed use result in undue traffic congestion, traffic hazards or other hazards to persons or property;

(7) Will the proposed use be adequately served with public utilities, services and facilities (i.e., water, sewer, street system, storm drainage, parks system, etc.) while maintaining adequate levels of service for existing development; and

(8) Will the proposed use be detrimental to the health, safety or welfare of current or future inhabitants of the Town?

(c) In considering an application for a conditional use, the Planning Commission and the Board of Trustees may impose conditions on the application to mitigate impacts as necessary.

(d) The application shall include the development application form, a site plan prepared in accordance with Section 16-2-310, and appropriate fees as required in the Applicant Guide. The application for a proposed conditional use shall include at least the following additional information:

(1) A detailed description of the proposed conditional use, including but not limited to hours of operation; vehicle and pedestrian traffic patterns and demands; employment levels; occupancy levels; management plans with respect to the demands of the use upon public services and facilities; narrative describing the reasons for the proposed change and describing other operational aspects of the use; and such other information as may be requested by the Zoning Administrator, Planning Commission or Board of Trustees.

(2) A statement describing the benefits of the proposed use; how that use will be compatible with existing and planned surrounding uses; and how the proposed use will satisfy each of the criteria set forth in paragraph (a) above, as applicable.

(3) Additional information as may be reasonably required by the Zoning Administrator or additional relevant information as deemed necessary by the Planning Commission or Board of Trustees to properly evaluate the request.

(e) An approved conditional use shall not be conducted until all necessary permits have been issued by the Town. If required by the Town, an approved conditional use shall not be conducted until the applicant has entered into an agreement with the Town specifying that all conditions imposed by the Town will be satisfied, that any public improvements required in connection with the use will be constructed (with financial guarantees therefor posted by the applicant), that any demands for other public facilities or services will be satisfied in the manner required by the Town, that the use and improvements will be in accordance with the approved application and development schedule and, if the conditional use is approved for a limited duration, that the use will be discontinued upon the expiration of the time period identified in the approved plan.

(f) As a condition of approval of a conditional use application, the Board of Trustees may provide that such approval is exclusive to the applicant to whom such approval is granted. Further, if the conditional use is proposed for a limited duration, the Board of Trustees may provide that such approval is limited to the time period approved by the Town and that the use must be discontinued upon expiration of such time period.

(g) If an approved conditional use is not in substantial operation within two (2) years after the date of the Board of Trustees' approval, the Board of Trustees may initiate proceedings to review the conditional use. Such review shall occur in the same manner as a review for the initial approval of the conditional use and, upon such review, the conditional use may be revoked or the development schedule may be extended.

(h) No approved conditional use may be modified or expanded, enlarged, expanded in parking area or expanded in ground area unless the approved conditional use is amended and approved in accordance with the procedures applicable to initial approval of a conditional use as set out in this Section.

(i) In the event of noncompliance by the applicant with an approved conditional use or the conditions imposed by the Board of Trustees, the Board of Trustees may call the conditional use up for further review. Upon such review and after notice given to the applicant, the Board of Trustees may revoke the previously approved conditional use or amend the previous approval. The Board of Trustees may refer a called-up conditional use to the Planning Commission for its review and recommendation, which review shall be after notice is given to the applicant.

Sec. 16-2-340. Temporary uses.

(a) Temporary uses of land are permitted in any zoning district (unless restricted to particular zoning districts herein), subject to the specific regulations and time periods listed in Table 2-1, and to the other applicable regulations of the zoning district in which the use is permitted.

Table 2.1
Temporary Uses

Use	*Zone Districts*	*Period*
(1) Contractor's office/temporary construction uses	All	Time to be specified; must be concurrent with Building Permit; must be terminated within thirty (30) days of issuance of project Certificate of Occupancy for all types of construction.
(2) Temporary real estate sales office	RE, R-1,R-2, R-3 and MH	Not to exceed twelve months
(3) Seasonal or off-site retail sales , which include, but are not limited to: sale of seasonal fruits and vegetables; sale of fireworks; and sale of Christmas trees	A, C, EC and P	Not to exceed thirty (30) days, and provided that any permits required by law are obtained
(4) Circuses, carnivals, festivals and other special events, which include, but are not limited to: concerts, athletic events, rodeos, and parades	A, C, EC and P	Not to exceed three (3) days, and provided that any permits required by law are obtained
(5) Flea markets, farmers and artisans markets, and farm-life activities and entertainments	A, C, EC and P	Not to exceed one (1) event per week during a single continuous six (6) month time period in any calendar year and provided that any permits required by law are obtained.

(b) Applications for temporary uses shall be submitted in accordance with the Applicant Guide.

(c) The Zoning Administrator may approve, approve with conditions or disapprove an application for a temporary use. The Zoning Administrator may also impose conditions on the temporary use that will mitigate anticipated adverse impacts. Such temporary use shall be valid only for the period of time specified, and only two (2) renewals of a temporary use may be granted by the Zoning Administrator. Failure to terminate such temporary use by the specified time shall be considered a violation of this Article.

(d) A temporary use permit shall not be granted for a use except upon a finding that the use will, during the time of its existence:

(1) Be compatible with the surrounding uses and community facilities;

(2) Not be detrimental to or constitute a danger to the health, safety and welfare of the citizens of the Town;

(3) Conform in all other aspects to the applicable zoning regulations and standards, except as specifically modified for the temporary use during the time it is permitted; and

(4) Leave the site, following the temporary use, in a state that is capable of being, and assurance has been provided that it will be, restored to a satisfactory condition.

(e) If the temporary use is approved, the Zoning Administrator shall issue a temporary use permit that shall specify time limits and other conditions as placed on the temporary use.

(f) Within fifteen (15) days after the Zoning Administrator's denial of a temporary use application or approval with conditions, the applicant may appeal the decision to the Board of Trustees by filing a

written notice of appeal with the Town Clerk. The notice shall state the basis for the appeal. Upon receipt of such notice of appeal, the temporary use application shall be scheduled for de novo review before the Board of Trustees at a public hearing. Notice of the public hearing shall be in accordance with Section 16-2-130 of this Chapter. Upon completion of the public hearing, the Board of Trustees may approve, deny or approve with conditions the temporary use application, and the Board of Trustees' decision shall be final.

(g) Upon the approval of an application for a temporary use, a majority of the Board of Trustees may "call up" the application for review of the Zoning Administrator's decision at the next regularly scheduled Board of Trustees meeting. The Zoning Administrator may also choose to "push up" the temporary use application to the Planning Commission and/or the Board of Trustees to either approve or deny the application.

(h) The applicant shall obtain all required permits prior to moving the temporary facilities onto the site.

(i) The Board of Trustees may, upon seven (7) days' written notice to an applicant, stating the contemplated action and in general the grounds therefor, and after a reasonable opportunity for the applicant to be heard, revoke a temporary use permit on any of the following grounds:

(1) The applicant has violated a zoning regulation or standard of the Town;

(2) The applicant has violated a term, limitation or condition of the temporary use permit;

(3) The applicant has maintained or allowed a nuisance in connection with the operation of the permitted use; or

(4) The applicant has been convicted of violating any federal or state law or Town ordinance or regulation in connection with the operation of the permitted use.

Sec. 16-2-350. Planned Developments

(a) As provided for in Section 16-2-475, an applicant has the opportunity to establish a PD zoning district for the purpose of creating an planned development.

(b) Where applicable, it is the intent of this Chapter that subdivision review under the subdivision regulations in Article IV of this Chapter be coordinated with and carried out simultaneously with the review of a PD under this Article.

(c) The initial zoning for a PD District is established by an Outline Development Plan (ODP). Site planning for development within a PD District is established by one or more Final Development Plans (FDP).

(1) An ODP, which reflects the overall concept of the Planned Development, shall include ODP maps and drawings, a written textual statement and such other forms as required by the Applicant Guide.

(2) An FDP, which may reflect the entire development as delineated on the ODP or any logical portion thereof, shall be submitted following the approval of the ODP. The FDP shall include FDP maps and drawings, a written textual statement and such other forms as required by the Applicant Guide.

(d) The Planning Commission and the Board of Trustees may approve a PD application if it meets the intent of this Article and complies with this Chapter and other controlling regulations and documents. The Planning Commission and Board of Trustees shall consider the following in making their decision for approval, approval with conditions or denial of a PD:

(1) The proposed PD District is compatible with present development in the surrounding area and will not have a significant, adverse effect on the surrounding area;

(2) The proposed PD District is consistent with the public health, safety and welfare, as well as efficiency and economy in the use of land and its resources;

(3) The proposed PD District is consistent with the overall direction and intent of this Article and the intent and policies of the Comprehensive Plan and other pertinent policy documents of the Town;

(4) The proposed PD District provides for a creative and innovative design which could not otherwise be achieved through other standard zoning districts.

(5) The exceptions from the zoning regulations requested in the proposed PD are warranted by virtue of innovative design and amenities incorporated in the PD District.

(6) The PD provides adequate circulation in terms of the internal street circulation system, designed for the type of traffic generated, for separation from living areas, convenience, safety, access and noise and exhaust control. Proper circulation in parking areas has been provided in terms of safety, convenience, separation and screening. The PD provides for buffering from collector and arterial streets through earthen berms, landscaping and other methods.

(7) The PD provides functional open space in terms of practical usability and accessibility, and optimum preservation of natural features, including trees and drainage areas, recreation, views, natural stream courses, bodies of water and wetlands.

(8) To the extent practicable, the PD provides variety in terms of housing types, housing size, densities, facilities and open space.

(9) The PD provides for pedestrian and bicycle traffic in terms of safety, separation, convenience, access, destination and attractiveness. If possible, there shall be an internal pedestrian circulation system separate from the vehicular system that allows access to adjacent parcels, parks, open space or recreational facilities within the PD, as well as links to trail systems of the Town.

(10) Building types in terms of appropriateness to density, site relationship and bulk.

(11) Building design in terms of orientation, spacing, materials, color, texture, storage, signs and lighting.

(12) Landscaping of the site in terms of purpose, such as screening, types and materials used, maintenance suitability, water demands and effect on the area.

(13) Services, including utilities, fire, police protection and other such services are available or can be made available to adequately serve the development.

(14) No structures in the PD shall encroach on a floodplain except as permitted by the Town's floodplain ordinance.

(15) No occupied structure shall be located on ground showing severe subsidence potential without adequate design and study approved by the Town.

(16) Visual relief and variety of visual sightings shall be located within the PD through building placement, shortened or interrupted street vistas, visual access to open space and other design methods.

(e) Upon approval of a PD application by the Board of Trustees, the applicant shall within one hundred and eighty (180) days revise the PD application to meet any conditions of approval and submit final documents to the Zoning Administrator, including the signed development agreement and improvement guarantee. Upon a written request from the applicant filed at least thirty (30) days prior to expiration of the one-hundred-eighty-day deadline to submit final documents, the Board of Trustees may grant a single extension not to exceed an additional one hundred eighty (180) days. If final documents are not recorded within the time required, approval of the PD application shall lapse and be of no further force or effect.

(f) Approval of an ODP shall be valid for three (3) years. A one-year extension of approval time may be applied for in writing to the Board of Trustees. No more than three (3) such one–year extensions shall be approved. The approval of an ODP shall not result in the creation of any vested property rights. Such approval shall allow the applicant to proceed to the next development plan stage, subject to the time limits set forth in this Section and the other requirements of this Chapter.

(g) An amendment to the ODP is a change in zoning district classification and shall follow the same procedures set out in this Chapter pertaining to the approval of an ODP. The Zoning Administrator may authorize minor changes in the ODP that do not:

(1) Alter the basic relationship of the proposed development to adjacent property;

(2) Change the uses permitted;

(3) Increase the height of building or structures;

(4) Decrease the amount of required off-street parking; or

(5) Reduce the minimum yards required at the boundary of the site.

(h) An amendment to an FDP is a change in site planning, and shall follow the same procedures set out in this Chapter pertaining to the approval of an FDP. The Zoning Administrator may approve an amendment to a FDP, provided that the amendments are only:

(1) Architectural. Minor changes in the color; exterior appearance; lot coverage; screening of outdoor storage areas; signage; or location of buildings, structures or divisional walls if required for engineering reasons or other circumstances not foreseen at the time the FDP was approved. No change authorized by this Paragraph may increase or decrease the dimensions of any building or structure by more than twenty five percent (25%) or permit an accessory structure whose size is greater than ten percent (10%) of the area of the principal building or structure.

(2) Landscaping and site features. Changes in plant materials, minor alterations in the location of plantings, changes in plant quantities or sizes, changes to the location of internal sidewalks or changes in location of parking spaces if required for engineering reasons or other circumstances not foreseen at

the time the FDP was approved. No change authorized by this Paragraph may increase landscaping by twenty five percent (25%), or decrease landscaping or sidewalks by more than ten percent (10%).

(i) Any administrative amendments authorized by the Zoning Administrator for an ODP or FDP shall be transmitted to the Planning Commission and Board of Trustees for their information by written communication from the Zoning Administrator. (j) Any changes which are approved for an ODP or FDP shall constitute an amendment thereto and must be on file with the Town and noted as amendments to the ODP or FDP.

(j) After the planned development has been approved, the use of land and the construction, modification or alteration of any buildings or structures within the planned development will be governed by the approved ODP and FDP rather than the other provisions of this Code. The approved ODP shall constitute the zoning document for the planned development, and the approved FDP shall govern all land development within such PD zone.

Sec. 16-2-360. Rezoning.

The Board of Trustees has determined that the Zoning Map should not be amended (rezoning of property approved) unless the rezoning is consistent with the goals and policies of the Comprehensive Plan and promotes the general welfare of the community. If a proposed rezoning is inconsistent with the Comprehensive Plan, the request may only be approved if the applicant demonstrates that the requested rezone is justified because of changed or changing conditions in the particular area, in the Town in general or that the rezoning is necessary to correct a manifest error in the existing zone classification. None of the foregoing shall apply to a general Town rezoning, a rezoning sponsored by the Town or a rezoning incident to a Comprehensive Plan amendment.

(1) Rezoning of individual property may be initiated by the Town, by citizen petition or by application filed by the landowner.

(2) Requests for rezoning initiated by the Board of Trustees, Planning Commission or Town staff will be prepared as a draft ordinance by the Town Attorney and Town staff and shall be reviewed and considered by the Planning Commission and presented to the Board of Trustees at a public hearing. In this instance, the Town shall be considered to be the applicant.

(3) To initiate a rezoning of private property, the petitioner must be the owner of the affected property or a citizen of the Town who has submitted the application with a petition signed by owners of a majority of the land affected by the request. In this instance, the person submitting the application shall be considered to be the applicant. Applications for rezoning shall be submitted in accordance with the Applicant Guide.

(4) An application for rezoning shall not be accepted where a prior application for rezoning to the same requested zone district has been denied by the Board of Trustees within the preceding twelve (12) months.

Sec. 16-2-370. Variances.

(a) Variances on individual lots from the provisions of this Chapter, except for use variances, may be granted when the Board of Adjustment finds that all of the following conditions exist:

(1) That peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of this Chapter are strictly enforced.

(2) That the circumstances creating the hardship were created through no fault of the applicant.

(3) That the property for which a variance is requested possesses exceptional narrowness, shallowness, shape or topography or anther extraordinary and exceptional situation or condition which does not occur generally in other properties in the same zoning district.

(4) That the variance will not substantially or permanently injure the appropriate use of adjacent conforming properties in the same zoning district.

(5) That the variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air and open space in the neighborhood, nor change the character of the neighborhood.

(6) That the variance will not alter the essential character of the district in which the property for which the exception is sought is located.

(7) That the variance will not weaken the general purposes of this Chapter or the regulations established herein for the specific zoning district.

(8) That the variance will be in harmony with the spirit and purposes of this Chapter.

(9) That the variance will not adversely affect the public health, safety or welfare.

(b) Under no circumstance shall a variance be granted on the sole basis of personal convenience, profit or special privilege to an applicant.

(c) Applications for a variance shall be submitted in accordance with the Applicant Guide.

(d) Failure of an applicant to apply for a building permit and commence construction or action with regard to the variance approval within one (1) year of receiving approval shall automatically render the decision of the Board of Adjustment null and void.

Sec. 16-2-380. Fair Housing Act reasonable accommodations.

(a) The federal Fair Housing Act, 42 U.S.C. §3601, et seq., as amended, requires that local governments be prepared to make "reasonable accommodations" in order to permit housing for certain protected individuals to occur in residential areas. In response to a written application identifying the type of housing being provided and the portions of the Fair Housing Act that require reasonable accommodations be made for such housing, the Zoning Administrator is authorized to approve modifications to the Town's land use, zoning and animal laws, rules, policies, practices and procedures as set forth in this Chapter and Article VII of Chapter 7 of this Code.

(b) The Zoning Administrator may approve a type of reasonable accommodation different from that requested by the applicant if the Zoning Administrator concludes that a different form of accommodation would satisfy the requirements of the federal Fair Housing Act with fewer impacts on adjacent neighborhoods. The decision of the Zoning Administrator shall be accompanied by written findings of fact as to the applicability of the Fair Housing Act, the need for reasonable accommodations, and the authority for any reasonable accommodations approved. The decision of the Zoning Administrator shall be final for purposes of judicial review.

Sec. 16-2-405. Official Zoning Map.

(a) Zoning district boundaries are established as shown on the Official Zoning Map of the Town of Bennett, Colorado (the "Zoning Map"), as amended, which map is hereby made a part of this Chapter by reference.

(b) It shall be the responsibility of the Zoning Administrator to maintain the Zoning Map, to interpret the map, to make information from the map available to the public and to make timely changes to the map after action by the Board of Trustees.

(c) The Zoning Map shall, at a minimum, contain the following information:

(1) Town limits, street rights-of-way, zone district boundary lines, zone district titles and property lines as appropriate to clarify boundaries;

(2) A table listing the history of all changes to the map from the date of initial adoption, including: annotation of Board of Trustees' action; description of property involved; ordinance or resolution number; date of Board of Trustees' action; County Clerk recording information; and the Zoning Administrator initials on each entry.

(d) Unless otherwise defined on the Zoning Map, district boundary lines follow:

(1) Lot lines;

(2) Centerlines of streets, alleys, railroad rights-of-way or such lines as extended; and

(3) Town boundary lines

Sec. 16-2-410. Standards zoning districts.

(a) In order to carry out the purposes of this Chapter, the Town is hereby divided into the following ten (10) standard zoning districts:

1. Agricultural (A) District.
2. Residential Estate (RE) District
3. Low Density Residential (R-1) District
4. Mid Density Residential (R-2) District
5. High Density Residential (R-3) District
6. Mobile Home (MH) District
7. General Commercial (C) District

8. Employment Center (EC) District

9. Industrial (I) District

10. Public (P) District

Sec. 16-2-415. A – Agricultural District.

(a) The A District is intended to provide for the continuation of agricultural activities. The A District is suitable for agricultural purposes due to soil quality, location, present land use and the availability of irrigation water.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-2.

Table 2.2
Agricultural District Standards

Standard	A – Agricultural District
Minimum Lot Area	217,800 square feet
Minimum Lot Width	300 feet
Maximum Lot Coverage	10 %
Minimum Front Setback (Principal Structure)	50 feet
Minimum Front Setback (Accessory Structure)	50 feet
Minimum Side Setback (Principal Structure)	50 feet
Minimum Side Setback (Accessory Structure)	10 feet
Minimum Rear Setback (Principal Structure)	50 feet
Minimum Rear Setback (Accessory Structure)	20 feet
Maximum Height (Principal Structure)	45 feet
Maximum Height (Accessory Structure)	60 feet

Sec. 16-2-420. RE – Residential Estate District.

(a) The RE District is intended to provide an opportunity for single-family dwellings on large lots, with the option of a reduced level of public improvements. Subdivisions in the RE District may be served internally with paved, rural streets. Where approved by the Town Engineer and permitted by appropriate regulatory agencies, lots in excess of one (1) acre may be served with individual septic systems in lieu of public sewer.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements for the RE District shall be as shown in Table 2-3.

(d) The following additional standards are established for residential development in the RE District:

(1) Only one (1) detached garage is permitted per lot or dwelling unit, and all single-family dwellings shall have at least a two-car garage. The maximum square footage of a detached garage shall be one thousand (1,000) square feet or eighty percent (80%) of the square footage of the building footprint of the principal residential dwelling, whichever is less.

(2) Only one (1) accessory building, not including a detached garage, is permitted per lot. Accessory buildings are not permitted in the front yards or in side yards that abut a public street.

Table 2.3
Residential Estate District Standards

Standard	**RE – Residential Estate District**
Minimum Lot Area/Dwelling Unit	21,780 square feet
Minimum Lot Width	100 feet
Maximum Lot Coverage	50 %
Minimum Floor Area/Dwelling Unit	2000 square feet
Minimum Principal Structure Footprint	1500 square feet
Minimum Front Setback (Principal Structure)	35 feet
Minimum Front Setback (Accessory Structure)	35 feet
Minimum Side Setback (Principal Structure)	35 feet
Minimum Side Setback (Accessory Structure)	10 feet
Minimum Rear Setback (Principal Structure)	35 feet
Minimum Rear Setback (Accessory Structure)	10 feet
Maximum Height (Principal Structure)	35 feet
Maximum Height (Accessory Structure)	18 feet

Sec. 16-2-425. R-1 – Low Density Residential District.

(a) The R-1 District is intended to provide for the development of low-density single-family residential dwellings.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements for the R-1 District shall be as shown in Table 2-4.

Table 2.4
Low Density Residential District Standards

Standard	R-1 – Low Density Residential District
Minimum Lot Area/Dwelling Unit	7500 square feet
Minimum Lot Width	70 feet
Maximum Lot Coverage	60 %
Minimum Floor Area/Dwelling Unit	800 square feet
Minimum Front Setback (Principal Structure)	20 feet
Minimum Front Setback (Accessory Structure)	20 feet
Minimum Side Setback (Principal Structure)	5 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	20 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	35 feet
Maximum Height (Accessory Structure)	18 feet

Sec. 16-2-430. R-2 – Mid Density Residential District.

(a) The R-2 District is intended to provide for the development of areas containing moderate density single-family and two-family residential dwellings.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-5.

Table 2.5
Mid Density Residential District Standards

Standard	R-2 – Mid Density Residential District
Minimum Lot Area/Dwelling Unit	3500 square feet
Minimum Lot Width	25 feet
Maximum Lot Coverage	70 %
Minimum Floor Area/Dwelling Unit	800 square feet
Minimum Front Setback (Principal Structure)	10 feet, w/ max. setback not to exceed an average of adjacent principal structures
Minimum Front Setback (Accessory Structure)	10 feet
Minimum Side Setback (Principal Structure)	5 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	10 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	35 feet
Maximum Height (Accessory Structure)	18 feet

Sec. 16-2-435. R-3 – High Density Residential District.

(a) The R-3 District is intended to provide for higher density multi-family residential development.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-6.

Table 2.6
High Density Residential District Standards

Standard	R-3 – High Density Residential District
Minimum Lot Area/Dwelling Unit	2400 square feet
Minimum Lot Width	50 feet
Maximum Lot Coverage	75 %
Minimum Floor Area/Dwelling Unit	600 square feet
Minimum Front Setback (Principal Structure)	25 feet; except in MS overlay, 5 feet
Minimum Front Setback (Accessory Structure)	25 feet
Minimum Side Setback (Principal Structure)	20 feet; except in MS overlay, 0 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	20 feet; except in MS overlay, 5 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	40 feet
Maximum Height (Accessory Structure)	18 feet

Sec. 16-2-440. MH– Mobile Home District.

(a) The MH District is intended to provide for the residential use of mobile homes or manufactured homes, whether for lease or ownership on individual lots or in a mobile home park.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-7.

(d) Additional requirements for mobile home parks are stated in Section 16-2-520.

Table 2.7
Mobile Home District Standards

Standard	MH– Mobile Home District
Minimum Lot Area	4000 square feet
Minimum Lot Width	40 feet
Maximum Lot Coverage	75 %
Minimum Front Setback (Principal Structure)	20 feet
Minimum Front Setback (Accessory Structure)	20 feet
Minimum Side Setback (Principal Structure)	5 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	10 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	20 feet
Maximum Height (Accessory Structure)	15 feet

Sec. 16-2-445. C – General Commercial District.

(a) The C District is intended to provide for commercial and service businesses that serve the residents of the Town and a larger regional market area.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-8.

(d) For those properties zoned Commercial in that area encompassed within the following: from Kiowa Avenue north to Colfax Avenue and South First Street east to Custer Street; not- withstanding the provisions of Article I, Division 6 of this Chapter, those residential uses existing prior to June 26, 2007 shall be allowed to continue. No increase in the number of residential units per lot or additions to residential units shall be permitted.

(1) For pre-existing mobile home parks within this area that were not processed pursuant to Article 1, Division 6 of this Chapter, requesting a mobile or manufactured home replacement, the following minimum standards shall apply:

a. There shall be a minimum ten-foot separation between units;

b. The unit shall be located a minimum of fifteen (15) feet from the perimeter of the overall property line operated as a mobile home park;

c. The placement of the unit shall accommodate a minimum of one (1) off-site parking space; and

d. An overall park plan shall be submitted with the request which shows, at a minimum, the overall mobile home park, including the identification of all spaces, with measurements and a site specific site plan for the space requesting a mobile or manufactured home replacement or any other information the Zoning Administrator determines to be necessary to review the request.

Table 2.8
General Commercial District Standards

Standard	C – General Commercial District
Minimum Lot Area	None
Maximum Lot Coverage	80%
Maximum Floor Area Ratio	.5
Minimum Front Setback (Principal Structure)	15 feet
Minimum Front Setback (Accessory Structure)	15 feet
Minimum Side Setback (Principal Structure)	10 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	15 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	50 feet
Maximum Height (Accessory Structure)	30 feet

Sec. 16-2-450. EC – Employment Center District.

(a) The EC District is intended to provide for a concentration of commercial and industrial land uses near major interchanges along the I-70 highway corridor. Employment centers serve as a location for nonresidential, commercial and industrial land uses, inclusive of large-scale warehousing, manufacturing, outdoor storage, distribution and trans-loading facilities.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-9.

Table 2.9
Employment Center District Standards

Standard	EC – Employment Center District
Minimum Lot Area	None
Maximum Lot Coverage	75%
Maximum Floor Area Ratio	.5
Minimum Front Setback (Principal Structure)	50 feet
Minimum Front Setback (Accessory Structure)	50 feet
Minimum Side Setback (Principal Structure)	25 feet
Minimum Side Setback (Accessory Structure)	10 feet
Minimum Rear Setback (Principal Structure)	25 feet
Minimum Rear Setback (Accessory Structure)	10 feet
Maximum Height (Principal Structure)	75 feet
Maximum Height (Accessory Structure)	30 feet

Sec. 16-2-455. I–Industrial District.

(a) The I District is intended to provide for limited or light industrial businesses which, by their nature, have minimal detrimental effect beyond the zone district in which they are located. Accordingly, industrial and manufacturing operations may locate in an I District as 1) a permitted use when their operations do not constitute a detriment to the public health or welfare by reason of smoke, radiation, noise, dust, odor, gas, glare, vibration, particulate matter or water pollution; or 2) by conditional use permit when the industrial or manufacturing operation is such that by reason of any of the foregoing, it may not be appropriate in the particular location in which it chooses to operate without certain safeguards to be appropriate.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-10.

Table 2.10
Industrial District Standards

Standard	I–Industrial District
Minimum Lot Area	None
Maximum Lot Coverage	80%
Maximum Floor Area Ratio	.3
Minimum Front Setback (Principal Structure)	50 feet
Minimum Front Setback (Accessory Structure)	50 feet
Minimum Side Setback (Principal Structure)	10 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	10 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	60 feet
Maximum Height (Accessory Structure)	30 feet

Sec. 16-2-460. P – Public District.

(a) The intent of the District is to provide a zoning classification for property devoted to public and quasi-public buildings and facilities, such that those properties, while unique in many respects, may nevertheless be subject to appropriate land use regulations.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-2-470.

(c) Lot and building requirements shall be as shown in Table 2-11.

Table 2.11
Public District Standards

Standard	P – Public District
Minimum Lot Area	None
Maximum Lot Coverage	80%
Maximum Floor Area Ratio	.3
Minimum Front Setback (Principal Structure)	15 feet
Minimum Front Setback (Accessory Structure)	30 feet
Minimum Side Setback (Principal Structure)	15 feet
Minimum Side Setback (Accessory Structure)	5 feet
Minimum Rear Setback (Principal Structure)	15 feet
Minimum Rear Setback (Accessory Structure)	5 feet
Maximum Height (Principal Structure)	50 feet
Maximum Height (Accessory Structure)	30 feet

Sec. 16-2-465. Lot and building requirements.

Lot and building requirements for the ten standard zoning districts are subject to the following additional provisions:

(a) No part of a yard, open space, buffer area, off-street parking area, loading space, lot area or building setback area required by this Chapter shall be used to meet a required standard for any other building, lot or use, unless a specific exception therefor is stated in this Chapter.

(b) No yard, building setback or lot area existing at the time of the adoption of the ordinance codified herein shall be reduced in dimension or area below the minimum requirements set forth herein.

(c) The number of principal structures permitted on any zone lot shall be limited as follows:

(1) For single family and two family residential uses, no more than one (1) principal structure plus permitted accessory structures per lot or tract of land in the A, RE, R-1, R-2, R-3 and MH Zone Districts is permitted. In order to qualify as a single principal structure, all portions of a structure must be structurally linked to each other, and not merely connected through the use of patios, breezeways, arcades or similar devices.

(2) For multiple-family residential uses in the R-3 Zone District, there is no limit on the number of principal or accessory structures permitted.

(3) For commercial and industrial uses in the C, EC, and I Zone Districts, there is no limit on the number of principal or accessory structures permitted.

(4) For any use in the P Zone District, there is no limit on the number of principal or accessory structures permitted.

(5) For any use in a PD or an Overlay District, refer to the approved ODP.

(d) Accessory structures shall be limited as follows:

(1) No accessory structure shall be located within any platted or recorded easement of the Town or over any utility except as otherwise expressly agreed to in writing by the Town or utility provider, as applicable.

(2) Only one (1) accessory building, not including a detached garage, is permitted per lot. Accessory buildings are not permitted in the front yards or in side yards that abut a public street. Accessory buildings shall not exceed a height of twelve (12) feet and shall not exceed two hundred fifty (250) square feet of floor area.

(3) The maximum cumulative lot coverage of all accessory buildings, including detached garages, shall not exceed the building footprint of the principal building.

(4) Only one (1) detached garage is permitted per residentially zoned lot or parcel. The maximum square footage shall be one thousand (1,000) square feet or eighty percent (80%) of the square footage of the building footprint of the principal residential dwelling, whichever is less.

(5) The minimum residential dwelling building footprint and minimum residential floor area square footage required for any residential zoning district shall be exclusive of any garage area.

(e) Penthouse or roof structures for elevators, stairways, tanks, ventilating fans or similar mechanical equipment required to operate and maintain the building, church steeples, flagpoles, chimneys, smokestacks or similar structures may be erected above the height limits herein. Private radio, television and ham radio antennas for personal use as approved by federal regulation may be erected to any height.

(f) Cornices, eaves or similar architectural features may extend into a required setback not more than two (2) feet.

(g) Fences and walls shall be subject to the standards contained in Section 16-2-790.

(h) Signs shall be subject to the standards contained in Article 3.

Sec. 16-2-470. Land uses.

(a) Land uses permitted within each standard zoning district are designated by symbols in Table 2-12, Land Use Table. The listed symbols are defined as follows:

P = Use permitted by right.

C = Conditional use, permitted pursuant to Section 16-2-330.

(b) Land uses permitted within a PD District shall be listed on the approved plan.

(c) No land, building, or structure shall be used for any purpose other than as provided for among the uses listed in the zoning district in which such land, building or structure, is located.

(d) Any use not permitted in a zone either specifically or by interpretation by the Zoning Administrator is hereby specifically prohibited from that zone. Uses that are similar to, but not specifically listed as, a permitted use may be approved by the Zoning Administrator.

(e) All uses are subject to the performance standards contained in Section 16-5-505 of this Article, any applicable Use Standards provided in Division 5 of this Article; and all applicable special area plans, master plans and design guidelines adopted by the Town.

Table 2.12
Land Use Table

Zone Districts										
Land Use Categories	***A***	***RE***	***R-1***	***R-2***	***R-3***	***MH***	***C***	***EC***	***I***	***P***
A. AGRICULTURAL USE										
(1) Auction arena or livestock sales	C								C	
(2) Crop production, pasture grazing land or private ranching	P									
(3) Greenhouse/nursery	P								C	
(4) Poultry hatcheries, fish hatcheries, commercial ranching and dairy farms or animals raised or kept for profit or production	C									
B. ANIMAL SERVICES										
(1) Animal boarding (kennels) and training	C						C		C	
(2) Animal hospital, large	C								C	
(3) Animal hospital, small	C						C		P	
(4) Riding academies and stables	C									
(5) Veterinary offices or clinics	C						P		P	
C. EDUCATIONAL USES										
(1) Day care center, adult or child		C	C	C	C		C			
(2) Elementary and secondary education school	P	P	P	P	P	P	C			P
(3) Postsecondary colleges and universities							C	P	P	P
(4) Private business, trade and vocational school							C	P	P	P
D. INDUSTRIAL USES										
(1) Commercial steam cleaning/laundry operations							C		C	
(2) Commercial trash removal companies without trash storage or trash transfer operations									C	
(3) Concrete or asphalt products production									C	
(4) Custom crafts (such as ceramics, furniture making and stained glass production)							P		P	
(5) General machine shops									P	
(6) General research and development								P	P	
(7) Laboratory: medical, dental, optical, scientific							C	P	P	
(8) Light trade and technical uses							C	P	P	
(9) Manufacturing, assembly, finishing or fabrication; primary									C	
(10) Manufacturing, assembly, finishing or fabrication; secondary								C	P	
(11) Meat processing plant									C	

Zone Districts										
Land Use Categories	***A***	***RE***	***R-1***	***R-2***	***R-3***	***MH***	***C***	***EC***	***I***	***P***
(12) Outdoor storage, except self- storage/mini-storage									C	
(13) Publishing plant								C	P	
(14) Recycling facilities									C	C
(15) Refining or initial processing of basic raw materials									C	
(16) Refuse collection facilities									C	C
(17) Self-storage, mini-storage							C		P	
(18) Soil amendments packaging and processing such as peat moss, top soil and composted manure; but excluding raw manure or chemical fertilizers									C	
(19) Warehousing and distribution								P	P	
(20) Waste-related uses, trash transfer station									C	C
(21) Wholesale establishments, including accessory offices								P	P	
E. INSTITUTIONAL USES										
(1) Cemetery	C		C							
(2) Charitable institutions							P	P	P	P
(3) Clubs and lodges,							P		P	P
(4) Cultural facilities, including a library or museum	C						P	P		P
(5) Events center							C	P		P
(6) Facilities owned or operated by government organizations other than Town	C	C	C	C	C	C	C	C	C	C
(7) Facilities owned or operated by Town	P	P	P	P	P	P	P	P	P	P
(8) Hospitals							C	P	P	
(9) Religious institutions	P	P	P	P	P	P	P	P	P	P
(10) Zoos, arboretum, botanical gardens, community gardens	P						C			P
F. RECREATION USES										
(1) Golf course and driving range	C	C	C	C	C					C
(2) Indoor commercial recreation or entertainment, including bowling alleys, movie theaters							P	P	P	
(3) Outdoor commercial recreation, including miniature golf, amusement parks							P	C	C	
(4) Outdoor playing fields	C	C	C	C	C	C	P	P	P	P
(5) Parks, both active and passive, and trails	C	C	C	C	C	C	C	P	P	P

Zone Districts										
Land Use Categories	***A***	***RE***	***R-1***	***R-2***	***R-3***	***MH***	***C***	***EC***	***I***	***P***
(6) Recreation facilities owned or operated by the Town or other government organization with supporting accessory uses, whether publically or privately owned or operated but in no event shall accessory uses occupy more than 10% of the gross floor area of the facility		C	C	C	C					P
(7) Shooting range, indoor									C	
(8) Shooting range, outdoor	C									
G. RESIDENTIAL USES										
(1) Assisted living facility or nursing home				C	P					
(2) Bed and breakfast establishments	C	C	C	C	C					
(3) Group home for elderly, developmentally disabled or mentally ill persons	P	P	P	P	P					
(4) Group home for juvenile offenders					C					
(5) Group home, other	C	C	C	C	C					
(6) Home occupations	P	P	P	P	P	P		P		
(7) Hotels and motels							P	P		
(8) Manufactured homes	P	P	P	P	P	P				
(9) Mobile homes						P				
(10) Multi-family dwelling					P			C		
(11) Rooming, lodging or boarding houses					P			C		
(12) Single-family dwelling	P	P	P	P	C	P				
(13) Two-family dwelling				P	C					
H. FOOD AND BEVERAGE SERVICE										
(1) Bar, tavern, nightclub							P	C	C	
(2) Brewery with tap room							C	C	P	
(3) Fast food							P	C	C	
(4) Fast food with drive-thru							C	C	C	
(5) Restaurant, other							P	C	C	
I. RETAIL USES										
(1) Building materials supply	C						C	C	P	
(2) Outdoor retail display and sales	C						C		C	C
(3) Pawnshops							C		C	
(4) Retail business, other (<5000 sq. ft.)							P	P		
(5) Retail business, other (>5000 sq. ft. <25000 sq. ft.)							P	C		
(6) Retail business, other (>25000 sq. ft.)							C	C		
(7) Sexually oriented business							C		P	

Zone Districts										
Land Use Categories	***A***	***RE***	***R-1***	***R-2***	***R-3***	***MH***	***C***	***EC***	***I***	***P***
J. SERVICES										
(1) Dry cleaning							P		P	
(2) Financial services (such as banks, savings and loan and brokerages) with drive-in facilities							P	P		
(3) Financial services (such as banks, savings and loan and brokerages) with no drive-in facilities							P	P		
(4) Funeral homes and mortuaries							P			
(5) Limited equipment rental							P		P	
(6) Offices; administrative business and professional, except health-related							P	P	P	
(7) Offices; medical, dental or other health-related ,including urgent care facilities							P	P	C	
(8) Personal services, other (<5000 sq. ft.)							P	P	P	
(9) Personal services, other (>5000 sq. ft. <25000 sq. ft.)							C	P		
(10) Personal services, other (>25000 sq. ft.)							C	P		
(11) Repair, furniture and major household appliance							P	P	P	
(12) Repair, other except vehicle- related repair							P	P	P	
K. TRANSPORTATION FACILITIES										
(1) Ambulance service	C	C	C	C	C	C	C	C	P	
(2) Heliports/helistops								C	C	C
(3) Overnight campground and travel trailer parking	C						C			
(4) Passenger terminal and transit facilities							P	P		P
(5) Private automobile parking lots or parking garages as a principal use							C	C	C	C
(6) Public automobile park 'n ride (commuter) lots							C	P	P	P
L. UTILITIES AND TELECOMMUNICATIONS										
(1) Overhead electric transmission lines and distribution feeder lines over 110 kV	C	C	C	C	C	C	C	C	C	C
(2) Public utilities, major	C							C	P	P
(3) Public utilities, minor	P	P	P	P	P	P	P	P	P	P
(4) Telecommunications facilities, including towers	C	C	C	C	C	C	C	C	C	C
M. VEHICLE-RELATED SALES AND SERVICE										
(1) Automobile rentals							C	P	P	
(2) Automobile washing facility							P	C	P	
(3) Major vehicle/equipment repair (includes auto body repair, paint shops and incidental sales of parts)							C		C	

Zone Districts										
Land Use Categories	***A***	***RE***	***R-1***	***R-2***	***R-3***	***MH***	***C***	***EC***	***I***	***P***
(4) Minor vehicle repair (includes minor repair where vehicles are not stored in an inoperable condition)							P	C	P	
(5) Motor vehicle dealer/sales, new and used (includes RVs, trailers, mobile homes							C	C	C	
(6) Service stations (minor repairs included)							P	C	P	
(7) Truck stops							C		C	
(8) Vehicle/equipment sales and rentals (other than motor vehicles)							C	C	P	
(9) Vehicle or automobile wrecking or salvage yard, including outdoor storage of inoperable vehicles									C	
(10) Vehicle storage (operable vehicles only)									C	
(11) Vehicle towing services									P	

Sec. 16-2-475. PD – Planned Development District.

(a) Pursuant to the Planned Unit Development Act of 1972, Article 67 of Title 24, C.R.S., the Planned Development (PD) District is created as an alternative to the conventional land use regulations contained within a standard zoning district.

(b) The PD District is a distinct zoning district that provides a means by which development standards and permitted land uses can be customized for a specific site. The PD District is intended to:

(1) Provide flexibility in land use regulations by allowing for the consolidation of the platting and rezoning procedures;

(2) Permit a developer to propose a total development plan which can be considered as to its overall merits under a unified procedure;

(3) Encourage imaginative uses of open space, and special consideration of property with outstanding natural or topographical features;

(4) Encourage a diversity of housing types while maintaining high quality living environments;

(5) Provide a mix of retail, office, employment, civic and recreation uses conveniently located to housing;

(6) Provide for more efficient use of land including the reduction of land area disturbed for utility lines and motor vehicle access;

(7) Facilitate use of the most appropriate design and construction techniques in the development of land; and

(8) Advance the guiding principles contained within the Comprehensive Plan.

(c) Any combination of land uses and lot and building requirements may be approved in a PD District if the Board of Trustees determines that such uses are compatible with one another and with the use of adjoining land.

(d) There shall be no minimum size for a PD District.

(e) The maximum permissible density within a PD District shall be determined based upon the land uses proposed for the development and shall be based upon the density standards for similar types of uses as specified in standard zoning districts. However, such density requirements may be altered through the approval process of the planned development if the spirit and intent of the development criteria contained in Section 16-2-350 (d) are met and if the Board of Trustees finds that the development plan contains areas allocated for usable open space or common park area in excess of public use dedication requirements, or that the alteration is warranted by the amenities incorporated in the development plan, and the needs of residents for usable and functional open space, parks and buffer areas can be met.

(f) Procedures for creating a PD District are contained in Section 16-2-350.

Sec. 16-2-480. Overlay Districts.

(a) An overlay district is a supplemental district that may be superimposed over any standard zoning district established in Section 16-2-410. The boundaries of each overlay district shall be established by ordinance of the Town Board and shall be shown on the Zoning Map. On and after the date of adoption by the Town Board of such ordinance, all real property within the boundaries of each overlay district shall become subject to the requirements of that overlay district.

(b) Any use by right or conditional use permitted in an underlying standard zoning district shall also be permitted in an overlay district. Additional uses may also be permitted if the proposed use conforms with the intent of the overlay district.

(c) Lot and building standards for development within an overlay district shall be established by a site plan submitted in accordance with Section 16-2-310.

(d) In addition to the standard zoning and PD districts listed above, and in accordance with the Bennett Downtown Study, three overlay districts are established:

(1) Residential Mixed Use (RMU) District.

(2) Commercial Mixed Use (CMU) District.

(3) Main Street (MS) District.

Sec. 16-2-485. RMU - Residential Mixed Use District.

(a) The RMU District is intended to promote and protect the existing residential neighborhood while allowing for the development of low intensity commercial activity that does not detract from the overall scale and character of the residential neighborhood as largely a single family dwelling environment. Commercial activity is intended to provide neighborhood-scaled shops and offices for residents to conveniently access goods and services within walking distance.

(b) All new development in the RMU District shall be subject to the recommendations of the Bennett Downtown Study.

Sec. 16-2-490. CMU - Commercial Mixed Use District.

(a) The CMU District is intended to promote safe environments for both the pedestrian and vehicular travel. Unlike the Main Street District, this environment incorporates SH 79 regional travel of large tractor trailers, as well as local residents in and adjacent to the CMU District. The CMU District promotes a pedestrian-active street where buildings are oriented to the street with standards allowing flexibility in building, circulation and parking lot layout.

(b) All new development in the CMU District shall be subject to the recommendations of the Bennett Downtown Study.

Sec. 16-2-495. MS – Main Street District.

(a) The Main Street District is intended: 1) to enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering along Palmer Avenue, E. Colfax Avenue and the designated portion of First Street (future Main Street); 2) to promote an urban, mixed-use environment with commercial, residential and civic activities; and 3) to promote safe, active, and pedestrian-scaled commercial streets through the use of storefront-style designs with horizontal and vertical mixed use building forms that clearly define and activate the public street edge.

(b) All new development in the MS District shall be subject to the recommendations of the Bennett Downtown Study.

Division 5
Use Standards

Sec. 16-2-505. General performance standards for all uses

All uses conducted in all zone districts must comply with the following performance standards:

(1) Glare and heat. Any operation producing intense glare or heat shall be conducted within an enclosed building or with other effective screening in such a manner as to make such glare or heat completely imperceptible from off site.

(2) Vibration. Industrial or commercial operation shall cause no inherent and recurring generated vibration perceptible without instruments at any point along the property line.

(3) Light. Exterior lighting, except for warning, emergency or traffic signals, shall comply with the lighting standards set forth in Division 8 of this Article.

(4) Smoke. All industrial and commercial uses which produce smoke or any air contaminant shall be subject to the jurisdiction and regulations of the Colorado Air Quality Control Department and the Colorado Air Quality Control Division. Visible emissions of any kind at ground level past the lot line of the property on which the source of the emissions is located, are prohibited.

(5) Odors. No industrial or commercial use shall cause or allow the emission of malodorous air contaminants from any single source such as to result in detectable odors which are apparent outside the property boundaries.

(6) Noise. All uses shall be conducted such that noise generated is controlled at its source or so attenuated by the structure from which it radiates that it does not become objectionable from off site.

(7) Fugitive dust. No industrial or commercial operation shall be allowed to produce fugitive dust in amounts which are noticeable outside of the property boundaries of the use.

(8) Electromagnetic and electrical interference. No equipment shall be operated in such a manner as to adversely affect the operation of any off-premises electrical, radio or television equipment. It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation for such purposes as communication, experimentation, entertainment, broadcasting, heating, navigation, therapy, vehicle velocity measurement, weather survey, aircraft detection, topographical survey, personal pleasure or any other use directly or indirectly associated with these purposes which does not comply with the then-current regulations of the Federal Communications Commission regarding such sources of electromagnetic radiation, except that for all governmental communications facilities, governmental agencies and government owned plants, the regulations of the interdepartmental Radio Advisory Committee shall take precedence over the regulations of the Federal Communications Commission, regarding such sources of electromagnetic radiation.

(9) Wastes. All liquid and solid wastes produced shall be confined within the property boundaries until disposed of by proper means. No person shall cause or permit any materials to be handled, transported or stored in a manner which allows or may allow particulate matter to become airborne or liquid matter to drain onto or into the ground.

Sec. 16-2-510. Home occupations.

Home occupations are permitted uses in all residential districts, subject to the following standards:

(1) The use must be conducted entirely within a dwelling or accessory building.

(2) The use may employ a maximum of one (1) person other than those members of the immediate family residing on the premises.

(3) The home occupation must be clearly incidental and secondary to the use of the dwelling for dwelling purposes and must not change the residential character thereof.

(4) The total area used for home occupations shall not exceed twenty-five percent (25%) of the total floor area within the lot. The area used for the home occupation shall be considered to include all storage areas and work spaces clearly utilized or essential in the operation of the home occupation.

(5) There shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation, including advertising signs displays or advertising that solicits or directs persons to the address.

(6) On-site retail sales are not permitted.

(7) Storage on the premises of material or equipment used or serviced as a part of the home occupation must be completely enclosed within a building. No storage of hazardous materials is permitted.

(8) Home occupations shall not create any glare, fumes, odors or other objectionable conditions detectable to the normal senses beyond the boundaries of the zone lot.

(9) Persons operating home occupations shall grant the Town reasonable access for the purpose of verifying compliance with this Chapter.

Sec. 16-2-515. Group homes.

(a) Group homes may be approved as conditional uses in all residential districts subject to the requirements set forth below. In conducting the hearing for the conditional use permit, the Planning Commission and Board of Trustees shall consider an analysis of the following:

(1) Building height and setbacks;

(2) Building coverage of the lot;

(3) Traffic and parking;

(4) Compatibility of building design with the character of the surrounding area; and

(5) Whether the types of treatment activities or the services proposed to be conducted upon the premises are in a manner substantially consistent with the activities otherwise permitted in the zoning district.

(b) A group home may not be located closer than one thousand (1,000) feet to any other group home.

(c) No permanent certificate of occupancy will be issued for a group home until the person applying for the group home has submitted a valid license from a governmental agency having jurisdiction.

(d) If active and continuous operations are not carried on in a group home for twelve (12) consecutive months, the group home use shall be considered to have been abandoned and no longer allowed. The group home use can only be reinstated after obtaining a new approval from the Planning Commission.

Sec. 16-2-520. Mobile home parks.

Mobile home parks in which mobile homes are located shall comply with the following standards:

(1) The space between the lower edge of the mobile home unit and the ground shall be completely enclosed (skirted) with suitable and uniform weatherproof material.

(2) Vehicle parking.

a. There shall be a minimum of two (2) off-street parking spaces provided for each mobile home unit within the park.

b. All parking surfaces shall be paved.

(3) Streets and access.

a. Paved streets shall extend from the existing street system as necessary to provide convenient access to each mobile home space and to common facilities and uses.

b. All streets, whether public or private, shall be paved and constructed to Town specifications.

(4) Pedestrian walkways, at least two (2) feet in width and paved, shall be provided for access to each mobile home from a paved street or driveway or parking area connected to a public street.

(5) Water and sewer service. All mobile home parks shall have all spaces or stands connected to the public water supply of the Town. All mobile home parks must have all spaces or stands connected to an approved public sewer system serving the Town.

(6) Refuse disposal. The storage, collection and disposal of refuse shall be conducted to control odors, insects, rodents and other nuisance conditions.

(7) Setback requirements.

a. Housing units within a mobile home park shall be separated by a distance of not less than fifteen (15) feet.

b. Housing units within a mobile home park shall be set back not less than ten (10) feet from any internal street or alley, and not less than twenty (20) feet from any public street abutting the perimeter of the mobile home park.

(8) Tie-downs and blocking. Every mobile home shall be secured against wind damage by blocking and tie-downs approved by the Building Official.

Sec. 16-2-525. Telecommunication facilities.

(a) Telecommunications facilities are allowed as a conditional use in the zone districts as shown in the Land Use Table in Section 16-2-470.

(b) The intent of colocation is to have several providers use the same structure or site to keep the number of telecommunication facilities to a minimum as a means of reducing the overall visual impacts throughout the community. If colocation is a practical alternative to the construction of a new telecommunication tower, then colocation is required.

(c) If it is practical to attach facilities to water towers, existing transmission towers, or existing buildings, or light poles or utility poles, then such locations shall be used instead of new telecommunications towers.

(d) Telecommunication facilities that are attached to existing buildings and structures, other than telecommunication towers, are subject to the following requirements:

(1) Façade mounted facilities (antenna mounted on the side of a building) may not extend above the parapet wall, or, in the case of a pitched roof, above the fascia.

(2) The maximum height of a facility that is mounted on a rooftop is the shorter of:

a. 20 feet taller than the building to which it is attached; or

b. 10 feet taller than the maximum height allowed in the zone for a principal building.

(3) Rooftop antennas shall either be:

a. Mounted to a penthouse;

b. Set back such that they are not visible from ground level on adjacent rights-of-way or residential uses at a distance of 100 feet or less; or

c. Reasonably screened from ground level view, and designed in a manner which is compatible with the materials, colors, and architectural details of the existing building or structure.

(4) Equipment that does not depend upon an elevated location to operate shall be located:

a. Within a building;

b. Within an underground enclosure; or

c. Within an enclosure at ground level which is screened from view from all abutting properties, streets, and trails.

(e) Telecommunication towers are subject to the following requirements:

(1) The minimum setback shall be the setback applicable to principal structures in the zone in which the tower is located, plus one foot per foot that a tower extends above the maximum building height for the zoning district.

(2) Telecommunication towers shall be nonreflective, unpainted galvanized steel or painted neutral colors or such shades that are appropriate and compatible with the surrounding environment.

(3) No lighting shall be permitted on telecommunication towers except that required by the Federal Aviation Administration (FAA).

(f) Abandonment:

(1) Telecommunications facilities which are not in use for communications purposes or which are deemed abandoned under Paragraph (2) below, for a period of six (6) consecutive months, shall be removed by the telecommunications facility owner. This removal shall occur within ninety (90) days of the end of said six-month period. Upon removal, the site shall be revegetated to substantially the condition it was in prior to the existence of the telecommunications facility.

(2) Telecommunications facilities shall be deemed abandoned if one (1) or more of the following conditions exist:

a. Power service is disconnected;

b. All of the equipment required for transmission has been removed from the site; or

c. The telecommunications facility owner has lost ownership, lease rights or other legal authority to use the property for purposes of operating a telecommunications facility.

(3) In the event that the owner fails to remove the abandoned telecommunications facility within the time specified in Paragraph (1) above, the Town is hereby authorized to remove or cause the removal of the abandoned telecommunications facility without any liability for trespass. All costs incurred by the Town, including an administrative cost equal to twenty-five percent (25%) of all direct costs, shall be charged as a lien against such real property and the owners thereof.

(4) If the amount specified in Paragraph (3) above is not paid within thirty (30) calendar days, the Town shall have the right to seek collection of any amount due, plus statutory interest and any and all costs of collection, including but not limited to its attorney's fees, through institution of an action at law or in equity.

(5) If the telecommunications facility owner intends to abandon or cease use of a facility, the owner shall immediately notify the Zoning Administrator, in writing, of such intent.

Sec. 16-2-530. Borrow pits.

Except under the following instances, borrowing may not be done without obtaining a conditional use permit:

(1) Minor projects which have cuts or fills each of which is less than five (5) feet in vertical depth at its deepest point measured from the existing ground surface, which include all of the following: a)

less than fifty (50) cubic yards of earth material; b) the removal of less than ten thousand (10,000) square feet of vegetation.

(2) Minimum excavation required in connection with a building or other structure authorized by a valid building permit.

(3) Grading work being done pursuant to an approved grading plan in conjunction with an approved recorded plat or overlot grading plan being done on the same property.

(4) Trenching incidental to the construction and installation of approved underground pipeline, septic tank, disposal lines, electrical or communication facilities, and drilling or excavation for approved wells or fence posts.

(5) Grading or excavation in accordance with plans incorporated in an approved mining permit, reclamation plan or reservoir permit.

(6) Maintenance and cleaning of ditches, lakes, ponds and water storage reservoirs.

(7) No processing, crushing or similar treatment of earth material may occur on the borrow pit site.

Sec. 16-2-535. Mining.

Mining is a mechanism allowing for extraction of sand, gravel, and clay, including attendant operations such as crushing and stockpiling. Quarrying of hard rock aggregate is generally prohibited. Mining operations, crushing and stockpiling are permitted as a conditional use within any land use category. Mining equipment shall be considered mechanical equipment; however, it will not be subject to the screening or camouflaging requirements herein. Mining operations shall, however, be subject to the following requirements under the following instances:

(1) All mining equipment and operations areas must be screened from the sight of adjacent properties or right-of-way by the use of berms or by other equivalent means.

(2) All mining equipment shall be located behind building setback lines.

(3) Mining equipment shall not exceed thirty-five (35) feet in vertical height unless totally screened.

(4) All access roads longer than one hundred (100) feet used for ingress and egress from the public roadway to the area of mining operations shall be paved to the standard for local roadways and shall be maintained to minimize fugitive dust generated by vehicles.

(5) Any required state highway access permits shall be obtained prior to any mining operation.

(6) Any necessary traffic improvements, identified through any requirement of the Town or County (as appropriate), that are needed for safety and proper circulation shall be constructed. Mining activity traffic will not lower the level of service of the public roadway providing access lower than the level of service "B".

(7) All mining activities shall meet applicable air quality standards as set by the Colorado Air Quality Control Commission.

(8) Mining structures and equipment shall be prohibited in the same locations as is outdoor storage. All mining operations shall be at least two hundred (200) feet from the property line.

(9) No open pit mine shall be deeper than two hundred (200) feet. No reclaimed open pit mine shall be left deeper than one hundred (100) feet.

(10) Mining, processing or transporting operations shall be within the time limits of 6:00 a.m. to 6:00 p.m., except for Sunday when such activity shall be prohibited. Maintenance operations shall not be subject to this provision.

(11) The use of explosives is subject to all state and federal standards and restricted to a maximum of five (5) days per calendar year.

(12) Mining and all associated activities and uses must meet State residential noise standards regarding noise pollution.

(13) All reclaimed slopes shall not exceed 3:1. A diverse permanent vegetative cover shall be established on all disturbed areas to achieve erosion control equal to conditions prior to mining. The cover shall be predominantly of native species.

(14) Sediment caused by accelerated soil erosion shall be removed from runoff water before leaving the site. Runoff shall not be discharged from the site in quantities or at velocities above those occurring before mining.

Sec. 16-2-540. Reservoir construction.

Open mining operations, crushing and stockpiling are permitted as a conditional use within any land use category for the purpose of creating a reservoir. The standards specified for reservoir construction are the same as those for mining in Section 16-10-540 with the exception that there is no depth limitation and the finished grades will be the same as the standards specified by the State for reservoirs. Any reservoir design and construction must be approved by the Town Engineer.

Sec. 16-2-545. Commercial marijuana cultivation and sale.

(a) The use of property as a medical marijuana center, optional premises cultivation operation or marijuana-infused products manufacturer are all land uses prohibited in any zone district, including in any PD zone district. For purposes of this Section, *medical marijuana center*, *optional premises cultivation operation* and *medical marijuana-infused products manufacturer* shall have the meanings set forth in Section 6-3-20 of this Code. Nothing in this Section shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in Article XVIII, § 14 of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, Title 12, Article 43.3, C.R.S., Section 25-1.5-106, C.R.S., and the rules promulgated thereunder.

(b) The use of property as a marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility or retail marijuana store are all land uses prohibited in any zone district, including in any PD zone district. For purposes of this Subsection, *marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility* and *retail marijuana store* shall have the meanings set forth in Section 6-4-20 of this Code. Nothing in this Section shall be construed to prohibit, regulate or otherwise impair the protections for the personal use of marijuana as provided in Article XVIII, § 16(3) of the Colorado Constitution.

Sec. 16-2-550. Reserved.

Sec. 16-2-555. Salvage yards and junkyards.

(a) Salvage yards and junkyards are permitted as a conditional use in the Industrial zoning district, subject to the following screening requirements.

(1) No conditional use permit shall be issued by for any salvage yard or junkyard in the Town unless the premises on which such business or storage is carried is entirely enclosed by a solid fence at least six (6) feet in height. Such fence shall be a masonry wall, a wooden fence, a steel fence or concealing chain link as approved by the Zoning Administrator. Such fence shall be maintained in a neat, substantial, safe condition. All gates shall open inward and shall be kept closed when the premises are not open for business.

(2) Such wall, fence or the gates thereof shall not contain any advertising sign or poster other than that needed to identify the enclosed business.

(3) Salvage or junk operations, including storage, shall not encroach upon or use any area outside the enclosed area.

(4) No screening shall be required in the following instances:

a. The common boundary between adjacent salvage yards and junkyards.

b. That portion of the boundary to be enclosed is contiguous to a view-obscuring topographic feature rendering screening unnecessary.

c. That portion of the boundary to be enclosed is contiguous to an industrial use of similar nature to a salvage yard or junkyard which is of such a view-obscuring arrangement, topographic or otherwise, as to render screening unnecessary. Any dispute as to the need for enclosure in the foregoing instances shall be determined by the Board of Trustees in considering an application for a conditional use permit. The Board of Trustees may allow an alternate method of enclosure in substitution for the wall or fence, provided that the alternative method of enclosure shall fulfill the intent to keep out children; to keep out persons attempting to enter salvage yards and junkyards illegally; to keep such areas free from rodents; and to effectively screen such yards from public view.

(b) Salvage and junk in an enclosed yard shall be so piled or placed that adequate passageways are open to permit the unobstructed passage of firefighting vehicles. Such passageways within the yard shall be approved in writing by the Fire Chief, Bennett Fire Protection District.

(c) It shall be the duty of the person operating a salvage yard or junkyard to maintain the premises so used in a clean, sanitary, and neat condition, and in such a manner as to eliminate and exclude rodents.

Sec. 16-2-560. Accessory Dwelling Units (ADU's).

(a) Number of ADU's. One ADU shall be allowed on a residential lot in the R-1 or R-2 zoning district in conjunction with any new or existing detached single-family dwelling.

(b) Location.

(1) An ADU may be added to or included within a single family dwelling, or located in a detached accessory structure on the same lot as the principal building.

(2) ADUs shall conform to all setback, height, and lot coverage restrictions and any other standards or regulations required in the R-1 or R-2 zoning district.

(c) Size/Scale.

(1) The total square footage of an ADU shall not exceed the smaller of one thousand (1,000) square feet or forty percent (40%) of the total square footage of the principal building excluding any garage area.

(2) If an ADU occupies an entire single floor within a principal building, the Zoning Administrator may allow for an increase in the allowed size of the ADU in order to efficiently use all of the floor area, so long as all other standards of this section are met.

(d) Subdivision. An ADU shall not be subdivided or otherwise segregated in ownership from the principal building.

(e) Occupancy. Either the principal building or the ADU must be occupied by an owner of the property on which the principal building and ADA are located.

(f) Parking. One off-street parking space is required for an ADU in addition to the parking required for the principal building. Parking spaces may include private driveways, garages, carports, or off-street areas reserved for vehicles.

(g) Exterior Modification. Only one entrance on the front of the principal building is permitted. Additional entrances are permitted on the side and rear of the principal structure. The Zoning Administrator may allow both entrances to the principal building and ADU to be located on the front of the structure where design, site layout, and construction considerations significantly hinder other options. Additions to an existing principal structure or the development of a newly constructed detached ADU shall be designed consistent with the existing facade, roof pitch, siding, and windows of the principal building.

(h) Home Occupations. Home occupation shall be allowed, subject to the requirements of this Article, in both the ADU and the principal structure.

Division 6
Parking Standards

Sec. 16-2-610. Parking space requirements.

(a) Unless otherwise provided, land uses are required to have off-street vehicle parking spaces in accordance with the standards of this Division. The number and type of spaces is determined by the use of the property. Table 2-13 identifies the number of off-street parking spaces required with the construction of or addition to any building, or the implementation or expansion of the use of a site.

Table 2.13
Off-Street Parking Requirements

Use	***Parking Spaces Required***
Residential	
Single-family dwelling	2.0 per dwelling unit
Multi-family dwelling:	
Studio	1.25 per dwelling unit
1-bedroom	1.5 per dwelling unit
2 or more bedrooms	2.0 per dwelling unit
Assisted living facility	0.5 per dwelling unit
Motel or hotel	1.25 per guest room, plus 1 per 100 square feet of restaurant/lounge, plus 2.5 per 100 square feet of meeting/banquet room
Group or nursing home	1 per room
Hospital	1 per 3 beds, plus 1 per 5 average daily outpatient treatments, plus 1 per 4 medical staff, plus 1 per student/faculty/staff
Food and Beverage	
Restaurant (without bar)	1.6 per 100 square feet of gross floor area
Restaurant (with bar)	2.25 per 100 square feet of gross floor area
Fast food restaurant	1.5 per 100 square feet of gross floor area
Retail/Service	
Animal hospital/veterinary clinic	1 per 300 square feet of gross floor area
Furniture, appliance, or building material store	1 per300 square feet of gross floor area
General retail (not in shopping center)	1 per 300 square feet of gross floor area
Grocery stores and discount superstores/clubs (freestanding)	1 per 175 square feet of gross floor area
Home improvement superstores	1 per 200 square feet of gross floor area
Shopping center	1 per 250 square feet of gross floor area
Motor vehicle sales and service	1 per 500 square feet of gross floor area, plus 1 per 6,000 square feet of outdoor vehicle display area, plus 2 per service bay
Motor vehicle cleaning facility (car wash)	2
Personal service	1 per 200 square feet of gross floor area

Use	*Parking Spaces Required*
Office/Business Services	
Bank	1 per 200 square feet of gross floor area
Business or professional office	1 per250 square feet of gross floor area
Medical or dental office, or clinic	1 per200 square feet of gross floor area
Wholesale establishment or warehouse	1 per 2 employees
Industrial use (excluding office) not mentioned specifically under another use in this Section	1 per500 square feet of gross floor area
Cultural/Recreational/Entertainment	
Public assembly	.25 per person in permitted capacity
Library	1 per 225 square feet of gross floor area
Museum	1.5 per 1000 annual visitors
Religious institutions	0.6 per seat
Cinemas	Single screen: 0.5 per seat; up to 5 screens: 0.33 per seat; 5to 10 screens: 0.3 per seat; over 10 screens: 0.27 per seat
Theaters (live performance)	0.4 per seat
Arenas and stadiums	0.33 per seat
Recreational facilities and health clubs	1 per 3 persons permitted capacity
Educational	
Day care center or preschool	0.35 per person (licensed capacity)
Elementary or secondary school	0.35 per student
College or university	Determined by parking study
Governmental	As determined by Zoning Administrator

Note: When determining the number of parking spaces to be required, fractions of spaces shall be rounded to the nearest whole number.

(b) When one (1) building is planned to include a combination of different uses, the minimum parking required will be determined by applying the above requirements based upon the floor area for each use. The maximum number of parking spaces required for the building shall be the sum of the requirements for each separate use.

(c) Off-street parking areas may be located to jointly serve two (2) or more buildings or uses, provided that the total number of spaces is not less than that required for the total combined number of buildings or uses. However, this number may be reduced based on the results of a shared parking demand analysis based on recognized standards and methodologies.

(d) For specific land uses not listed, the Zoning Administrator shall determine the appropriate number of parking spaces required, based upon the type of activity, , similarity to listed uses, expected parking demand to be generated, and other information from appropriate traffic engineering and planning criteria.

Sec. 16-2-620. Loading requirements.

(a) Each required off-street loading space shall be of a size not less than that required for an off-street parking space, as set forth in Section 16-2-640(e), but scaled larger to delivery vehicles expected to be used, logically and conveniently located for bulk pickups and deliveries, and accessible to such vehicles when required off-street parking spaces are filled; provided that for industrial uses, the off-street area required for the off-street loading space shall be a twelve (12) foot by forty-five (45) foot loading space with a fourteen (14) foot height clearance; provided further that if more than one (1) berth is provided the minimum dimensions are held to be ten (10) feet by forty-five (45) feet with a fourteen (14) foot height clearance.

(b) The number of off-street loading spaces required for each use is set forth in Table 2-14. Where the use of the premises is not specifically mentioned, loading requirements shall be determined by the Zoning Administrator based upon requirements for similar uses, expected demand generated by the proposed use, temporal factors and other information from appropriate traffic engineering and planning criteria.

Table 2.14
Loading Zone Standards

Use	***Square Feet of Gross Floor Area***	***Required Off-Street Loading Berths***
Commercial		
Retail or wholesale	10,000 - 25,000 25,000 - 50,000 50,000 – 100,000 For each additional 50,000 or major fraction thereof	1 2 3 1 additional
Mortuary	For each 5,000	1
Hospital (In addition to space for ambulance)	For 10,000 - 300,000 For each additional 300,000 or major fraction thereof	1 1 additional
Hotel	For each 10,000	1
Office	For each 10,000	1
Industrial		
Manufacturing or warehousing	10,000 – 25,000 25,000 - 40,000 40,0000 – 60,000 60,000 – 100,000 For each additional 50,000 or major fraction thereof	1 2 3 4 1 additional
Educational		
School	For each 15,000	1

Sec. 16-2-630. Stacking requirements.

The purpose of stacking space requirements is to promote public safety by alleviating on-site and off-site traffic congestion that might otherwise result from the operation of a drive-up or drive-through facility. For all applicable drive-up or drive-through uses, the following off-street stacking requirements shall apply:

(1) At a minimum a stacking space shall be eight and one-half (8.5) feet wide and eighteen (18) feet long.

(2) A stacking space at a drive-in or drive-through window, menu board, order station, designated drop-off zone, or service bay is considered to be a stacking space.

(3) An area reserved for stacking spaces may not double as a circulation driveway, maneuvering area, or off-street parking space.

(4) Stacking spaces may be located anywhere on the building site, provided that traffic impacts on and off site are minimized and the location does not create negative impacts on adjacent properties due to noise, light or other factors.

(5) A minimum of four (4) stacking spaces per one thousand (1000) square feet of gross floor area plus two (2) stacking spaces for the first drive through window and two (2) stacking spaces for each additional window shall be provided.

(6) For uses that have drive-through bays or stalls, a minimum of two (2) stacking spaces per bay or stall shall be provided.

Sec. 16-2-640. Parking area design standards.

(a) The required number of parking spaces in all off-street parking areas shall be unobstructed and free of all other uses.

(b) All off-street parking areas and access drives shall be surfaced with asphalt or concrete, except that other dust-free surfaces such as washed road base with a chemical dust suppressant may be approved by the Zoning Administrator for parking areas in the industrial districts, based on type of use, location and impact to adjoining properties.

(c) Off-street parking areas with two (2) or more spaces shall be screened from any adjoining residentially zoned lot by landscaping or solid fencing.

(d) Lighting from any parking area shall comply with Division 8 of this Article.

(e) Off-street parking spaces shall be at least nine (9) feet wide by eighteen (18) feet deep, except that parallel parking spaces shall be not less than ten (10) feet wide by twenty-two (22) feet long.

(f) Off-street parking spaces for persons with disabilities shall be twelve (12) feet wide, unless the space is parallel to a pedestrian walk. The parallel-handicapped parking space shall be adjacent or close to an ADA approved ramp. Other dimensions shall be the same as those for standard parking spaces. Handicapped parking spaces shall have unimpeded ramp access to a walk. Every handicapped parking stall shall be identified at the head of the parking space with a raised, standard identification sign, centered between three (3) feet and five (5) feet above the parking surface. The sign shall include the

international symbol for accessibility and state "reserved," or contain similar wording, in accordance with Section 16-3-420 (6).

(g) The minimum width of traffic aisles in parking lots shall be as listed in Table 2-15.

Table 2.15
Parking Stall Standards

Parking Stall Angle (degrees)	***Direction of Traffic***	***Minimum Traffic Aisle and Driveway Width (feet)***
0 (parallel)	One-way traffic	12
0 (parallel)	Two-way traffic	24
30	One-way traffic	14
45	One-way traffic	16
60	One-way traffic	18
90	One-way traffic	24
90	Two-way traffic	24

Sec. 16-2-650. Parking of Recreational Vehicles.

A recreational vehicle, trailer or boat may only be parked on a lot behind the front building line of a principal structure or, in the case of a corner lot, behind the building line facing each street or right-of-way, and shall be screened to a height of six (6) feet from view from any public or private right-of-way. Parking of recreational vehicles shall also comply with Section 8-5-10 of this Code.

Division 7
Landscape Standards

Sec. 16-2-710. Landscape plan requirement

(a) A landscape plan prepared in conformance with this Division shall be submitted for:

(1) All residential and non-residential development proposed within the Town requiring approval of a site plan or final development plan prior to the issuance of a building permit.

(b) A landscaping plan submitted with a site plan or final development plan must comply with the landscaping requirements of this Division. Landscaping plans for single-family residential developments shall be required for common open space areas, adjacent street rights-of-way and parks, but not for individual lots.

(c) Unobstructed open space and common open space improvements shall include, but are not limited to, landscaping, patios, plazas, arcades, pedestrian and/or bicycle pathways, fences, retaining walls, benches, fountains, statuary, kiosks, light fixtures, picnic shelters and other site amenities.

(d) All portions of a site not occupied by structures, water bodies, streets, roads, driveways, sidewalks, plazas, patios, parking areas and other vehicle use areas are required to be landscaped in accordance with these standards.

(e) Landscape plans shall be submitted in accordance with the Applicant Guide.

Sec. 16-2-720. Landscape design criteria.

All landscaping plans shall comply with the applicable design standards of this Division.

(1) Plant materials.

a. The following ratios apply: One (1) tree and ten (10) shrubs, or an acceptable combination of trees and shrubs, for every one thousand (1,000) square feet of landscaped area.

b. Within a required landscaped area, ornamental clump grasses may be exchanged for up to fifty (50) percent of the required shrubs at a ratio of three (3) ornamental clump grasses for one (1) shrub if one (1) gallon clump grasses are selected.

(2) Parking areas:

a. Interior coverage: At least five percent (5%) of the interior area of a parking lot shall be landscaped if the lot contains fifteen (15) or more parking spaces. At least seventy-five (75%) of the required landscaped area shall include living plant material.

b. Islands: Landscaped parking lot islands must be delineated by a clear physical barrier such as concrete curbs or landscaping timbers to protect the plant material from vehicular damage.

c. Parking lot screening: Berms, walls, fences, plants, planters or combinations thereof shall be used to screen the parking lot from view from surrounding public rights-of-way and from all dissimilar adjacent uses. All perimeter areas of the parking lot shall be landscaped to provide visual relief to large expanses of paving and to provide ample shading to reduce heat build-up. Whenever structures such as walls or fences are used to create a screen, plants shall be located on

the sides of the structure which is visible from adjacent public rights-of-way. The top of the landscape screen around the parking area shall be at least three (3) feet higher than the surface of the parking area, except where clear visibility must be maintained as provided in Section 16-2-770 of this Chapter, or due to traffic or pedestrian safety considerations.

(3) Use of nonliving materials: Nonliving landscaping such as decorative or pattern concrete, brick pavers, wood chips, decorative rock or other similar materials may be used to meet the requirements for landscaping but shall not exceed twenty-five percent (25%) of the total required landscaped area. Notwithstanding the foregoing, the Board of Trustees or Zoning Administrator may approve the use of artificial turf or plants in a park or recreation area as part of the final development plan or site plan approval process upon a determination that: (a) the area where artificial turf or plants is being proposed is a high traffic area; (b) the area consists of soils that are unable to adequately support natural turf; or (c) the use of artificial turf or plants will be used to promote water conservation.

(4) Public rights-of-way and street trees:

a. Public rights-of-way: Landscaping shall be provided in the street right-of-way adjacent to the property in the area between the property line and the curb (when there is a detached sidewalk or no sidewalk); or from the back of sidewalk to the property line (when the sidewalk is attached to the curb).

b. Street trees: Street trees shall be required unless the Zoning Administrator determines they are unnecessary for the area. The number of street trees required for each property shall be an average of one (1) tree for each thirty (30) feet of street frontage. The location of street trees shall be within the public right-of-way or, in the event that they encroach upon existing or planned utility lines, they will be located as close as practical to the right-of-way.

(5) Existing landscaping:

a. The owner or developer shall incorporate existing healthy trees and shrubs into the landscape design. Existing trees and other plants in reasonably healthy condition may be removed only if the owner or developer has satisfactorily demonstrated to the Town that site design restrictions necessitate their removal.

b. All existing trees and plants that are incorporated into the landscape design must be adequately protected by means of temporary fencing and be properly maintained during construction to ensure their survival.

(6) Public and private open space, stormwater detention areas and drainage channels. All public and private open space, stormwater detention areas and drainage channels not designated as natural areas in accordance with Section 16-5-640 of this Chapter must be designed and landscaped in such a manner as to blend properly with the property and adjacent areas. Slopes shall not exceed the design standards for detention areas located in open space as specified in the Town of Bennett Storm Drainage Criteria Manual. Wetlands on public and private property shall be maintained in their natural state, and the property owner may receive a credit, in kind, to a portion of the open space, public land dedication or floodplain requirements.

(7) Seeding. All future development phases within a site that are stripped of vegetation shall be seeded with an appropriate seed mixture to prevent wind and water erosion during the time the site remains undeveloped, in accordance with an approved grading plan. A financial guarantee may be

required for seeding in stormwater detention areas, and future development phases shall not be released until the grass required to comply with these standards has become established in a manner which prevents erosion.

Sec. 16-2-730. Screening of site.

Outside trash receptacles, loading docks, open storage areas and utility boxes shall be screened from view from public rights-of-way and from all adjacent uses other than industrial. Screening for such areas shall be provided for by means of walls, solid fences or evergreen plantings. The following are special requirements for utility boxes and trash receptacles:

(1) Utility boxes: All above-ground utility boxes, which include electric transformers, switch gearboxes, cable television boxes and telephone pedestals and boxes shall be screened on the sides visible from the public rights-of-way that are not used for service access.

(2) Trash receptacles: Trash receptacles and dumpsters shall be entirely screened from view and enclosed by a solid, gated wall or fence (trash enclosure) at least six (6) feet in height. The trash enclosure shall use materials compatible with the building structure and designed to be visually harmonious with the overall building architecture. The trash enclosure shall be sited so the service vehicle can conveniently access the enclosure and maneuver without backing onto a public right-of-way.

Sec. 16-2-740. Xeriscape.

(a) Water conservation. It is the intent of the Town to encourage attractive landscape development which creates a pleasing and enjoyable environment. In recognition of its dry climate, the Town encourages the conservation of water by using plants with low to moderate water requirements, using efficient irrigation systems zoned so that similar exposures and plants are grouped together and avoiding over-spraying walks, drives and buildings.

(b) The owner or developer and designer submitting the landscape plan are encouraged to review informational literature regarding Xeriscape methods. This literature may provide specific details on Xeriscape design, methods of irrigation, preparation of soils and mulches and appropriate landscape materials.

Sec. 16-2-750. Plant selection.

Except for designated natural areas and wetlands, landscaping materials shall be placed or planted according to the provisions of this Division. Only those species which are healthy and compatible with the local climate and the site soil characteristics, drainage and water supply shall be planted. The following criteria are applicable to both traditional and Xeriscape plans:

(1) Type of material: Irrigated sod area shall be limited to a maximum area of three thousand five hundred (3,500) square feet for residentially zoned lots or parcels in the RE, R-1 and R-2 Districts.

(2) Plants prohibited near sidewalks, streets and utility lines:

a. Plants selected shall not by their growth habits obstruct, restrict or conflict with the safe use or maintenance of any roadway, sidewalk, alley or utilities.

b. Plants which have thorns or spines shall not be planted upon public rights-of-way or be closer than two (2) feet from walks or other pedestrian areas.

(3) Minimum landscape material sizes: Trees and shrubs shall at a minimum be the following sizes at the time of planting:

a. Large deciduous trees (shade trees): Two and one-half (2.5) inches in caliper.

b. Ornamental deciduous trees: Two (2) inches in caliper.

c. Coniferous (evergreen) trees: Five (5) feet in height.

d. Shrubs (evergreen and deciduous): Five-gallon container.

(4) Mulch installation. All rock and stone or woody mulch used in the landscape shall be installed to a minimum depth of two (2) inches over a water-permeable landscape fabric.

(5) Recommended plant material. For a list of plant material and species recommended by the Town, please inquire with the Zoning Administrator.

Sec. 16-2-760. Irrigation.

Underground automatic irrigation systems are required for all permanent landscaping which cannot survive on natural precipitation. The use of drip, trickle, subterranean and other water-conserving irrigation methods is encouraged, as is the use of organic mulches and other water-conserving design features. The overall irrigation system design should emphasize efficient water use and conservation.

Sec. 16-2-770. Completion.

(a) Substitutions. All substitutions of plant material on an approved landscape plan must be approved by the Zoning Administrator.

(b) Inspections. Landscaping shall be installed and completed in compliance with the approved landscape plan.

Sec. 16-2-780. Maintenance.

(a) Maintenance of required landscaping on private property and public rights-of-way. The property owners or a designated homeowners' association shall be responsible for the proper maintenance of the landscaping and the irrigation systems on their property and on that portion of the public right-of-way adjacent to their property up to the curb (or sidewalk where the walk is attached to the curb). The landscaping shall be maintained to meet the following standards, except for those areas designated as natural areas or large tracts of vacant or agricultural land:

(1) Grass shall not exceed six (6) inches in height and shall be kept free of weeds.

(2) Rock, mulch or groundcover areas shall be kept free of weeds.

(3) Trees and shrubs shall not overhang or encroach upon streets, walkways, drives, parking areas, traffic signs or traffic signals to the extent that they interfere with the intended use of those facilities. Tree limbs which overhang the public sidewalk shall be kept trimmed to a height of at least ten (10)

feet above the sidewalk level. Tree limbs which overhang the public street shall be kept trimmed to a height of at least thirteen (13) feet above the street level.

(b) Replacement of materials: Dead or diseased plant material shall be replaced within one (1) growing season with the same type of plant material and placed in substantially the same location as shown on the approved landscape plan. Substitutions may be allowed as replacement material, provided that the material is approved by the Zoning Administrator.

(c) Failure to maintain: The provisions of Section 16-1-345 regarding violations shall apply if it is found that adequate maintenance is not being performed according to this Section. Failing to maintain landscaping in accordance with the requirements of this Division shall be declared a public nuisance, and may be abated in the manner provided in Article I of Chapter 7 of this Code. Sections 7-1-210 and 7-1-220 of this Code concerning the non-exclusivity of the nuisance abatement procedure apply with respect to the enforcement of this Division as well.

Sec. 16-2-790. Fences and walls.

(a) General. Fences and walls shall comply with the following general requirements:

(1) A building permit from the Town is required prior to the construction of any fence or wall that is greater than thirty-six (36) inches in height. Fencing intended for decorative purposes only, and which does not include any area to be completely enclosed, may be allowed on any part of a parcel, provided that it does not exceed thirty-six (36) inches in height.

(2) It shall be the responsibility of the property owner to locate all property lines.

(3) Height shall be measured at the finished grade on the side of the fence or wall nearest the street, alley or abutting property.

(4) On corner lots, no obstruction is allowed within the corner vision clearance triangle established for the adjacent intersection.

(b) Residential zoning districts. Fences and walls in residential zone districts shall meet the following standards:

(1) No barbed wire, sharp-pointed or jagged materials along the top of the fence shall be permitted.

(2) No above ground electrically charged fences shall be permitted, although underground electrical fences may be permitted for the purposes of containing pets within a residential lot.

(3) Height limits and construction type:

a. Front yards:

1. Maximum height: four (4) feet.

2. Fences shall be constructed of either split rails or pickets. A solid wall or stockade type fence not to exceed thirty-six (36) inches in height shall also be permitted alongside front yard property lines. Agricultural fences such as hog panels, chicken wire, field fence and snow fence types are not permitted. Chain link is also not permitted.

b. Side and rear yards:

1. Maximum height: six (6) feet.

2. Construction: may be one hundred percent (100%) solid.

(c) Non-residential zoning districts. Fences and walls in agricultural, commercial and industrial zone districts shall meet the following standards:

(1) Maximum height: eight (8) feet.

(2) Barbed wire, razor wire or electrical security fences shall be permitted only in industrial and agricultural zone districts. Security fences may be topped with up to three (3) strands of barbed or razor wire.

(d) Installation. All fences shall meet the following installation requirements:

(1) Fences shall be installed so that the finished side faces a public way or public space. All post and structural members, not decorative in nature, shall be on the side facing the fence owner's property.

(2) Fencing shall be installed vertical to the ground and the top finish of the fence shall be uniform in height. Fences shall follow the contour of the ground as far as practical. Adjustments for grade shall occur at the bottom of the fence to every extent possible.

(3) Gates adjacent to sidewalks, alleys and public rights-of-way shall open inward to the private property.

(4) An improved driving/parking surface is required prior to the construction of any gate which will serve as vehicular access for long-term parking in the backyard.

(5) No fencing shall be erected so as to restrict access by emergency equipment to any building.

(e) Maintenance. Failing to maintain fences and walls in accordance with the requirements of this Section shall be declared a public nuisance, and may be abated in the manner provided in Article I of Chapter 7 of this Code. Sections 7-1-210 and 7-1-220 of this Code concerning the non-exclusivity of the nuisance abatement procedure apply with respect to the enforcement of this Section as well. All fences shall meet the following maintenance requirements:

(1) Fences and walls regulated by this Section shall be maintained in a safe manner perpendicular to the ground. Should a fence or wall lean or sag more than 20º to either side, perpendicular to the ground, it shall be considered to be a nuisance or a hazard and must be removed or repaired.

(2) Fences and walls no longer maintained in a safe manner and/or which create a hazard through neglect, lack of repair, manner of construction, method of placement, or otherwise, shall be repaired, replaced or removed by the property owner. Examples of lack of maintenance shall include, but are not limited to, protruding or exposed wire, missing and/or protruding pickets,

sagging or leaning more than 20º to either side, extending into a traveled walkway or creating a hazard for a pedestrian or motor vehicle.

Division 8
Lighting Standards

Sec. 16-2-810. Purpose and applicability.

(a) Purpose. The purpose of these lighting standards is to:

(1) Provide adequate lighting for safety and security;

(2) Reduce light pollution, light trespass, glare, sky glow impacts and offensive light sources;

(3) Prevent inappropriately aimed or poorly designed or installed exterior lighting;

(4) Encourage quality lighting design, light fixture shielding, uniform light intensities and lighting controls; and

(5) Promote efficient and cost-effective lighting to conserve energy.

(b) Applicability. The lighting standards contained herein shall apply to all exterior lighting, including illumination from outdoor signs, and any interior lighting from buildings or structures that affect the outdoor environment, unless otherwise exempted herein. The following uses shall conform to the requirements of this Division:

(1) New development. All new development that requires Town approval of a site plan or planned development plan shall conform to the lighting standards set forth in this Division and shall submit a lighting plan in accordance with Section 16-2-830.

(2) New construction or remodeling. All new construction for which a building permit is required and any remodeling of an existing building or structure for which a building permit is required shall conform to the lighting standards set forth in this Division; provided, however, that compliance with the requirements of this Division is required for a remodel of an existing building or structure only with respect to the remodeled portion of the existing building or structure. The requirements of this Division shall be met prior to a final inspection for any building permit.

(3) New lighting. All new exterior lighting and interior lighting from buildings or structures that affect the outdoor environment shall conform to the lighting standards set forth in this Division.

(4) Existing lighting systems. All existing, legally installed and operative nonconforming lighting systems may be continued, but if a luminaire, lamp or any other lighting equipment or part of a lighting system is removed, it shall only be replaced in a manner that complies with the requirements of this Division.

(6) Exemptions. The standards of this Division shall not apply to the following types of exterior lighting:

a. Ornamental lighting: Ornamental landscape lighting where the maximum wattage of any single light fixture does not exceed the equivalent of fifteen-watt incandescent or one hundred (100) lumens and is not used from 12:00 a.m. to dusk.

b. Holiday lights: Holiday lights on residential and nonresidential properties.

c. Aviation lighting: Lighting used exclusively for aviation purposes. All heliport lighting shall be turned off when the heliport is not in use.

d. Public safety lighting. Lighting required for public safety which includes: lighting within the right-of-way; emergency repairs within the right-of-way; and lighting installed by a governmental entity for the purposes of health, safety and welfare.

Sec. 16-2-820. Prohibited lighting.

Search, blinking, pulsating, flashing, changing intensity, strobe, beacon and laser lights are all prohibited from use.

Sec. 16-2-830. Lighting plan.

When a lighting plan is required as part of a site plan or final development plan, an applicant shall comply with submittal requirements for those plans as set forth in the Applicant Guide. When an application is not part of a formal subdivision or zoning application and is being processed through the site plan process, the applicant must submit a light plan that complies with the requirements set forth in the Applicant Guide. If the Zoning Administrator determines that the proposed lighting plan does not comply with this Section, the plan shall not be approved and the building permit shall not be issued.

Sec. 16-2-840. Design standards.

Lighting shall meet the following design standards:

(1) Lighting zones: Pursuant to Section 16-2-860, all zoning districts within the Town are placed within one of two lighting zones. Lighting within the lighting zones shall comply with the allowable light levels, light trespass levels, light pole heights and curfew requirements set forth in Table 2-16.

(2) Shielding requirements: The illumination from an exterior lamp that emits more than nine hundred (900) lumens shall be a full cut-off fixture and fully shielded from view from adjacent properties and public rights-of-way, except as otherwise permitted herein. Fixtures shall meet the definitions for fully shielded and full cut-off as defined in Division 2 of this Article.

(3) Side shields: Any exterior light fixture located within fifteen (15) feet of a property line of a residential zoning district or an existing residential use or within ten (10) feet of a public right-of-way shall provide side shields on the sides facing the property line, residential use, or public right-of-way, as applicable.

(4) Light source requirements: All exterior light fixtures should utilize one (1) of the following bulb types: metal halide, compact fluorescent, incandescent (including tungsten-halogen), high pressure sodium or LED. Alternative bulb types may be approved by the Zoning Administrator in accordance with Section 16-2-880.

(5) Light from buildings: The luminance levels at building entrances and windows may exceed the maximum allowed (see Table 2-16) by one hundred percent (100%) of the site lighting to a distance of five (5) feet from the building in order to accommodate light spillage from within the building and light from window signage (example: a convenience store).

(6) Illuminating signs: In addition to compliance with Article III of this Chapter, all signs shall comply with the following lighting standards:

a. Internally illuminated signs:

i. Luminous intensity shall be limited to a maximum of 0.3 foot candles between dusk to dawn as measured from the sign's face.

b. Externally illuminated signs:

i. All light must be aimed directly onto the sign. No sign shall be illuminated with fixtures that provide unshielded upward transmission of light.

ii. The total initial horizontal luminance level from external light sources shining on a sign shall not exceed eighty (80) lumens per square foot of sign face.

(7) Canopy lighting: Lighting fixtures mounted on canopies are permitted in non-residential zoning districts only and shall be installed such that the bottom of the light fixture or its lens, whichever is lower, is recessed or mounted flush with the bottom surface of the canopy and parallel to the ground. Full cut-off light fixtures with side shields may project below the underside of a canopy. All light emitted by an under-canopy fixture shall be substantially confined to the ground surface directly beneath the perimeter of the canopy.

(8) Flag poles: A flag may be illuminated by one (1) upward aimed and shielded spotlight light fixture which shall not exceed forty-watt metal halide or its equivalent. Flag pole lighting is exempt from the curfew limitations set forth in Section 16-2-850.

(9) Motion sensors: Motion sensor activations shall be permitted so long as the sensor is triggered by motion within the owner's property lines. The Zoning Administrator may grant exceptions to this requirement pursuant to Section 16-2-880.

(10) Architectural and landscape lighting: All light must be aimed directly onto the surface intended to receive the light source. All light fixtures shall be shielded and any uplighting on buildings may be permitted provided that no luminance escapes the facade. Building facades may be illuminated with a maximum forty-watt lamp.

(11) Recreational facilities: The maximum initial horizontal illumination for recreational facilities shall be the lesser of fifty (50) f.c. or the IESNA standards for the specific recreational facility. Lighting for parking lots and pedestrian areas shall be a maximum of five (5) f.c. All exterior lights shall be extinguished by 10:00 p.m. or immediately after the conclusion of the final event of the day. Lighting for security shall comply with Table 2-16.

(12) Single-family detached dwellings:

a. Unless the total fixture wattage is sixty (60) watts or less, full cut-off fixtures must be utilized for exterior lighting of single-family detached dwellings in order to direct light emissions down onto the site and not shine direct illumination or glare onto adjacent properties. In order to reduce glare, fixtures at sixty (60) watts or less must be made of translucent materials or have a translucent or frosted lens to reduce glare. Clear unfrosted bulbs within clear fixtures are prohibited. For lighting technology that includes LED, light source emission shall meet the equivalent of a sixty-watt incandescent bulb.

b. The curfew requirements set forth in Section 16-2-850 do not apply to single-family detached dwellings.

(13) Right-of-way lighting: Lighting located within the public right-of-way shall comply with the definition of *full cut-off* as defined in Division 2 of this Article.

(14) Design Requirements. The style, color and design of the fixtures shall be compatible with the overall design concept and use of materials for the building, site and area of the lighting plan. Individual sites or projects shall use a consistent lamp source for uniformity in light color and intensity.

Sec. 16-2-850. Hours of operation.

All nonresidential light fixtures shall be subject to the following curfew: all exterior lighting fixtures, except the minimum necessary for security, shall be extinguished by 10:00 p.m. or within one (1) hour after the close of the facility, whichever is later, and remain extinguished until dawn, or one (1) hour prior to the commencement of business, whichever is earlier. Lights during pre- and post-curfew hours shall be operated as follows:

(1) Pre-curfew: Pre-curfew light levels shall meet the standards set forth in this Division.

(2) Post-curfew: Post-curfew light levels necessary for security shall comply with the standards set forth in Table 2-16. Motion sensors may be used for lighting fixtures not needed for constant security lighting.

Sec. 16-2-860. Lighting zones.

Lighting Zones are designated as follows:

(1) Lighting Zone 1: Low and moderate ambient lighting. Areas where lighting might adversely affect flora and fauna or disturb the character of the area. The vision of human residents and users is adapted to low to moderate light levels. Lighting may be used for safety, security, convenience, decorative or architectural detailed as described herein.

(2) Lighting Zone 2: Moderately high ambient lighting. Areas of human activity where the vision of human residents and users is adapted to moderately high light levels. Lighting is generally desired for safety, security or convenience and it is often uniform or continuous.

(3) Table 2-16 specifies the zoning districts within, and applicable to, each Lighting Zone:

Table 2.16
Lighting Zone Criteria

Standard	***Lighting Zone 1*** *Agricultural (A), Single-Family Residential (R-1), Two-Family Residential (R-2), Multi-Family Residential R-3) and Mobile Home District (MH, Public (P) and all applicable residential PDs*	***Lighting Zone 2*** *Commercial (C), Employment Center (EC), Industrial (I) and applicable PDs*
Maximum illumination	5 f.c. building entries and parking lots	5 f.c. building entries and parking lots; 20 f.c. under canopies for uses such as fueling stations
Maximum light level at the property line	0.5 f.c.	0.5 f.c.
Post-curfew	Entry lights may be left on. Parking lots with more than two (2) poles and pedestrian circulation lighting shall be reduced to security levels.*	Entry lights may be left on. Parking lots with more than two (2) poles and pedestrian circulation lighting shall be reduced to security levels.*
Maximum pole height	25 feet in parking lots; 12 feet for all sidewalks and pedestrian circulation routes	35 feet in parking lots; 12 feet for all sidewalks and pedestrian circulation routes

* Security levels shall mean one (1) or more of the following techniques: (a) fifty percent (50%) reduction in lighting equipment; (b) motion sensors for lighting fixtures not needed for constant security lighting; or (c) site specific lighting such as lighting a trash dumpster, pay phone, or employee entrance.

Sec. 16-2-870. Installation and maintenance.

Light fixtures shall be installed and maintained in a manner consistent with the lighting plan approved by the Town. The property owners and occupants shall be jointly responsible for the proper maintenance of the lighting fixtures and equipment on their property. Landscaping improvements shall be maintained as required by Section 16-2-780 in order eliminate conflicts between lighting fixtures and mature landscaping.

Sec. 16-2-880. Exceptions.

(a) Criteria: The Zoning Administrator may grant an exception from the provisions of this Division if:

(1) The proposed exception is based upon a specific hardship that is unique to the site, is not self-inflicted by the property owner and is directly attributable to existing topographical or other site conditions that do not allow the applicant to satisfy the requirements of this Division;

(2) The proposed exception shall at no time allow proposed light levels to exceed maximum lumen limits; and

(3) The proposed exception does not conflict with the overall intent of this Division to eliminate glare, light pollution and light trespass.

(b) Equivalent material: The Zoning Administrator may approve any alternative design, material or method, provided that it provides an approximate equivalent method of satisfying these standards and complies with IESNA recommendations.

(c) Conditions. In granting any exception pursuant to this Section, the Zoning Administrator may impose reasonable conditions to further the purpose of this Division.

ARTICLE III: SIGN REGULATIONS

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ARTICLE III

Sign Regulations

Division 1
Purpose and Applicability

Sec. 16-3-10. Authority and purpose.

Pursuant to authority found in state law, the sign regulations in this Article are adopted for the purpose of promoting the health, safety, morals and general welfare of the Town.

Sec. 16-3-20. Application.

A sign may be displayed, erected, placed, established, painted, created, altered or maintained in the Town only in conformance with the standards, procedures, exemptions, and other requirements of this Article.

(1) If any provision of this Article conflicts with any other adopted Town code that regulates signs, the more restrictive standards shall control and apply.

(2) Signs shall be permitted in the various zoning districts as accessory structures in accordance with the regulations contained in this Article.

Sec. 16-3-30. Intent.

The intent of these regulations is to:

(1) Encourage the effective use of signs as a means of communication;

(2) Encourage the innovative use of sign design;

(3) Promote both renovation and proper maintenance of signs;

(4) Reduce administrative burdens;

(5) Enable fair and consistent enforcement;

(6) Encourage signs that are attractive and compatible with adjacent property;

(7) Encourage signs that will preserve and enhance property values;

(8) Improve and maintain pedestrian and traffic safety;

(9) Avoid the appearance of clutter; and

(10) Provide a reasonable balance between the right of a business or individual to identify itself and its purpose, and the right of the public to be protected against the visual discord that results from the unrestricted proliferation of signs.

Division 2
Definitions

Sec. 16-3-210. Definitions.

The words and phrases used in this Article shall have the meanings defined below:

Banner means a temporary sign having characters, letters illustrations or ornamentations applied to flexible material (e.g. vinyl, plastic, canvas, cloth, fabric or other lightweight non-rigid material) with only such material for a backing, which projects from, hangs from or is affixed to a building or structure. Banners include building decals, cable-hung banners and wave banners.

Billboard means a large sign which directs attention to a business, activity, commodity, service, entertainment or communication which is not conducted, sold, or offered at the premises on which the sign is located, or which does not pertain to the premises upon which the sign is located.

Directional sign plaza means an off-premise sign intended for the advertising of vacant lots or model homes that need traffic to be directed for sales purposes.

Electronic message center means a sign that is capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

Flag, corporate means any flag other than a nation, state or city flag which has copy or a logo.

Flag, decorative means a flag or pennant with no copy or logo.

Message hold time means the time interval a static message must remain on the display before transitioning to another message.

Mural means a picture or graphic illustration applied directly to a wall of a building that does not advertise or promote a particular business, service or product.

Sign means any advertisement, identification, announcement, direction or communication produced in whole or in part by the construction, erection, affixing or placing of a structure on any land or on any other structure or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface.

Sign, construction 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 or similar artisans, and/or the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project.

Sign, directional means a noncommercial sign directing or guiding vehicular traffic on private property (e.g. enter, exit, drive-through-lane, parking, or similar signs). Logos and business names are permitted as needed to complete the directional message.

Sign, freestanding means any sign supported by structures or supports that are placed on or anchored in the ground and are not attached to any building or structure.

Sign, identification means a sign which establishes the identity of the occupant by listing their name or professional title, which establishes the identity of a building or building complex by name or

symbol only, or which indicates street address and name. The term identification sign shall be for purposes of information and not for advertising.

Sign, ideological means a temporary or permanent sign communicating a message or ideas for noncommercial purposes, including signs relating to political campaigns or issues.

Sign, memorial means a sign or plaque identifying a site, structure or building, which may include but is not limited to names or dates of construction, use, or historical designation.

Sign, monument means a freestanding sign with the entire bottom of the sign affixed to the ground that identifies a business, institution, subdivision or development.

Sign, off-premises means any sign normally used for promoting an interest other than that of a business, individual, products, or service available on the premises where the sign is located.

Sign, on-premises means any sign used for promoting a business, individual, product or service available on the premises where the sign is located.

Sign, permanent means any sign constructed of permanent materials and permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.

Sign, portable means a moveable sign that is not permanently affixed to a building, structure, or the ground.

Sign, private notification means a sign that regulate actions on private property, e.g., no trespassing and similar signs.

Sign, projecting means a sign which is attached perpendicular to the wall of a building or structure.

Sign, real estate means a temporary sign intended to advertise the financing, development, sale, transfer, lease, exchange, availability or rent of land, buildings, or apartments.

Sign, special event means a temporary sign directing attention to an activity of limited duration. Examples include grand openings, special sales, community event or similar activities.

Sign, temporary means any banner, blimp, wind or fan-driven sign, or other sign constructed of light fabric, cardboard, wallboard, plywood, sheet metal, paper or other light materials, with or without a frame, intended or designed to be displayed for a limited period of time.

Sign, traffic control means a sign erected in a public right-of way by an authorized governmental agency for the purposes of traffic regulation and safety.

Sign, wall means any sign painted on or affixed to the building wall, or any sign consisting of cut-out letters or devices affixed to the building wall with no background defined on the building wall in such a manner that the wall forms the background surface of the sign.

Sign, wayfinding means a sign authorized by a governmental body for placement in the public right-of-way that is designed to orient and navigate the general public from place to place.

Sign, window means any sign, picture, symbol or combination thereof designed to communicate information about an activity, business, commodity, event, sale or service that is placed inside a window or glass door, or upon the windowpanes or glass and is visible from the exterior of the

window. A window sign does not include merchandise or models of products or services incorporated in a window display, or customer information signs.

Sign face means an exterior display surface of a sign including nonstructural trim, yet exclusive of the supporting structure.

Super graphic means a painted design which covers all or a major portion of a wall, building or structure. A super graphic is a sign only if it is related by language, logo, or pictorial depiction to the advertisement of any product or service or the identification of any business.

Transition duration means the time interval it takes the display to change from one complete static message to another complete static message.

Transition method means a visual effect applied to a message to transition from one message to the next. Transition methods include:

a. Dissolve – a frame effect accomplished by varying the light intensity or pattern, where the first frame gradually appears to dissipate and lose legibility simultaneously with the gradual appearance and legibility of the second frame.

b. Fade – a frame effect accomplished by varying the light intensity, where the first frame gradually reduces intensity to the point of not being legible (i.e. fading to black) and the subsequent frame gradually increases intensity to the point of legibility.

Division 3
Administration and Procedures

Sec. 16-3-310. Permits required.

(a) Prior to the erection or installation of any permitted permanent or temporary sign, but not including exempt signs under Section 16-3-340, a sign permit shall be obtained pursuant to this Article.

(b) Sign permits shall be required for sign programs specified in an approved final development plan for centers, regional centers or large-scale single users.

(c) A revocable permit shall be required whenever a person seeks to erect a sign on public property or within a public right-of-way.

(d) No sign permit shall be issued for any sign on private property without written consent of the property owner or the owners authorized agent.

(e) A building permit shall be required where applicable to ensure the structural integrity of the type of sign requested.

(f) It shall be unlawful to erect or install any sign without having first obtained the permits required by this Article and the Town's building code.

Sec. 16-3-320. Permit approval criteria.

(a) Applications for sign permits and sign plans (when required by this Article) shall be submitted in accordance with the Applicant Guide.

(b) The Zoning Administrator shall review the sign permit application in light of the approval criteria in this Article and shall either approve, approve or deny such application.

(c) An application for a sign permit may be approved if it complies with the applicable standards set forth in this Article or a final development plan, and all applicable building code requirements. In cases where there is a conflict between this Article and the final development plan, the final development plan shall control.

(d) An application for a revocable permit may be approved if it complies with the following criteria:

(1) The applicant agrees to the terms of a revocable permit agreement, including but not limited to any provisions that require compensation to the Town for use of public property or public right-of-way and that indemnify the Town and hold the Town harmless from future damages or liability claims.

(2) The proposed sign complies with all applicable use, development and design standards set forth in this Article, and all applicable building code requirements.

(3) The proposed sign shall not interfere with street intersection visibility or in any other way adversely affect the public health, safety or welfare.

(4) The proposed sign shall not be located over any existing or future utilities and may be removed by the Town if necessary for reconstruction of a street, sidewalk, utilities or to protect the health, safety and welfare of the citizens of the Town, with no liability to the Town for replacement or repair.

(5) The proposed sign has been approved by the Town Engineer based on the Town Engineer's review of the proposal under all Town ordinances, resolutions, rules, regulations and policies governing the use of public property and public rights-of-way.

(e) A sign permit shall lapse and have no further effect unless a sign has been erected in compliance with the terms and conditions of the permit within one (1) year after the date of the sign permit approval.

Sec. 16-3-330. Minor modifications to sign standards.

(a) The Zoning Administrator shall be authorized to grant minor modifications of any sign standard, including but not limited to sign area modifications of twenty percent (20%) or less, subject to the approval criteria noted in Subsection (c) below. Such actions may be taken in order to encourage the implementation of alternative or innovative practices that provide equivalent benefits to the public.

(b) An applicant requesting a modification to the sign standards that does not qualify as a minor modification must obtain a variance per Section 16-2-370 of this Chapter.

(c) Approval criteria. Minor modifications may be approved by the Zoning Administrator only upon a finding that all of the following criteria have been met:

(1) The requested modification eliminates an unnecessary inconvenience to the applicant and will have no significant adverse impact on the health, safety or general welfare of surrounding property owners or the general public;

(2) Any adverse impacts resulting from the minor modification will be mitigated to the maximum extent practical; and

(3) The requested minor modification is either:

a. Of a technical nature and is required to compensate for some practical difficulty or unusual aspect of the site or the proposed sign; or

b. An alternative or innovative design practice that achieves to the same or better degree the objective of the existing design standard sought to be modified.

Sec. 16-3-340. Signs allowed without permit.

Generally, the following types of signs are allowed in all zoning districts without a sign permit, subject to the provisions of this Section. Exempt signs shall otherwise be in conformance with all applicable requirements of this Article, and the construction and safety standards of the Town. Changing or replacing the copy on an existing lawful sign shall also not require a permit, provided the copy change does not change the nature of the sign or render the sign in violation of this Article. All signs not listed in this Section (and that are not prohibited under Sec. 16-3-350) require a sign permit pursuant to Sec. 16-3-310 above.

(1) National, State, Town or other political subdivision flags, provided that the following restrictions are met:

a. For residential uses, the height of the pole on which the flag is mounted does not exceed the height of the principal structure on the lot or the distance from the flagpole to the lot line, whichever is less.

b. For nonresidential uses, the height of the pole on which the flag is mounted does not exceed the height of the principal structure on the lot or forty (40) feet, whichever is less.

c. The location of the flagpole is set back a distance from a property line that is at least equal to its height.

(2) Corporate or decorative flags, provided that the following restrictions are met:

a. For residential uses, the height of the pole on which the flag is mounted does not exceed the height of the principal structure on the lot or the distance from the flagpole to the lot line, whichever is less.

b. For commercial, employment, office and other nonresidential uses, the height of the pole on which the flag is mounted does not exceed the height of the principal structure on the lot or forty (40) feet, whichever is less.

c. The size of the flag does not exceed twenty (20) square feet.

d. The location of the flagpole is set back a distance from a property line that is at least equal to its height.

(3) Public event banners, provided that the following restrictions are met:

a. Each such banner shall relate to a public event;

b. Each such banner shall be removed no later than one (1) week after the event to which it relates ends;

c. The maximum size of any such banner suspended from the sides of a building shall be one hundred (100) square feet;

d. The maximum size of any such banner suspended from any one (1) pole or other structure shall be six (6) square feet; and

e. No more than two (2) such banners shall be suspended from any one (1) pole or other structure.

(4) Signs erected by any governmental or quasi-governmental agency, including but not limited to traffic control, legal notice, community events and wayfinding signs.

(5) Signs erected by public utility companies, oil and gas companies, or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices.

(6) Any sign displayed on a window or inside a residential building, and any sign inside a nonresidential building that is not visible through a window.

(7) Memorial signs, as defined in Sec. 16-3-210.

(8) Real estate signs in residential zoning districts, limited to one (1) sign per street frontage not to exceed six (6) square feet per sign. All other real estate signs, as defined in Section 16-3-210, shall require a permit and comply with the temporary sign standards set forth in Section 16-3-430 (4).

(9) Address and building identification signs, provided that such signs:

a. Are attached to the building identified;

b. Are limited to two (2) per building;

c. Are not more than six (6) square feet in total area for each sign; and

d. May be illuminated.

(10) Permanent window signs, provided that such signs are limited to ten percent (10%) of the total window area of an establishment in a commercial zoning district, and are illuminated only during the times the establishment is in operation.

(11) Temporary window signs, provided that such signs are limited to seventy percent (70%) of the total window area in a commercial zoning district.

(12) Temporary decorations or displays, if they are clearly incidental to, customarily, and commonly associated with any national, state, or local holiday or religious celebration; such signs may be of any type, number, area, height, location, illumination or animation.

(13) Portable signs, provided that the following restrictions are met:

a. One (1) freestanding portable sign shall be allowed for each business in commercial zoning districts, under the following conditions:

1. The maximum area of each face of a portable sign shall be six (6) square feet.

2. The maximum height of a portable sign shall be four (4) feet.

3. No portable sign shall be placed within twenty-five (25) feet of another portable sign.

4. A portable sign may be in place only during the business hours of the business to which it relates.

5. A minimum three-foot unobstructed walkway shall be maintained at all times on any sidewalk where a portable sign is located. Such sign shall not impede pedestrian movement and must be removed immediately upon the request of the Zoning Administrator upon a determination that it is in violation of this Article or unsafe.

6. Portable signs are permitted in the public right-of-way only if the adjacent business or building is built to the front property line and has a zero setback. No portable sign may be installed on any public right-of-way or public property unless a revocable permit to occupy such space has been obtained pursuant to Section 16-3-310 (c).

(14) Ideological signs, as defined in Sec. 16-3-210.

(15) Temporary garage sale, yard sale or estate sale signs in residential areas, provided that:

a. The size and location of those signs do not create a hazard for automobile or pedestrian traffic or a public nuisance;

b. All such signs are removed by the end of the fifth day of posting.

(16) Temporary posters announcing or advertising events sponsored by noncommercial organizations.

(17) Signs which identify restrooms, public telephones or provide instructions as required by law or necessity, provided the sign does not exceed two (2) square feet in area, such as “no smoking,” “restrooms,” “no solicitors,” “self-service” and similar signs.

(18) Vending machine signs provided that the advertisement upon the vending machine sign is limited to the product vended.

(19) Private notification signs, which do not exceed two (2) square feet in area.

(20) Murals or super graphics, as defined in Section 16-3-210, occupying no more than ten percent (10%) of a wall.

(21) Scoreboards in sports stadiums or fields.

(22) Customer information signs less than six (6) square feet in sign area, as defined in Sec. 16-3-210. Such signs may be attached to the building, as projecting or wall signs, suspended from a canopy or included as an integral part of a freestanding sign.

(23) External use signs limited to an aggregate sign area of forty (40) square feet in area, as defined in Sec. 16-3-210.

(24) Signs carried by a person and not set on or affixed to the ground.

Sec. 16-3-350. Prohibited signs.

The following types of signs are prohibited except as noted:

(1) All signs not expressly permitted under this Article, or exempt from regulation in accordance with Section 16-3-340.

(2) Signs attached to trees or other plant materials.

(3) Vehicles or trailers parked on public right-of-way or public property, or on private property, so as to be visible from public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby premises. This provision is not intended to prohibit any form of vehicular sign, such as a sign attached to a truck or motor vehicle, which vehicle is primarily used for business purposes other than advertising. Signs may be placed on motorized vehicles, provided that:

a. The vehicle upon which the sign is affixed must be used for the daily operation of the business and not primarily to display signage; and

b. No sign shall project more than one (1) foot above the roofline of the vehicle to which it is attached. When not in use, any vehicle with an attached sign must be parked on the business premises of the business that it advertises and not closer than fifty (50) feet to the public right-of-way (or, if there is no parking on the business premises, it must be legally parked). No signage may be painted or affixed in any manner to trailers.

(4) Any revolving or rotating sign except barber poles.

(5) Any sign displaying flashing or intermittent lights, or lights of varying intensity of illumination. All lighted signs shall comply with the lighting standards set forth in Division 9 of Article 2 of this Chapter.

(6) Any sign with direct or indirect lighting that causes direct glare into or upon any lot, tract or public right-of-way that is adjacent to the lot, tract or public right-of-way where the sign is located. The light from any light source intended to illuminate a sign shall be so shaded, shielded or directed so that the light intensity or brightness shall not cause glare to affect surrounding properties, or cause glare to affect safe vision of pedestrians or operators of vehicles moving on public or private streets, driveways or parking areas.

(7) Signs contributing to confusion of traffic control devices or emergency service vehicles, or which hide or interfere with the effectiveness of such devices or vehicles.

(8) Any sign that obstructs any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any building as required by law.

(9) Any sign that impedes safe pedestrian or vehicular movement. The lowest point of a sign that extends over an area intended for pedestrian use shall not be less than nine (9) feet above the finished grade below it. The lowest point of a sign that extends over an area intended for vehicular use shall not be less than fourteen (14) feet above the finished grade below it.

(10) Any sign that obstructs the view of a person operating a motor vehicle in any direction at the intersection of a street or with an alley or driveway (see corner vision clearance provisions in Section 16-5-615)

(11) Any sign that emits a sound which is intended to attract attention.

(12) Any off-premise sign, as defined in Section 16-3-210, not otherwise explicitly permitted in this Article.

(13) Any sign attached to a building that projects above the top of the building, unless explicitly permitted in this Article as a roof sign.

Division 4
Standards

Sec. 16-3-410. Sign standards by zoning district.

Signs in all zoning districts shall be subject to the standards set forth in this Section. The number, types and sizes of signs set forth in Tables 3-1 and 3-2 shall also comply with the standards by sign type listed in Section 16-3-420.

(1) Standards for Residential Zoning Districts. Signs in the RE, R-1, R-2, R-3, and MH zoning districts, and residential land use designations within an agricultural or residential PD zoning district, shall be subject to the following standards:

Table 3.1
Standards for Residential Zoning Districts

Sign Type	Maximum Number	Maximum Area	Maximum/Minimum Height
Awning or Canopy Sign	Unlimited	0.5 square feet of signage for each linear foot of awning or canopy	No higher than roof or parapet line; 9 feet minimum pedestrian clearance; 14 feet minimum vehicular clearance
Directional Sign	Per approved sign plan	6 square feet	No higher than 4 feet
Monument sign	1 per public, quasi-public or institutional use; 2 per main entrance to a subdivision, multi-family housing complex or mobile home park	32 square feet	No higher than 6 feet
Wall Sign	1per single family or two- family dwelling with a home-based business	2 square feet	No higher than 8 feet
	1 per principal multifamily family building, per street frontage	32square feet	No higher than one (1) foot below roof or parapet line
	1 per public, quasi-public or institutional use	32 square feet.	No higher than one (1) foot below roof or parapet line

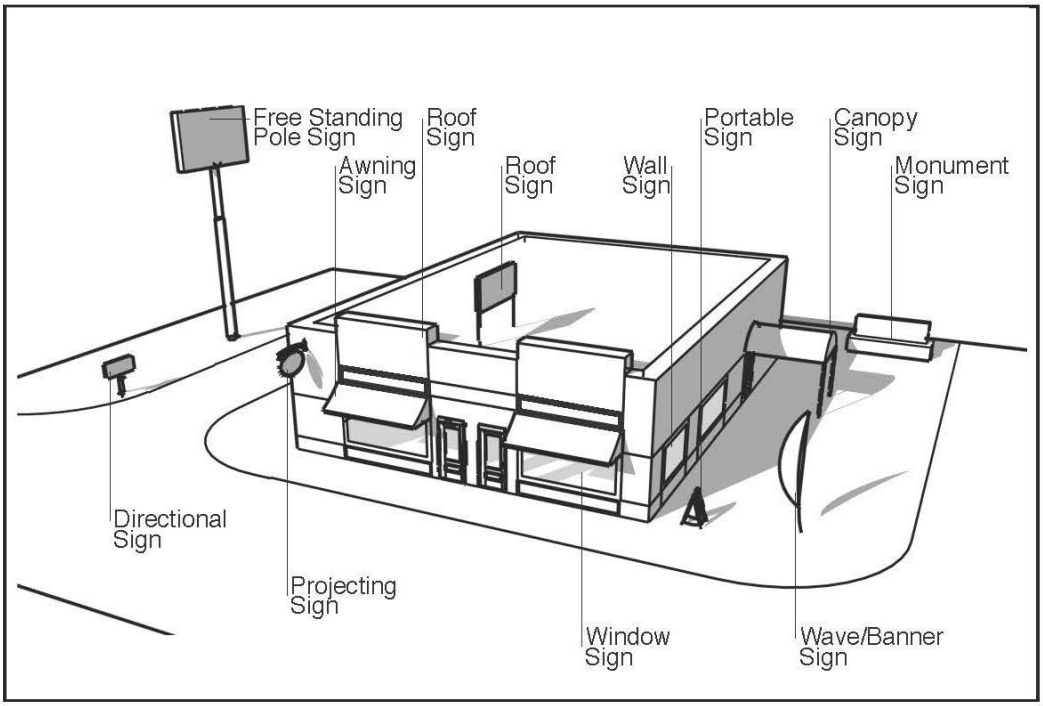
(2) Standards for Nonresidential Zoning Districts. Signs in the C, EC, I-1, I-2 and P zoning districts, and nonresidential land use designations within an agricultural, residential or PD zoning district, shall be subject to the following standards:

Table 3.2
Standards for Nonresidential Zoning Districts

Sign Type	Maximum Number	Maximum Area	Maximum/Minimum Height
Awning or Canopy Sign	Unlimited	0.5 square feet of signage for each linear foot of awning or canopy	No higher than roof or parapet line; 9 feet minimum height pedestrian clearance; 14 feet minimum height vehicular clearance
Directional Sign	Per approved sign plan	6 square feet	No higher than 4 feet, except when used on a vehicular clearance structure: minimum of 14 feet
Freestanding Pole Sign	One per legal lot of record < 2 acres in size	100 square feet.	No higher than 25 feet
	One per street frontage > 500 lineal feet on legal lot of record > 2 acres in size	100 square feet.	No higher than 25 feet
	Pole Sign within 250 feet of interstate highway	300 square feet.	No higher than 45 feet
Monument Sign	One per business or industrial establishment	60 square feet.	No higher than 6 feet for lots < 150 lineal feet of frontage; 8 feet for lots > 150 lineal feet of frontage
Projecting Sign	One per building entrance	15 square feet	No higher than roof or parapet line; 9 feet minimum height
Roof Sign	1 per principal building	100 square feet	No higher than 4 feet above the roofline, parapet or fascia wall on a flat roof; no higher than roofline on a peaked or mansard roof
Wall Sign	Unlimited. Within allowed maximum area	1.5 square feet of area per lineal foot of exterior wall frontage, up to a maximum of 100 square feet for entire building	No higher than 25 feet and not higher than the eave line of the principal building

Sec. 16-3-420. Standards by sign type.

Figure 3.1
Sign Type Examples



The following types of permanent signs shall be allowed, subject to the standards set forth in this Section:

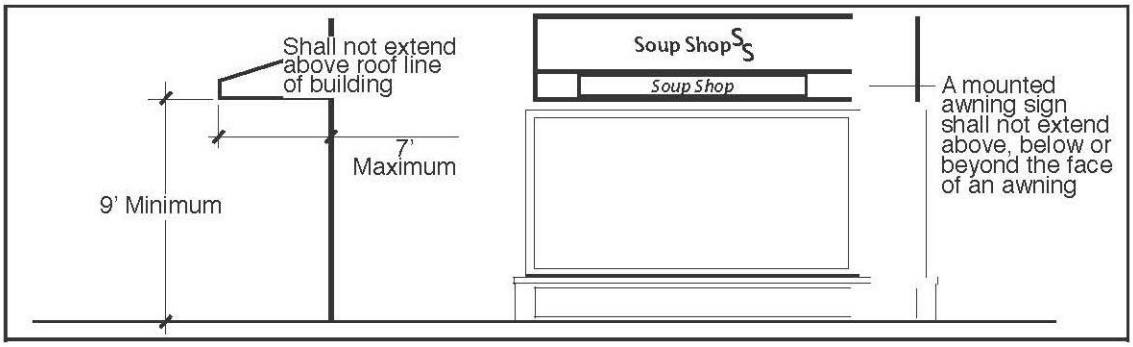
(1) Awning signs.

a. Location. Signs may be placed only on awnings that are located on first- and second-story building frontages, including those fronting a parking lot or pedestrian way. An awning may include a printed or mounted sign. No sign mounted to an awning shall project beyond, above or below the face of an awning.

b. Quantity, Area and Height. Sign quantity and area shall comply with the requirements established in Section 16-3-410. No structural element of an awning shall be located less than nine (9) feet above finished grade. Awnings on which signs are printed or mounted shall not extend over a public right-of-way more than seven (7) feet from the face of a supporting building. No awning, with or without signage, shall extend above the roof line of any building.

c. Lighting. Awnings may be internally illuminated in nonresidential zones only.

Figure 3.2
Awning Sign Detail

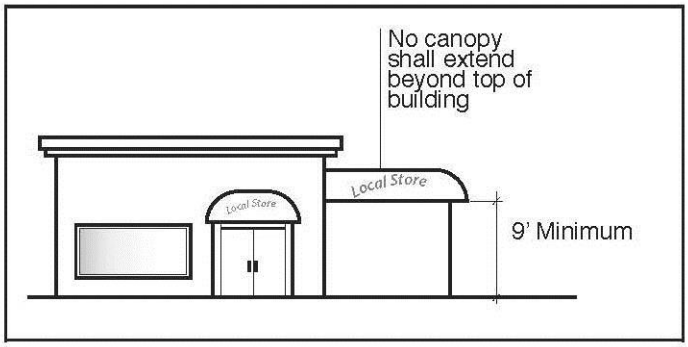


(2) Canopy signs.

a. Quantity, Area and Height. Sign quantity and area shall comply with the requirements established in Section 16-3-410. No structural element of a canopy sign shall be located less than nine (9) feet above finished grade. Canopies on which signs are printed or mounted shall not extend over a public right-of-way more than seven (7) feet from the face of a supporting building. No canopy, with or without signage, shall extend above the roof line of any building. No canopy sign shall project above the top of the canopy upon which it is mounted. However, a sign may project horizontally from the face of a canopy the distance necessary to accommodate the letter thickness and required electrical equipment, but not more than twelve (12) inches.

b. Lighting. Canopies may be internally illuminated in nonresidential zones only.

Figure 3.3
Canopy Sign Detail



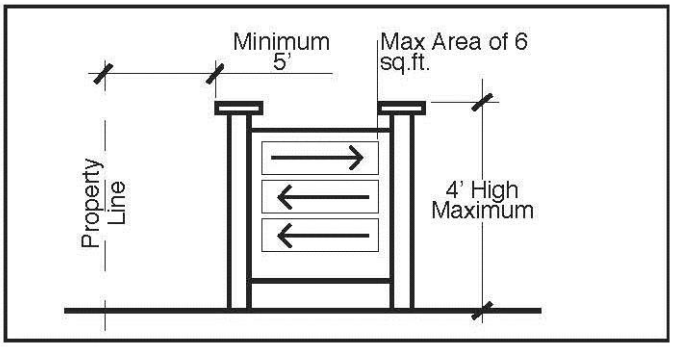
(3) Directional signs.

a. Location. On-premise entrance, exit, and other directional signs shall be allowed per a sign plan approved by the Zoning Administrator. Directional signs shall be no closer than five (5) feet from any property line.

b. Quantity, Area and Height. Directional signs shall comply with the quantity, area and height requirements established in Section 16-3-410.

c. Lighting. Directional signs may be internally illuminated.

Figure 3.4
Directional Sign Detail



(4) Electronic message centers.

a. Location. An electronic message center may be integrated up to fifty percent (50%) of the allowed sign area of a nonresidential on - premise freestanding pole or monument sign. Existing signage proposed for conversion to the use of an electronic message center shall conform to the sign standards in this Article prior to issuance of a sign permit. Non-conforming signs shall not be eligible for conversion to an electronic message center.

b. Quantity, Area and Height. An electronic message center shall comply with the quantity, area and height requirements established for freestanding pole or monument signs in Section 16-3-410.

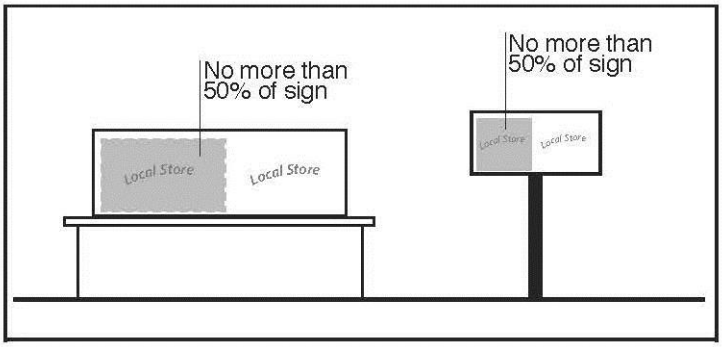
c. Lighting. Lighting from the electronic message center shall not exceed 0.3 foot candles between dusk to dawn as measured from the sign's face. The electronic message center shall have automatic dimmer software or solar sensors to control brightness for nighttime viewing. The intensity of the light source shall not produce glare, the effect of which constitutes a traffic hazard. Documentation shall be provided from the sign manufacturer which verifies compliance with auto dimming and brightness requirements.

d. Transition Method. The electronic message center shall be limited to static messages, changed only through either dissolve or fade transitions, which may otherwise not have movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign, including the movement of any illumination or the flashing scintillating or varying of light intensity.

e. Transition Duration. The transition duration between messages shall not exceed one (1) second.

f. Message Hold Time. The message hold time shall be a minimum of three (3) seconds.

Figure 3.5
Electronic Message Center Detail



(5) Freestanding pole signs.

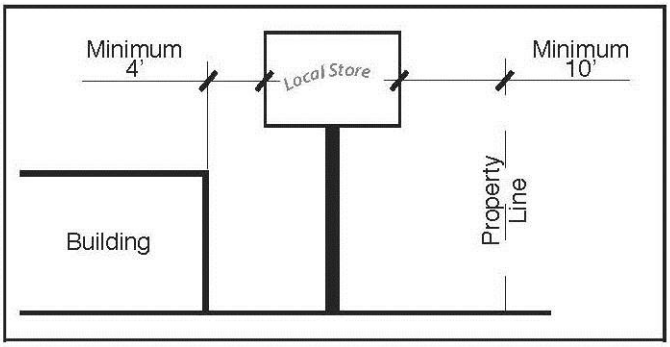
a. Location. A freestanding pole sign shall be located on a site frontage adjoining a public or private street, easement or right-of-way. No freestanding pole sign in any zoning district shall be erected closer than ten (10) feet from any property line, or closer than four (4) feet to any building (See Figure 3-6). Freestanding pole signs shall not be located within one hundred (100) feet of any residential zoned property.

b. Quantity, Area and Height. A freestanding pole sign shall comply with the quantity, area and height requirements established in Section 16-3-410.

c. Landscaping. Landscaping shall be provided at the base of the supporting structure in an appropriate amount to be determined by the Zoning Administrator during review of a sign plan. The Zoning Administrator may waive this requirement if it is determined that the landscaping would not contribute significantly to the overall aesthetic character of the project, or if physical conditions of the site would preclude all or a portion of the landscaping.

d. Lighting. Freestanding pole signs may be internally illuminated.

Figure 3.6
Freestanding Pole Sign Detail

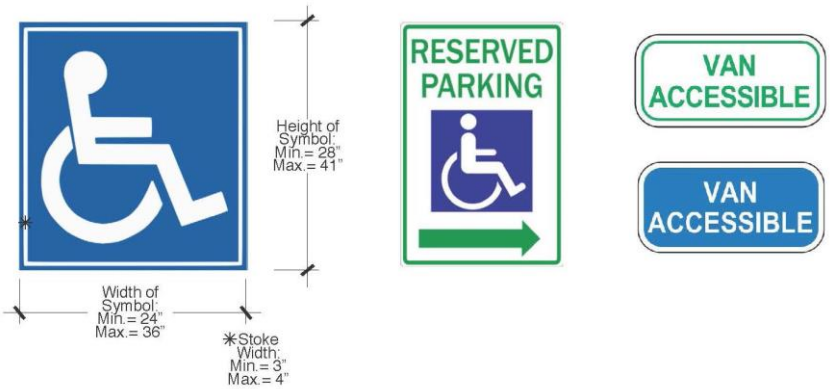


(6) Handicap parking signs.

a. Location. Handicap parking space signage shall be installed as required by Section 16-2-640 (f) and show the symbol of accessibility (see Figure 3-7).

b. Quantity, Area and Height. A handicap parking sign shall be a minimum twelve (12) inches wide and eighteen (18) inches high centered between three (3) feet and five (5) feet above the ground at the head of the required space and may be mounted on a pole or structure. The sign shall have a white background with green lettering stating "Reserved Parking" and the white international symbol of accessibility on blue background. Van accessible spaces shall have an additional sign, "Van Accessible", mounted below the symbol of accessibility. The accessibility parking space shall be striped in white on the pavement and marked with the international symbol of accessibility. The symbol shall be a minimum twenty-eight (28) inches in height and twenty-four (24) inches in width with the blue background symbol and optional white border.

Figure 3.7
Handicap Parking Sign Detail



(7) Monument signs.

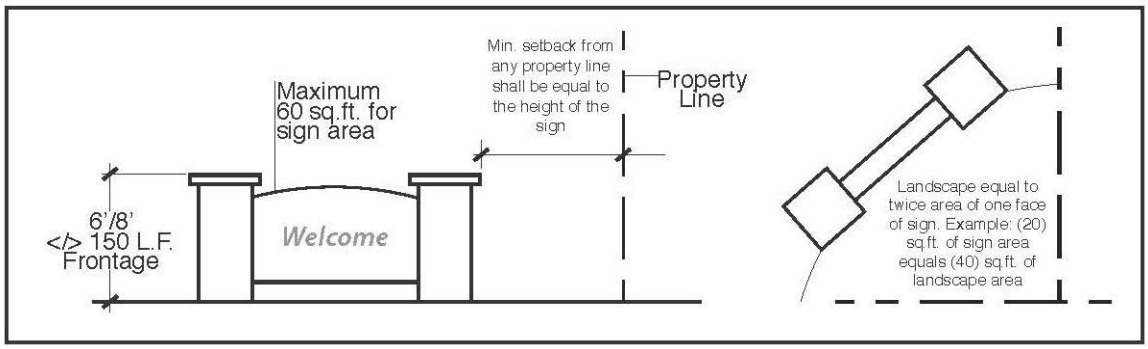
a. Location. A monument sign shall be located on a site frontage adjoining a public or private street, easement or right-of-way. The minimum setback from any property line shall be equal to the height of the sign. Upon approval of the zoning administrator, a monument sign can be integrated into a fence or wall.

b. Quantity, Area and Height. A monument sign shall comply with the quantity, area and height requirements established in Section16-3-410.

c. Landscaping. Landscaping shall be provided at the base of the supporting structure equal to twice the area of one face of the sign. For example, twenty (20) square feet of sign area equals forty (40) square feet of landscaped area. The Zoning Administrator may reduce or waive this requirement if it is determined that the additional landscaping would not contribute significantly to the overall aesthetic character of the project, or if physical conditions of the site would preclude all or a portion of the landscaping.

d. Lighting. Monument signs may be illuminated.

Figure 3.8
Monument Sign Detail



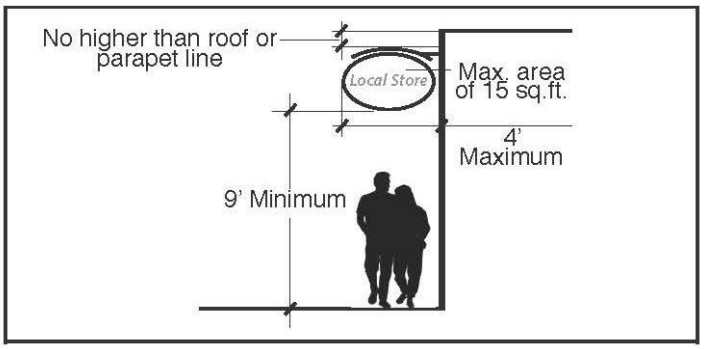
(8) Projecting signs.

a. Location. Projecting signs shall be placed on a ground floor facade, except for businesses located above the ground level with direct exterior pedestrian access.

b. Quantity, Area and Height. A projecting sign shall comply with the quantity, area and height requirements established in Section 16-3-410. No structural element of a projecting sign shall be located less than nine (9) feet above finished grade. Projecting signs shall not be higher than the wall from which the sign projects if attached to a single story building, or the height of the bottom of any second story window if attached to a multi-story building. Projecting signs shall not extend more than four (4) feet from the face of a supporting building.

c. Lighting. Projecting signs shall not be illuminated.

Figure 3.9
Projecting Sign Detail



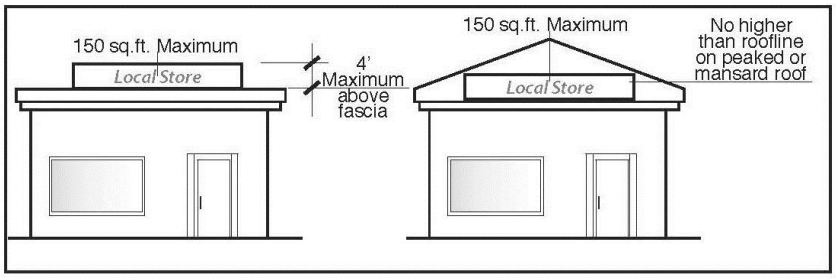
(9) Roof signs.

a. Location. A permanent on - premise, nonresidential roof sign may be permitted, subject to approval by the Zoning Administrator, where the nature of the use, the size of the site or other physical constraints result in a situation where either a wall or freestanding sign cannot be installed without practical difficulties. The negative impact on the visual character of the site or surrounding area resulting from the installation of a roof sign shall be minimized through the use of quality materials and compatible colors. A roof sign shall not include an electronic message board.

b. Quantity, Area and Height. A roof sign shall comply with the quantity, area and height requirements established in Section16-3-410.

c. Lighting. Roof signs shall not be illuminated.

Figure 3.10
Roof Sign Detail



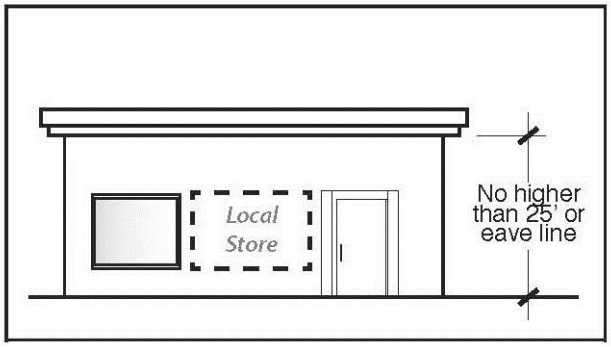
(10) Wall signs.

a. Location. A wall sign shall not be placed to obstruct any portion of a window, doorway or other architectural detail.

b. Quantity, Area and Height. A wall sign shall comply with the quantity, area and height requirements established in Section 16-3-410. Wall signs shall not be higher than the eave line of the principal building. No sign part, including cut-out letters, may project from the building wall more than required for construction purposes and in no case more than twelve (12) inches.

c. Lighting. Wall signs may be illuminated in nonresidential zoning districts only.

Figure 3.11
Wall Sign Detail



Sec. 16-3-430. Temporary signs.

The following types of temporary signs shall be allowed, subject to the standards set forth in this Section:

(1) Directional sign plazas. The placement, installation and timing for removal of directional sign plazas shall be in accordance with a sign plan approved by the Zoning Administrator, subject to the following requirements:

a. Off-site, individual homebuilder signs are not allowed unless they are a part of an approved sign plan.

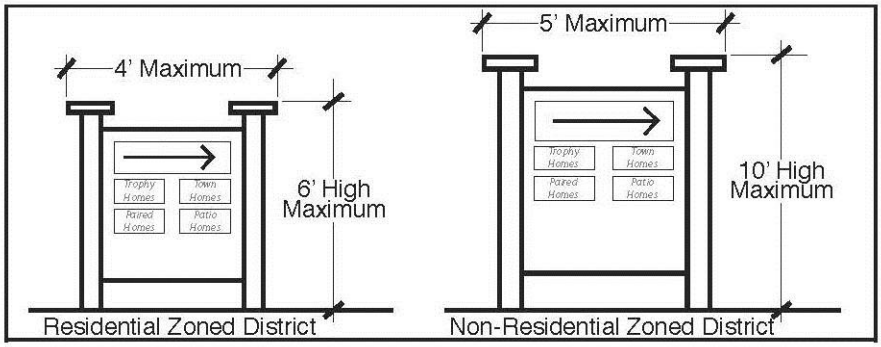
b. Directional sign plaza structures shall be ladder type with individual sign panels of uniform design. See Figure 3-12.

c. Directional sign plazas shall not exceed six (6) feet in height and four (4) feet in width in residential zoned districts, and ten (10) feet in height and five (5) feet in width in nonresidential-zoned districts. See Figure 3-12.

d. The minimum setback for a directional sign plaza shall be no less than four (4) feet from the edge of roadway. Directional sign plaza structures shall not obstruct the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of vehicles, pedestrians or traffic control signs; shall not obstruct any other existing sign; and shall not be installed within the sight triangle of an intersection (see Section 16-5-615 for corner vision clearance triangle specifications).

e. Directional sign plazas, or any part thereof, shall not be illuminated.

Figure 3.12
Directional Sign Plaza Detail



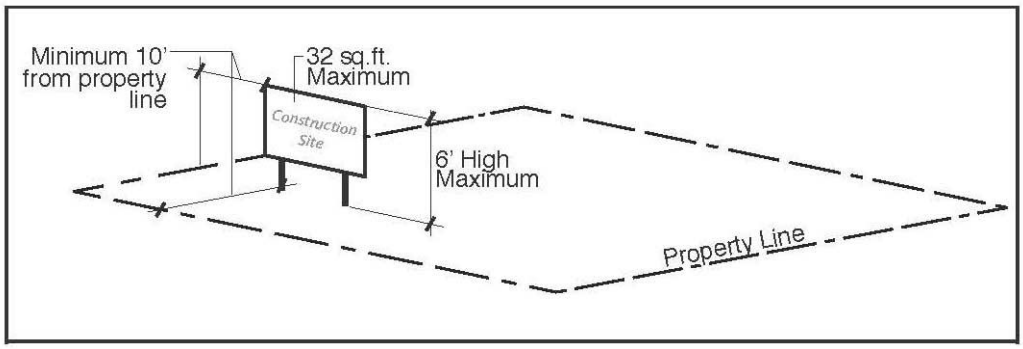
(2) Construction signs. Each subdivided lot in any zoning district may have one (1) freestanding temporary tract sign, provided that each sign:

a. Has a maximum sign area of thirty-two (32) square feet;

b. Has a maximum height of six (6) feet; and

c. Has a minimum setback of ten (10) feet from any property line. See Figure 3-13.

Figure 3.13
Construction Sign Detail



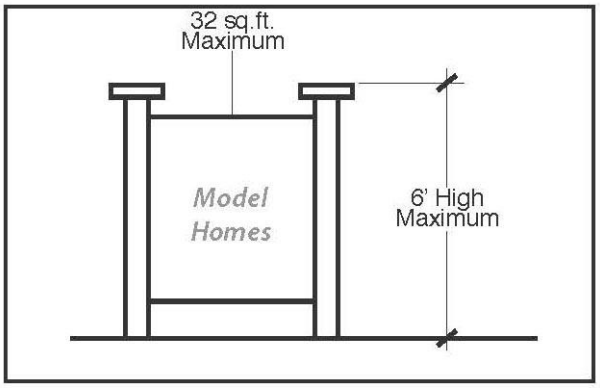
(3) Model home signs. Each builder within a subdivision or development may have the following types of model home signs under the following conditions:

a. Each builder may have one (1) freestanding sign within each model home complex that it constructs, provided that such sign:

1. Does not exceed a maximum area of thirty two (32) square feet; and

2. Does not exceed a maximum height of six (6) feet (see Figure 3-14).

Figure 3.14
Model Home Complex Sign Detail



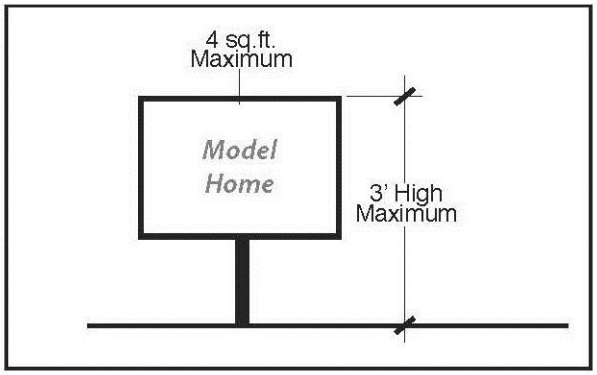
b. Each model home may have one (1) freestanding sign, provided that each such sign:

1. Is located on the same lot as the model home;

2. Does not exceed a maximum area of four (4) square feet; and

3. Does not exceed a maximum height of three (3) feet (see Figure 3-15).

Figure 3.15
Model Home Sign Detail



(4) Real estate signs.

a. Residential Zoning Districts and Uses:

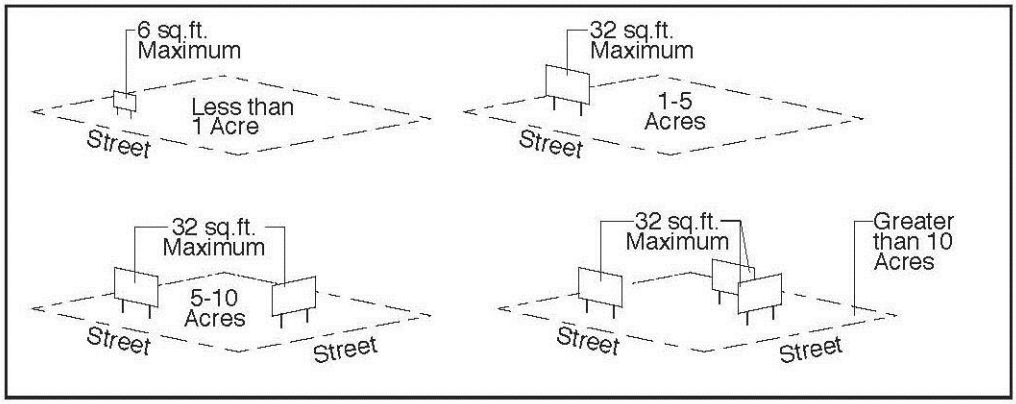
1. Less than one (1) acre: one (1) sign per street frontage not to exceed six (6) square feet per sign.

2. One (1) to five (5) acres: one (1) sign per street frontage not to exceed thirty-two (32) square feet per sign.

3. Five (5) to ten (10) acres: two (2) signs not to exceed thirty-two (32) square feet per sign, or one (1) sign not to exceed sixty-four (64) square feet.

4. Greater than ten (10) acres: three (3) signs not to exceed thirty-two (32) square feet per sign, or two (2) signs not to exceed forty-eight (48) square feet, or one (1) sign not to exceed ninety-six (96) square feet.

Figure 3.16
Residential Real Estate Sign Detail



b. Nonresidential Zoning Districts and Uses:

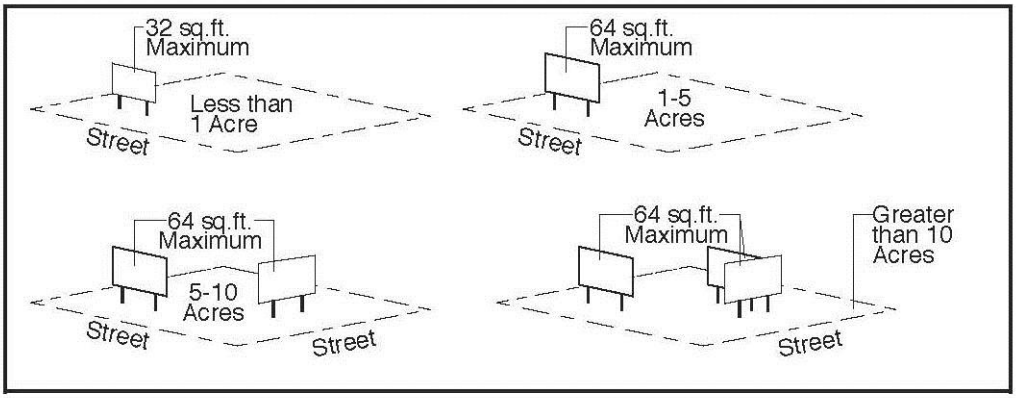
1. Less than one (1) acre: one (1) sign per street frontage not to exceed thirty-two (32) square feet per sign.

2. One (1) to five (5) acres: one sign per street frontage not to exceed sixty-four (64) square feet per sign.

3. Five (5) to ten (10) acres: two (2) signs not to exceed sixty-four (64) square feet per sign, or one (1) sign not to exceed one hundred twenty-eight (128) square feet.

4. Greater than ten (10) acres: three (3) signs not to exceed sixty-four (64) square feet per sign, or two (2) signs not to exceed one hundred twenty-eight (128) square feet per sign.

Figure 3.17
Nonresidential Real Estate Sign Detail



c. Residential and nonresidential real estate signs are to be removed fourteen (14) days after sale or lease of property.

d. Off-premise signs directing the public to a home or lot for sale or home for rent shall be allowed in any zoning district, subject to the following requirements:

1. No more than one (1) sign per home, or lot for sale or home for rent. For multiple lots for sale by a homebuilder, no more than one (1) sign at the entrance to a subdivision.

2. The sign shall not exceed four (4) square feet in area.

3. The sign shall be removed within ten (10) days of the lot sale or home rental. For multiple lots for sale by a homebuilder, the sign shall be removed within ten (10) days after the last home or lot is sold.

(5) Banners, balloons, blimps and inflatable displays. Temporary banners, balloons, blimps and inflatable displays promoting special events and grand openings, shall be permitted as follows:

a. One (1) banner per business may be displayed on a building wall, not to exceed one-half (0.50) square feet for each linear foot of exterior wall up to a maximum area of one hundred (100) square feet;

b. Two (2) freestanding wave banners are permitted per business, up to a maximum square footage of (50) square feet each;

c. No banner shall be illuminated, animated or constructed of reflective materials;

d. Balloons, blimps and other inflatable displays shall be securely anchored or tethered to the ground, building or structure; and

e. No banners, balloons, blimps and inflatable displays shall be displayed for more than seven (7) consecutive days or more than a total of fourteen (14) days per quarter, except for grand openings. For grand openings, banners, balloons, blimps and inflatable displays will be permitted for a period of time not to exceed fourteen (14) days from the first day of business.

(6) Prohibited signs. No sign listed as a prohibited sign in Section 16-3-350 shall be permitted, even on a temporary basis.

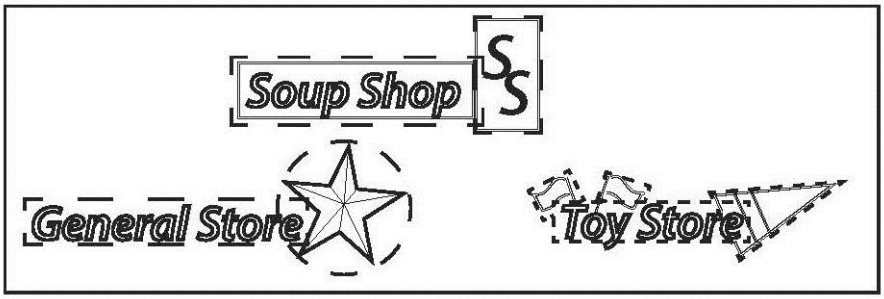
(7) Permits. Each sign permit issued for a temporary sign pursuant to Division 1 of this Article and this Section shall include the dates upon which the sign shall be erected and removed.

Sec. 16-3-440. Sign measurement.

(a) Computation of Sign Area.

(1) The area of a sign face shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the message, logo, symbol, name, photograph, writing, representation, emblem, artwork, figure or other display used to differentiate the sign from the backdrop or structure against which it is placed (See Figure 3-18).

Figure 3.18
Sign Measurement Detail



(2) Any supporting framework, bracing, poles, fence or wall, or architectural feature or landscape element that is clearly incidental to the sign display shall not be computed as sign area.

(3) Architectural treatments that aid in integrating the signage with the building design are encouraged, but any such treatment shall not be created for the purpose of visually enlarging the size of the sign. If more than ten percent (10%) of any wall or roof surface of any nonresidential building or any accessory structure to a nonresidential use is painted, finished or surfaced in a distinctive color scheme that includes some or all of the same colors, shapes, symbols, images, patterns or textures used on any sign identifying an owner, tenant or user of the building, and the Zoning Administrator determines that such wall or roof surfaces serve as a sign for an owner, tenant or user of the building, such wall or roof area shall be counted as signage and shall be subject to the limitations on signage area in Table 3-2.

(4) All sign faces visible from one point shall be counted and considered part of the maximum total sign area allowance for a sign.

a. When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and are part of the same sign structure, the sign area shall be computed by the measurement of one of the two sign faces.

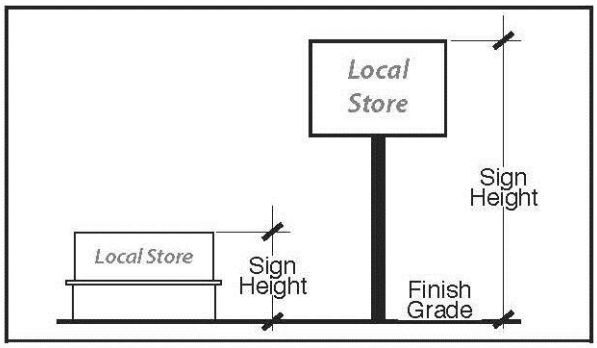
b. When the sign has more than two display surfaces, the area of the sign shall be the area of largest display surfaces that are visible from any single direction.

(5) For the purpose of determining sign area and the allowable number of wall signs, a wall shall be considered the entire building side or elevation, and not each articulated wall face per building side or elevation.

(b) Computation of Sign Height.

The height of any sign shall be determined by the distance between the topmost portion of the sign structure and the ground elevation at the base of the sign (See Figure 3-19). The grade shall not be artificially changed solely to affect the sign height measurement.

Figure 3.19
Sign Height Detail



Division 5
Sign Design, Installation and Maintenance

Sec. 16-3-510. Sign design.

(a) The design of a sign including copy, lettering size and style, and colors shall logically relate to the average speed of the motorists who will see it. Signs shall legibly convey their messages without being distracting or unsafe to motorists reading them.

(b) All signs shall be designed to complement or enhance the other signs for a building or development.

(1) Whenever possible, signs located on buildings with the same wall elevation shall be placed at the same height, in order to create a unified sign band.

(2) Freestanding monument and pole signs shall have a sign face that is an integrally framed structure and shall not have multiple attached separate sign units on the face of the sign supports.

(3) The negative impact on the visual character of the site or surrounding area resulting from the installation of a freestanding pole sign shall be minimized through the use of wide pylons, quality materials and compatible colors.

Sec. 16-3-520. Sign installation.

(a) All permanent signs and all components thereof, including sign structures and sign faces, shall be installed in compliance with all building and electrical codes.

(b) Except for flags, window signs, portable signs and temporary signs conforming to the requirements of this Article, all signs shall be constructed of high quality durable materials and shall be permanently attached to the ground, a building, or another structure by direct attachment to a rigid wall, frame, or structure.

Sec. 16-3-530. Sign maintenance.

All signs, both currently existing and constructed in the future, and all parts and components thereof, shall be maintained in a safe condition in compliance with all building and electrical codes, and in conformance with this Article.

(1) All signs, including sign structures and sign faces, shall be kept neatly painted, including all metal parts and supports that are not galvanized or of rust-resistant metals, and in a general state of good repair. For the purposes of this section, good repair shall mean that there are no loose, broken, torn or severely weathered portions of the sign structure or sign face.

(2) All electronic message center displays shall be equipped with a malfunction display and the ability to automatically shut off if a malfunction occurs. An electronic message center under repair shall be shut off.

Sec. 16-3-540. Sign removal and alteration.

(a) Inspection. The Zoning Administrator may inspect any sign and shall have authority to order the painting, repair, alteration or removal of a sign and/or sign structure that constitutes a hazard to safety, health or public welfare by reason of abandonment or inadequate maintenance, dilapidation or obsolescence.

(b) Sign removal or repair. In addition to any other remedies available under this Chapter, the Zoning Administrator may issue a written notice to sign owners of the need to remove or repair a sign, as follows:

(1) Any sign that does not meet the requirements set forth in this Chapter and does not qualify as a nonconforming structure.

(2) Any sign that has not been used in a bona fide manner as a sign for a consecutive period of one hundred and eighty (180) days and deemed abandoned by the Zoning Administrator.

(3) Any sign that is in disrepair or unsafe and deemed hazardous by the Zoning Administrator.

(4) Any sign identifying a business, professional or industrial establishment that has moved from the premises.

(5) Signs or supporting structures that are the subject of a written notice shall be removed or repaired within fifteen (15) days after the date on which the Town issues the notice. If the sign is not repaired or removed within that time, the Town may remove the sign from the premises on which it is located and store the sign. Costs incurred by the Town for removal, storage and disposition of the sign will be assessed to the owner of the sign, supporting structure or property to which the notice was sent.

(c) Altering or moving existing signs.

(1) Any alteration to an existing sign shall require a new permit pursuant to Division 4 of this Article before the sign may be altered. Alterations shall include, without limitation:

a. Changing the size of the sign;

b. Changing the shape of the sign;

c. Changing the material of which the sign is constructed;

d. Changing or adding lighting to the sign;

e. Changing the location of the sign; or

f. Changing the height of the sign.

(2) Existing conforming or nonconforming signs may be altered in any way that does not change the size, height, background, shape or location of the sign without bringing the entire sign into conformance, provided that the cost of the alteration is less than fifty percent (50%) of the sign's replacement cost.

(3) Signs may be removed for maintenance and replaced on the same support, without obtaining a new permit.

(4) Whenever a business, industry, service or other use is discontinued, any sign or sign copy pertaining to the use shall be removed by the person or entity owning or having possession of the property within one hundred and eighty (180) days after the discontinuance of such use, except a sign advertising the lease or sale of the building.

ARTICLE IV: SUBDIVISION REGULATIONS

Division 1	*Purpose and Applicability*
Sec. 16-4-10	Title
Sec. 16-4-20	Intent
Sec. 16-4-30	General provisions
Sec. 16-4-50	Status of existing plats
Sec. 16-4-60	Violations and enforcement
Division 2	*Definitions*
Sec. 16-4-210	Definitions
Division 3	*Administration and Procedures*
Sec. 16-4-310	Classification of subdivisions
Sec. 16-4-320	Subdivision processing procedures
Sec. 16-4-330	Administrative adjustment review process
Sec. 16-4-340	Boundary line adjustment review process
Sec. 16-4-350	Minor subdivision review process
Sec. 16-4-360	Major subdivision review process
Sec. 16-4-370	Sketch plan review
Sec. 16-4-380	Final plat review
Sec. 16-4-390	Resubdivision and vacation of right-of-way or easement

ARTICLE IV

Subdivision Regulations

Division 1
Purpose and Applicability

Sec. 16-4-10. Title.

This Article shall be known as the *Subdivision Regulations of the Town of Bennett*.

Sec. 16-4-20. Intent.

It is the intent of this Article:

(1) To establish appropriate standards for subdivision design that will:

a. Encourage the development of sound, economical and stable neighborhoods and healthy living environments, in conformance with the goals and policies of the Comprehensive Plan.

b. Provide lots of adequate size, configuration and design for the purpose for which they are intended to be used.

c. Promote superior design and design flexibility.

d. Preserve the significant natural features and environmental quality of the Town.

e. Guide the physical development of the Town in ways that complement the Town's character and culture.

f. Promote a cohesive sense of community among new and current residents, precluding neighborhood design or restrictions that in any way isolate any neighborhood from the rest of the community.

g. Provide complete and accurate public land records.

(2) To establish standards for utilities and other public services that will:

a. Provide an efficient, adequate and economical supply of utilities and services to land proposed for development without adverse effects to property that is currently served.

b. Ensure that adequate stormwater drainage, sewage disposal, water supply and other utilities, services and improvements needed as a consequence of the subdivision of the land are provided.

c. Provide for the reasonable extension of utilities and services to other lands that may be developed in the future.

d. Provide the equitable distribution of the cost of new and expanded public services needed to support new land development.

(3) To ensure the provision of adequate and safe traffic circulation that will:

a. Minimize traffic hazards through appropriate street design, providing safe and convenient vehicular and pedestrian traffic circulation systems.

b. Provide adequate vehicular access to abutting properties.

c. Provide streets of adequate capacity and appropriate design and function.

(4) To ensure adequate public facilities that will:

a. Provide for the recreational, cultural, educational and other public facility needs of the community.

b. Facilitate effective law enforcement and fire protection.

(5) To contribute to the proper development of the community in accordance with the goals and policies of the Comprehensive Plan as it may be updated from time to time.

(6) To establish subdivision procedures and application requirements that will:

a. Allow the efficient, predictable and thorough processing and evaluation of requests to subdivide property.

b. Provide adequate public notice and forums for dialogue regarding issues related to the development of land.

Sec. 16-4-30. General provisions.

(a) All responsibilities and obligations of the subdivider resulting from the approval of plans or plats under the provisions of these regulations shall be binding upon the subdivider's successsors.

(b) Unless a waiver has been granted, no subdivision shall be approved if any portion of the subdivision creates a violation of any of the standards established by this Chapter or any applicable special area plans or design guidelines, or if it creates a lot that does not comply with zoning requirements.

(c) Subdivisions may be approved and constructed in phases. Each phase, either alone or in combination with earlier phases, must meet the requirements of this Chapter and all other local, state and federal laws.

(d) Subdivision review may be conducted concurrently with initial zoning or with site plan review.

(e) Subdivision review shall be conducted concurrently with or following zoning review whenever a proposed subdivision necessitates a rezoning, conditional use permit or planned development.

(f) Any subdivider seeking a waiver from any of the requirements of this Chapter shall either submit a letter to the Zoning Administrator, indicating in detail the nature of the requested waiver and the reasons why it should be approved, or shall include such request in its application for a final plat. The Board of Trustees shall approve, approve with conditions or deny the waiver at a meeting or during the public hearing on the final plat, as appropriate.

Sec. 16-4-40. Status of existing plats.

All plats of property that, upon the effective date of these regulations, have been previously approved by the Board of Trustees are considered to be approved subdivisions.

Sec. 16-4-50. Violations and enforcement.

(a) No owner or agent of the owner shall transfer ownership of any portion of land by reference to a subdivision plat before such plat has been approved in accordance with the provisions of this Article and recorded with the appropriate County Clerk and Recorder, and before all of the subdivider's responsibilities as stated in a development agreement have been completed. Each transaction involving any individual portion of land shall be deemed a separate violation of the terms of this provision. Nothing herein contained shall prevent the Town from seeking other relief, such as injunctive relief, against violation of this Chapter.

(b) No building permits shall be issued for the construction or alteration of any structure on any property unless a plat of such property has been approved and recorded, and public improvements have been installed or guaranteed in accordance with the requirements of this Chapter.

(c) The description of land by metes and bounds or by reference to a portion of a subdivided lot in a deed or other instrument of transfer of ownership in order to avoid compliance with these regulations shall constitute a violation of these regulations.

Division 2
Definitions

Sec. 16-4-210. Definitions.

The words and phrases used in this Article shall have the meanings defined below:

Administrative adjustment means a minor adjustment to an existing approved, recorded plat. Minor adjustments constitute the correction of errors, or slight adjustments of property lines where the plat retains essentially the same design. Minor adjustments do not include the creation of any additional lots, changes to streets or extension of utilities.

*Boundary line adjustmen*t means either a lot merger or minor changes in the boundary lines of two (2) or more adjacent platted lots of record (or parcels) where such adjustment does not create additional lots.

Lot merger means the merging of not more than three (3) contiguous lots into a lesser number of lots than had originally existed.

Resubdivision means a subdivision of land resulting in further division of previously subdivided lots.

Sketch plan means a map of a proposed subdivision, containing information specified that is used as a reference for initial discussions between an applicant and the Town.

Subdivider means any person, firm, partnership, joint venture, association, corporation or other business entity which participates as the owner, developer or other party responsible for the platting of a subdivision.

Subdivision means the division of land, lot, tract or parcel into two (2) or more lots, parcels, plats, sites or other divisions of land for the purpose of sale, lease, offer or development, whether immediate or future. Unless the method of disposition is adopted for the purpose of evading this Chapter, the term *subdivision* shall not apply to any division of land which:

a. Creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five (35) or more acres per interest;

b. Is created by order of any court in this State or by operation of law;

c. Is created by a lien, mortgage, deed of trust or any other security instrument;

d. Is created by a security or unit of interest in any investment trust regulated under the laws of this State or any other interest in an investment entity;

e. Creates cemetery lots;

f. Creates an interest or interests in oil, gas and other minerals, or water which are now or hereafter severed from the surface ownership of real property;

g. 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 Subparagraph as only one (1) interest;

h. Is created by or for the conveyance of real property to the Town in satisfaction of land dedication, subdivision, annexation or other Town requirements; or to a public entity having the power of eminent domain;

i. Is a result of an estate proceeding; or

j. Is a division of land determined by the Board of Trustees not to be within the intent and scope of this Chapter.

Subdivision, major means all subdivisions not classified as boundary line adjustments, administrative adjustments, or minor subdivisions.

Subdivision, minor means a subdivision fewer than four (4) new lots, parcels, tracts, spaces or interests, and does not require public infrastructure to be constructed in association with the subdivision.

Division 3
Administration and Procedures

Sec. 16-4-310. Classification of subdivisions.

All proposed subdivisions of land shall be classified as an administrative adjustment, a boundary line adjustment, a minor subdivision or a major subdivision.

Sec. 16-4-320. Subdivision processing procedures.

The procedures contained in this Division shall be used to conduct the processing and review of subdivision applications.

Sec. 16-4-330. Administrative adjustment review process.

(a) An administrative adjustment is a means of correcting errors or making minor adjustments to an approved and recorded subdivision plat that are so insignificant that public meetings or hearings would not be warranted.

(b) Administrative adjustments are permitted if all of the following conditions are met:

(1) No additional lots are created.

(2) All proposed lot line changes result in lots, together with any existing buildings, that meet all zoning and subdivision requirements, including setbacks and area requirements.

(3) The proposal does not seek to change basic lot configurations.

(4) The area of any individual platted lot is changed no more than fifty percent (50%).

(5) No attempt is being made to circumvent the fifty-percent limitation through the submission of sequential administrative subdivisions.

(6) No street rights-of-way or utility or drainage easements are affected, and no utility mains need to be extended.

(c) The review and processing of an administrative adjustment shall involve three (3) primary steps, as follows:

(1) Application.

(2) Staff review and approval.

(3) Recording of affidavit of correction with the appropriate County Clerk and Recorder.

(d) The materials required to accompany an application for an administrative adjustment shall be in accordance with the Applicant Guide.

(e) Approval or denial of application. Within thirty (30) days of a complete administrative adjustment application, the Zoning Administrator shall determine whether the proposed administrative adjustment complies with the requirements of this Article and shall approve, approve with conditions or

deny the application. Notice of the approval or denial shall be in writing and shall be provided to the applicant. If the administrative adjustment is approved, the application shall be finalized, and an affidavit of correction prepared by a licensed surveyor shall be recorded.

(f) Right to appeal. Within fifteen (15) days after the date of the Zoning Administrator's denial of an application for an administrative adjustment, the applicant may appeal the decision to the Board of Trustees by filing a written notice of appeal with the Town Clerk. The notice shall state the basis for the appeal. Upon receipt of such notice of appeal, the requested administrative adjustment shall be scheduled for de novo review before the Board of Trustees pursuant to the public hearing procedures set forth in Section 16-1-340 of this Chapter. Upon completion of such public hearing process, the Board of Trustees may approve, deny or approve with conditions the requested administrative adjustment, and the Board of Trustees' decision shall be final.

Sec. 16-4-340. Boundary line adjustment review process.

(a) The purpose of this Section is to permit a lot merger or minor changes in the boundary lines of adjacent lots or parcels without requiring the processing of an entire subdivision plat application.

(b) Before any boundary line adjustment shall be legally effective for any purpose, whether immediate or future, including but not limited to any sale, transfer of ownership or building development of the affected or resulting lots or parcels, the procedures prescribed by this Section shall be followed.

(c) The review and processing of an boundary line adjustment shall involve three (3) primary steps, as follows:

(1) Application.

(2) Staff review and approval.

(3) Recording of documents with the appropriate County Clerk and Recorder.

(d) The boundary line adjustment review process is commenced by filing with the Town an application in accordance with the Applicant Guide.

(e) Approval or denial of application. Within thirty (30) days of a complete boundary line adjustment application, the Zoning Administrator shall determine whether the proposed boundary line adjustment complies with the requirements of this Chapter and shall approve, approve with conditions or deny the application. Notice of the approval or denial shall be in writing and shall be provided to the applicant. If the boundary line adjustment is approved, the application shall be finalized, and the appropriate documents shall be recorded.

(f) Right to appeal. Within fifteen (15) days after the date of the Zoning Administrator's denial of an application for a boundary line adjustment, the applicant may appeal the decision to the Board of Trustees by filing a written notice of appeal with the Town Clerk. The notice shall state the basis for the appeal. Upon receipt of such notice of appeal, the requested boundary line adjustment shall be scheduled for de novo review before the Board of Trustees pursuant to the public hearing procedures set forth in Section 16-1-340 of this Code. Upon completion of such public hearing process, the Board of Trustees may approve, deny or approve with conditions the requested boundary line adjustment, and the Board of Trustees' decision shall be final.

(g) Conditions of approval may be imposed on any boundary line adjustment as may be necessary to conform the application to the requirements of this Section or to other applicable requirements of this Code.

(h) Boundary line adjustment review standards. The decision to approve or deny a proposed boundary line adjustment shall be based upon whether the applicant has demonstrated that the proposed adjustment meets all of the following standards:

(1) The adjustment involves adjacent lots or parcels;

(2) No new lot or parcel is created;

(3) The resulting lots or parcels comply with the applicable subdivision standards and zoning standards unless the applicant has first obtained approval for a zoning variance pursuant to Section 16-2-360 of this Chapter;

(4) The lots or parcels, as approved, will not conflict with existing structures or utilities upon the property;

(5) The lots or parcels, as approved, will not be deprived of access or have nonconforming access as a result of the adjustment;

(6) The adjustment does not create, or mitigates to the extent possible, negative impacts on the surrounding property;

(7) If applicable, the adjustment does not materially impair the purposes, intent or development contemplated under a site plan or Final Development Plan affecting the property;

(8) The resulting lots or parcels allow for the efficient use of property;

(9) The adjustment involves only lots or parcels with identical zoning;

(10) All owners and record title interest holders have consented to the adjustment;

(11) The properties subject to the proposed adjustment are not owned by persons who, within the preceding six (6) months, have submitted one (1) or more boundary line adjustments for properties adjacent to or within the same block as the properties subject to the application;

(12) The adjustment does not dedicate rights-of-way or easements; and

(13) The adjustment is not being used to adjust building envelopes or building site dimensions where no adjustment of legal boundaries is proposed.

(i) Finalization and recording of boundary line adjustment.

(1) The approval of a boundary line adjustment shall be evidenced by the issuance of a certificate of approval that has been executed by the Zoning Administrator and Town Clerk on behalf of the Town. The certificate shall be void and of no further force and effect unless it is ready to be recorded as hereinafter provided within one hundred eighty (180) days of the date of the decision on the boundary line adjustment.

(2) Prior to the recordation of the certificate of approval, the final site plan drawing, all final deeds exchanging property between the affected parcels and all final instruments necessary to release or amend deeds of trust or similar encumbrances on the properties shall be submitted to the Zoning Administrator for final review. The applicant shall be responsible for addressing any corrections requested by Town staff. Upon Town approval, the fully executed originals of such documents shall be recorded in the office of the appropriate County Clerk and Recorder by the Town, the applicant or an escrow agent (if an escrow has been opened by the applicant), as the Zoning Administrator may direct. Immediately following the recordation of such items, the original, fully executed Town certificate of approval shall be recorded. No boundary adjustment shall be effective unless and until such certificate has been recorded.

(3) The applicant shall pay all recording costs associated with the boundary line adjustment.

(4) In the event the deeds, final site plan or other documents required for the finalization of the approved boundary line adjustment are not submitted to the Zoning Administrator within one hundred eighty (180) days following the effective date of the approval, such approval shall be void and of no further force and effect, and no Town certificate of approval shall be recorded.

(j) Deed restriction in lieu of lot merger. In the event the owner of property, consisting of not more than three (3) adjacent lots and containing an existing single-family residential structure, wishes to obtain a building permit for either an accessory structure to be located on the property or an addition to the existing structure without completing a lot merger, the owner may request that, in lieu of a lot merger, the Building Official issue the building permit after receiving from the owner a deed restriction in a form approved by the Town Attorney. The deed restriction shall restrict the owner's ability to convey the property without first subdividing it or completing a lot merger. The deed restriction shall be released by the Town upon completion of a subdivision or a lot merger combining all adjacent lots, or upon the determination of the Zoning Administrator that the purpose for which the deed restriction was given is no longer served. The Zoning Administrator shall have the authority to execute any such deed restriction and any release of a deed restriction on behalf of the Town.

Sec. 16-4-350. Minor subdivision review process.

A subdivision application shall be classified as a minor subdivision application and governed by this Section when the application proposes to create fewer than four (4) new lots, parcels, tracts, spaces or interests, unless such application proposes or requires public infrastructure to be constructed in association with the subdivision, in which case the subdivision shall be classified as a major subdivision regardless of size. The processing and review of a minor subdivision consists of three (3) primary steps, as follows:

(1) The submittal and review of a final plat in accordance with this Article.

(2) A public hearing for the final plat before the Planning Commission.

(3) A public hearing for the final plat before the Board of Trustees.

Sec. 16-4-360. Major subdivision review process.

All subdivisions that do not fit within the definition of administrative adjustment, boundary line adjustment or minor subdivision as defined in this Article require processing and review as a major subdivision consisting of seven (7) primary steps, as follows:

(1) The submittal and review of a sketch plan by Town staff and Planning Commission in accordance with this Article.

(2) The submittal and review of a final plat in accordance with this Article.

(3) A public hearing for the final plat before the Planning Commission.

(4) A public hearing for the final plat before the Board of Trustees.

(5) Execution of a development agreement and recordation of the plat.

(6) The completion of public improvements required by the development agreement.

(7) The transfer of land or fees as required by this Chapter.

Sec. 16-4-370. Sketch plan review.

The sketch plan is intended to provide the subdivider with preliminary informal feedback from the Town staff and the Planning Commission on format and substance. Sketch plan review assists the subdivider in understanding the Town's preliminary position on the development, prior to the effort associated with the final plat documents, and to provide the Town with an overall master plan for the proposed development.

(1) Specific processing steps shall consist of:

a. The subdivider shall submit to the Zoning Administrator all documents required in the Applicant Guide.

b. The Planning Commission shall review the sketch plan in a public meeting and provide feedback to the subdivider. The meeting is intended to be for the mutual exchange of information and development concepts. The feedback shall take the form of recommendations endorsed by a majority of the Planning Commission members present. The recommendations by the Planning Commission may include an endorsement of the sketch plan concept, suggestions for modifications to the concept, or endorsement of alternative designs and specifics necessary to accomplish the Town's goals.

c. The subdivider shall incorporate comments from the Planning Commission and from the Town staff into the final plat.

(2) Sketch plan comments from the Town shall remain valid for ninety (90) days. Comments made by the Town during the sketch plan review shall not be binding on the Town's consideration of any subsequent final plat application nor result in a vested property right pursuant to Article 1, Division 5 of this Chapter or state statute. After the sketch plan review, the applicant may submit an application for a final plat.

(3) The Town shall use the following criteria to evaluate the applicant's sketch plan application:

a. The land use mix within the project conforms to the Town's Zoning District Map and furthers the goals and policies of the Comprehensive Plan.

b. The sketch plan represents a functional system of land use and is consistent with the rationale and criteria set forth in this Chapter and the Comprehensive Plan.

c. The utility and transportation design is adequate, given existing and planned capacities of those systems.

d. Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.

e. There is a need or desirability within the community for the applicant's development and the development will help achieve a balance of land use and/or housing types.

Sec. 16-4-380. Final plat review.

The final plat is intended to complete the subdivision of land consistent with the Town's technical standards.

(1) Specific processing steps shall consist of:

a. The subdivider shall submit to the Zoning Administrator all documents required in the Applicant Guide.

b. The Planning Commission shall review the final plat in a public hearing.

c. Within thirty (30) days after the Planning Commission review of the final plat, the Planning Commission shall approve or disapprove the proposed subdivision, in accordance with Section 31-23-215, C.R.S.

d. The final plat shall be presented to the Board of Trustees for its review and action at a public hearing.

(2) The Town shall use the following criteria to evaluate the applicant's final plat application:

a. The final plat incorporates recommended changes, modifications and conditions attached to the sketch plan unless otherwise approved by the Planning Commission.

b. All applicable technical standards in accordance with this Chapter and adopted Town documents have been met.

Sec. 16-4-390. Resubdivision and vacation of right-of-way or easement.

(a) Resubdivision. The resubdivision of any lots, tracts or parcels, or the relocation or addition of streets within a subdivision, shall be considered a resubdivision and shall be prepared and submitted in compliance with the requirements for a major subdivision as set forth in Section 16-4-360. In the event that any dedicated streets are relocated as a result of a resubdivision, it is necessary for the Town to first vacate those existing streets, with said vacation to be effective prior to the approval of the final plat.

(b) Vacation. The vacation of any right-of-way or easement shall be in accordance with C.R.S. § 43-2-301, *et seq.*

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ARTICLE V

Dedications and Improvements

Division 1
Purpose and Applicability

Sec. 16-5-10. Purpose.

The Town's municipal services include raw water supply, treatment, re-use and potable water distribution; public transportation facilities (streets, sidewalks and bike paths); stormwater collection; and wastewater collection and treatment. Authority to connect to and otherwise modify these facilities is regulated by application for which must be made to the Town. These facilities must be planned and constructed in advance of their need. This is accomplished by the property developer responsible for paying the cost of all common facilities needed for their development, and then dedicating them to the Town. Major common infrastructure facilities (pump stations, raw water supply pipelines, interceptor sewers, treatment plant expansion, regional detention, etc.) are only occasionally found to be necessary and therefore not addressed as a part of this Chapter. It is expected that the need for these unique facilities will be discussed at the conceptual stage of development proposals and design criteria and construction responsibility resolved at an early stage in the project. Also, the other utility services, which are provided by nonmunicipal entities (gas, electric, telephone, cable TV, etc.), are not described herein.

Sec. 16-5-20. Future obligations.

This Article is intended to increase the water supply of the Town in order to meet the increased water requirements attributable to annexations, subdivisions, resubdivisions and extensions of water service. Under no circumstances should this Article be interpreted to relieve the applicant, its successors, assigns or future residents of the subject land, of any obligation to install water mains or other facilities; to pay tap fees or plant investment fees which may be imposed by the Town for the expansion or improvement of its water treatment and wastewater facilities; or to pay reasonable fees or charges to the Town for the provision of services.

Sec. 16-5-30. Exceptions.

(a) This Article shall not apply to the subdivision or resubdivision of any annexed lands where the applicant can demonstrate that the requirements of this Article have already been met. Also, this Article shall not apply to any annexation or subdivision agreements into which the Town has entered, but only to the extent such agreements are in direct conflict with the provisions hereof and only to the extent said agreements have not been altered or amended, or expired, prior to the fulfillment of any water rights dedication, or cash in lieu of water rights obligations contained therein.

(b) Whenever an application pertains to the annexation, subdivision, resubdivision or water service extension to a parcel of property already serviced by Town water, the applicant will not have to comply with the dedication requirements for the land area encompassed by the lots containing those existing dwellings or structures which are presently so served; provided, however, that no additional

burden is placed on the Town water system by construction, change of land use, expansion of floor area, increase in water use or otherwise on the lots so exempted.

Division 2
Definitions

Sec. 16-5-210. Definitions.

The words and phrases used in this Article shall have the meanings defined below:

Approved Development Plan means a site plan or final development plan as approved in its final form by the Town pursuant to the Town Code, as may be amended from time to time pursuant to the Town Code, that may identify, among other things (1) Public Improvements necessary for facilitating development of the property within the District Boundaries or the Service Area; and (2) any developer guarantees in connection with development of the property.

Appurtenant means belonging to, accessory or incident to, adjunct, appended or annexed to.

Board of Directors means the board of directors of a District.

BRI means Bennett Regional Improvements.

BRI Authority means one or more authorities established by a BRI Establishment Agreement.

BRI Establishment Agreement means a written agreement establishing a BRI Authority which has, at minimum, Title 32 special districts from three (3) or more Approved Development Plan areas as parties to the BRI Establishment Agreement.

BRI Master Plan means one or more master plans adopted by a BRI Authority establishing Regional Improvements which will benefit the taxpayers and service users of the Districts which constitute such BRI Authority, which master plan may change from time to time.

BRI Mill Levy means the following:

(a) For districts with property within their boundaries developed or proposed to be developed with any residential uses the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the BRI Master Plan, shall be: (i) one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; and (ii) five (5) mills from the twenty-first (21st) year through the fortieth (40th) year or the date of repayment of the debt incurred for Public Improvements, other than Regional Improvements, which ever first occurs; and (iii) for an additional ten (10) years thereafter, the mill levy shall be equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of the debt incurred for Public Improvements other than Regional Improvements; and

(b) For districts with property within their boundaries developed or proposed to be developed solely for commercial uses the mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the BRI Master Plan, shall be: (i) one (1) mill for collection beginning for each district in the first year of collection of a debt service mill levy by such district and continuing in each year

thereafter through the twentieth (20th) year; and (ii) one and one-half (1.5) mills from the twenty-first (21st) year through the fortieth (40th) year or the date of repayment of the debt incurred for Public Improvements, other than Regional Improvements, which ever first occurs; and (iii) for an additional five (5) years thereafter, the mill levy shall be the lesser of twenty (20) mills or a mill levy equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of the debt incurred for Public Improvements other than Regional Improvements; and

(c) Any district may, pursuant to written agreement with the Town, extend the term for application of the BRI Mill Levy beyond the years set forth in A and B above.

(d) All mills described in this BRI Mill Levy definition shall be subject to the Mill Levy Adjustment.

Commercial development means all development other than that zoned or used for residential or industrial occupancy; commercial development shall include, but not necessarily be limited to, developments containing office, retail and similar uses and structures.

Conveyance of legal title to water rights means the legal process by which legal title to the water rights to be dedicated is transferred to the Town by appropriate deed, assignment or other instrument of conveyance as may be required by the Town.

Debt means bonds, notes, debentures, certificates, contracts, capital leases or other multiple fiscal year obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy, collect Fee revenue, and/or levy Special Assessments.

District means a special district organized under the Special District Act whose service plan is to be approved by the Town under applicable state law and any existing District that, on or after the effective date of this the ordinance codified herein, is wholly within the corporate limits of the Town.

End User means any owner, or tenant of any owner, of any taxable improvement within a District who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Debt Mill Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. A person or entity that constructs homes or commercial structures with the intention of selling to others is not an End User.

Intergovernmental Agreement means the intergovernmental agreement between a District and the Town regarding the provisions of the service plan, which intergovernmental agreement may be amended from time to time by a District and the Town.

Maximum Debt Mill Levy means the maximum mill levy a District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be fifty (50) mills for so long as the total amount of aggregate Debt of the District exceeds fifty percent (50%) of the District's assessed valuation. At such time as the total amount of aggregate Debt of the District is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance of any Debt or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall

not be subject to the Maximum Debt Mill Levy if End Users cast the majority of affirmative votes taken by the District's Board of Directors at the meeting authorizing such action, and, as a result, the mill levy may be such amount as is necessary to pay the debt service on such Debt, and the Board of Directors may further provide that such Debt shall remain secured by such increased mill levy, notwithstanding any subsequent change in the District's Debt to assessed value ratio. The Maximum Debt Mill Levy shall be subject to a Mill Levy Adjustment. The Maximum Debt Mill Levy does not include the BRI Mill Levy.

Maximum Operation and Maintenance Mill Levy means the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Operation and Maintenance Costs, and shall be fifty (50) mills until such time that the District issues Debt. After the District issues Debt, the Maximum Operation and Maintenance Mill Levy shall be ten (10) mills. The Maximum Operation and Maintenance Mill Levy shall apply to the District's ability to increase its mill levy as necessary for provision of operation and maintenance services to its taxpayers and service users until such time as End Users cast the majority of affirmative votes taken by the District's Board of Directors at a meeting authorizing an increase of such Maximum Operation and Maintenance Mill Levy.

Maximum Aggregate Mill Levy means the maximum combined mill levy a District is permitted to impose upon the taxable property within the District for payment of all expense categories, including but not limited to Debt, capital costs, organizational costs, and Operation and Maintenance Costs, except that the Maximum Aggregate Mill Levy shall not include the BRI Mill Levy. The Maximum Aggregate Mill Levy shall be sixty (60) mills until such time as End Users cast the majority of affirmative votes taken by the District's Board of Directors at a meeting authorizing an increase of such Maximum Aggregate Mill Levy. The Maximum Aggregate shall be adjusted to reflect any Mill Levy Adjustment in the Maximum Debt Mill Levy and the Maximum Operation and Maintenance Mill Levy.

Mill Levy Adjustment means, if, on or after January 1 of the year of approval of the Service Plan, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the Maximum Debt Mill Levy, the Maximum Operation and Maintenance Mill Levy, and the BRI Mill Levy may be increased or decreased to reflect such changes, such increases and decreases to be determined by the Board of Directors in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the applicable mill levy, as adjusted for changes occurring after January 1 of the year of approval of the Service Plan are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Model Service Plan means the Town's model Title 32 district service plan, as the same may be amended from time to time by the Board of Trustees. There shall be a single-district Model Service Plan and a multiple-district Model Service Plan.

Operation and Maintenance Costs means (1) planning and design costs of Public Improvements identified by a District as being payable from its operation and maintenance mill levy; (2) the costs of repair, replacement and depreciation of the Public Improvements; (3) the costs of any covenant enforcement and design review services a District may provide; and (4) the costs of ongoing administrative, accounting and legal services to a District.

Petitioners means those persons proposing a service plan or an amendment to an approved service plan.

Public Improvements means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Special District Act and in accordance with the Approved Development Plan, except as specifically limited by the service plan, that benefit the property within the District boundaries and/or service area and serve the future taxpayers and inhabitants of the property within the District boundaries and/or service area as determined by the Board of Directors of the District.

Regional Improvements means improvements or facilities that benefit the property within a District's boundaries and which are to be financed in whole or in part with the BRI Mill Levy and in accordance with the service plan.

Service Plan Amendment means an amendment to a service plan approved by Board of Trustees in accordance with this Article and the applicable state law.

Subdivider means an applicant for a subdivision, as defined in Article 4 of this Chapter.

Sufficient legal supply means that the water rights proposed for dedication shall have a sufficient probability of being physically and legally available for pumping and use by the Town in order to provide a dependable supply of water to the Town. To qualify as a sufficient legal supply, any water right proposed for dedication must be free and clear of all liens, encumbrances and assessments. If the water right proposed for dedication is not-non-tributary groundwater, the proposed dedication shall include approved replacement plans by the Groundwater Commission as necessary to allow the ability to pump the not-non-tributary groundwater included with the proposed dedication.

Total Debt Limit means the Total Debt Limit set forth in a service plan for a District, which Total Debt Limit includes any Debt issued for Public Improvements and Regional Improvements.

Water right means a decreed, vested, conditional or inchoate right to use a certain portion of the waters of the State by reason of the appropriation and/or beneficial use of the same, including any tributary, nontributary and not-non-tributary groundwater and surface water, decreed and undecreed water rights and return flows appertaining thereto, and the right to all water from the Denver, Upper Arapahoe, Lower Arapahoe and Laramie-Fox Hills Aquifers, as provided for in a determination of water rights for the property by the Colorado Groundwater Commission.

Division 3
Administration and Procedures

Sec. 16-5-310. General provisions.

(a) Subdividers shall be required to design, install, pay for and warranty streets, utilities, drainage improvements and other infrastructure needed to support subdivision developments.

(b) Subdividers shall be required to arrange for the provision of adequate and timely services by utilities provided by entities other than the Town, including gas, electric and telephone.

(c) Public improvements provided by subdividers shall meet the requirements of the applicable Town design criteria manuals, the Town's adopted street and drainage standards, other requirements of Town ordinances, requirements of the Colorado Department of Transportation, and requirements of all other state and federal agencies.

(d) Unless otherwise provided for in an annexation agreement or development agreement, subdividers shall be responsible for public improvements throughout a subdivision, including those improvements serving abutting land dedicated for public use, and the provision of extensions that will be necessary to serve adjacent land.

(e) Unless otherwise specified in the development agreement, each phase of a subdivision must be served by all required improvements.

(f) It shall be the responsibility of the subdivider to have competent inspections performed on all phases of construction of required public improvements, and to provide to the Town as-built drawings and inspection reports as may be required by the Town Engineer to ensure that construction was performed according to plans and specifications approved by the Town Engineer.

Sec. 16-5-320. Project construction documents.

The design and construction of infrastructure improvements are the responsibility of the developer. The design must be documented in writing, should be made part of the final drainage or utility master plan as appropriate and should be reflected in the construction documents. These construction documents must be prepared to a condition of completeness suitable for competitive bid even if competitive bidding is not utilized. The design and construction shall comply with the Town's codes, ordinances and appropriate Town design manual.

Sec. 16-5-330. Initiation of improvements.

No construction or installation of public improvements shall begin until a development agreement has been approved by the Town. Thereafter, the developer shall be permitted to commence construction and/or installation of the improvements, after obtaining the required permits from the Town and other entities.

Sec. 16-5-340. Acceptance of improvements.

(a) During the progress of construction of facilities which will be dedicated to the Town, the subdivider shall conduct those tests which are specified in the construction documents and the

development agreement, and those which are otherwise necessary as a part of standard construction quality control. Results of those tests shall be provided to the Town within two (2) days of the day of the test.

(b) All facilities will remain in the ownership of the subdivider until officially accepted by the Town in writing. Acceptance can be made in part for fully functional portions of the development, but normally will be made for all proposed dedications as a whole. Conditional acceptance may be given for nonessential components (e.g., open space trails, etc.) on a case-by-case basis as mutually agreed to by the subdivider and Town. Interim inspections of work in progress are desirable, especially for those items which are otherwise not easily viewed or for which field modifications may be necessary.

(c) Review for acceptance by the Town is initiated by the subdivider. At the time the subdivider judges that the facilities are substantially complete, he or she will request of the Town a certificate of completion acceptance. That request shall be accompanied by a statement from the subdivider's engineer that all the facilities have been constructed in substantial conformance with Town standards and the plans and specifications, and a set of as-built drawings which highlight any modifications from the original construction documents. The Town will conduct its review of the facilities to be dedicated and either accept, reject or conditionally accept them. Once acceptance is made or confirmation that acceptance conditions have been met occurs, the Town acquires ownership. At that time the subdivider shall provide a two-year guarantee of all facilities. During the guarantee period, the subdivider shall promptly repair or replace any facilities which the Town determines to be deficient. When any such restoration is complete, the warranty will be deemed fulfilled, the Town will become the owner and any remaining bond retainage will be returned to the subdivider.

Division 4
Water Rights Dedication

Sec. 16-5-405. Approvals conditioned upon dedication of water rights.

(a) In its discretion, the Board of Trustees may require as a condition of annexation that the applicant dedicate to the Town some or all of the water and water rights appurtenant to or associated with the property to be annexed. Any such requirements may be set forth in the annexation agreement.

(b) It shall be a condition precedent to the approval of any subdivision or resubdivision of property that the subdivider dedicate to the Town the minimum water rights required by this Article. No subdivision plat shall receive final approval until the Town becomes title owner of all water required for the platted area. In the sole and absolute discretion of the Town, the dedication of water rights to the Town for all property other than residential may be deferred to the time of water tap application, in which case the dedication of water rights shall be required as a condition precedent to the approval of a building permit or a water tap application, whichever first occurs. Also, subject to Section 16-5-30 above, said requirement shall apply to all extensions of municipal treated water service. In the event of any change or expansion of use which expands the demand on the water utility system, additional water rights shall be dedicated in the amount determined pursuant to this Chapter. Such dedication of additional water rights shall be required as a condition precedent to the approval of any permit for, and to the provision of any water service to, such changed or expanded use. No such permit or provision of water service shall receive final approval or be deemed authorized until all requirements of this Division have been satisfied.

(c) It is the intent of this Division that no subdivision, resubdivision, building permit, change of use or request for water service extension shall be approved until the Board of Trustees has formally accepted water rights, or cash in lieu of water rights, which fully comply with the water right dedication requirements set forth herein.

Sec. 16-5-410. Amounts of water to be dedicated.

In addition to the dedication of water rights required at the time of annexation, an applicant seeking approval of development shall dedicate to the Town the following amounts of water:

(1) Residential developments. For each residential subdivision, resubdivision or extension of water service, the person seeking approval for such subdivision, resubdivision or water extension shall dedicate to the Town water rights constituting a sufficient legal supply which provide:

a. Seven-tenths (0.7) acre-feet per year of water for each dwelling unit in a single-family dwelling.

b. Five-tenths (0.5) acre-feet per year of water for each dwelling unit in a two-family dwelling or a three-family dwelling unit.

c. Five-tenths (0.5) acre-feet per year of water for each dwelling unit in a building used for four (4) or more multi-family dwellings.

d. Two and five-tenths (2.5) acre-feet per year of water for each acre of irrigated landscape area to be served by the Town water system and located within the residential development. Except as provided in Subparagraph e. below, there shall be excluded from such requirement irrigated landscape areas that are within lots used for single-family, two-family or three-family dwellings.

e. One and nine-tenths (1.9) acre-feet per year of water for each acre of irrigated native grass areas.

f. Two and a half (2.5) acre-feet per year for each acre of irrigated landscape area in excess of three thousand five hundred (3,500) square feet which is within a lot used for a single-family dwelling and is to be served by the Town water system.

g. In the event multi-family dwelling units are proposed to be served by a single meter rather than individual meters, the Town may require that the owner, his or her successors or assigns in interest, convey to the Town additional water in the event actual water use from the single meter exceeds the amount dedicated to the Town. The Town in its sole discretion shall determine when single meters may be used for multi-family dwelling unit developments.

(2) Commercial. For each commercial subdivision, resubdivision, building permit, change of use or extension of water service, the person seeking approval for such subdivision, resubdivision, building permit, change of use or water extension shall dedicate to the Town water rights constituting a sufficient legal supply which provides:

a. Eighty (80) gallons per day (gpd) of water for each one thousand (1,000) square feet of gross building floor area within the area proposed for subdivision, resubdivision or extension of water service that is zoned or used for commercial use.

b. Two and five-tenths (2.5) acre-feet per year of water for each acre of irrigated landscape area to be served by the Town water system and located within the commercial development.

c. One and nine-tenths (1.9) acre-feet per year of water for each acre of irrigated native grass areas.

d. For any high water use commercial development, such additional amounts as may be required pursuant to Section 16-5-445.

(3) Industrial. Industrial demands and required dedications shall be evaluated on a case-by-case basis at the time of the proposed industrial zoning or industrial use. It shall be a condition precedent to such industrial zoning or use that the water rights required by the Town are dedicated to the Town.

(4) Out-of-Town water service. Any person or entity seeking an out-of-Town water service shall dedicate to the Town double the amount of water otherwise required by this Section.

(5) The quantity of water required for fractional acres shall be determined proportionately.

Sec. 16-5-415. General requirements for dedications.

(a) The conveyance of legal title to any water rights proposed for dedication shall occur by execution and delivery to the Town of special warranty deed or such other instruments as the Town may require, free and clear of all liens, encumbrances and assessments.

(b) If at any time it is determined by the Town that there has been a change or expansion of use which expands the demand on the water utility system, additional water rights to satisfy such demand shall be dedicated to the Town upon request. Such additional dedications shall also include approved replacement plans by the Groundwater Commission as necessary to allow the ability to pump the not-non-tributary groundwater included with the dedication.

(c) All water rights required to be dedicated to the Town shall be dedicated and transferred at no cost to the Town. Such dedications shall be in addition to the payment of all tap fees required by the Town.

(d) The Town's obligation to provide water service to the property shall at all times be limited by the amounts lawfully available under the water rights dedicated or conveyed by the landowner, its successors or assigns in interest.

Sec. 16-5-420. Expansion of use.

If a water utility system user expands the demand on the water utility system, additional water rights shall be dedicated. The dedication requirement shall be determined by calculating the requirement as outlined in Sections 16-5-410, 16-5-415 and 16-5-445 and crediting the previously dedicated amount of water rights.

Sec. 16-5-425. Acceptance of water rights by Town; determination of yield.

(a) Only those water rights which the Town, in its sole and absolute discretion, deems capable of being transferred into the Town's municipal water system will be accepted. The specific yield allocated to each water right proposed to be dedicated shall be determined solely and exclusively by the Town. The Town at any time may review the adequacy of water rights dedicated to it or proposed to be dedicated to it. If any such water rights are determined by the Town to not comply with the Town's dedication requirements or any other applicable ordinances, resolutions, rules, regulations or policies of the Town, the Town may withhold the approval or recording of the annexation, subdivision or other proposed development approval or permit for the property until such dedication requirements have been met.

(b) At the sole and absolute discretion of the Town, water rights not meeting the criteria for sufficient legal supply, as defined above, may be accepted if said water rights contain attractive transfer or other characteristics, and further, that the water rights have a probability acceptable to the Town of yielding, each year, the amount of water for which credit is given.

Sec. 16-5-430. Cash in lieu of water rights.

(a) If a person seeking annexation, subdivision, resubdivision or water service extension approval within the Town limits is unable to dedicate sufficient water rights to meet the requirements described

herein, the Town, in the sole and absolute discretion of the Board of Trustees, may agree to accept cash in lieu of dedication of water rights for any dedication required by this Article. Any cash-in-lieu payment shall be at a rate as determined by the Board of Trustees from time to time by resolution.

(b) In order to defray the expense the Town must incur in locating and purchasing water rights to totally or partially satisfy developments for which sufficient water rights are not dedicated, the cash equivalent price shall include adjustment to reflect such costs, expenses and market risk factors relative to locating and purchasing such water rights.

(c) If a person seeking an out-of-Town water service is unable to dedicate sufficient water rights to meet the requirements described herein, then the Town, in the sole and absolute discretion of the Board of Trustees, may agree to accept cash in lieu of water rights, any amount of which shall be twice the cash-in-lieu-of-water-rights value determined for in-Town property.

(d) Any consideration other than cash shall be evaluated by the Town on a case-by-case basis. The amount of credit given, if any, shall be determined by the Board of Trustees after considering the advice of the Town staff.

(e) Whenever the dedication requirement is satisfied by cash in lieu of water rights instead of, or in combination with, water rights, the Board of Trustees' approval of the application for annexation, subdivision, resubdivision or request for water service extension shall be contingent upon tender of the cash payment.

Sec. 16-5-435. Dry-up covenant.

Whenever the Board of Trustees determines that the transfer of an irrigation water right to municipal purposes will be contingent upon documenting that lands historically irrigated with the water right have been taken out of irrigation, approval of the application shall be contingent upon the current owner of the historically irrigated property entering into a binding dry-up covenant with the Town, which encompasses and runs with the affected lands. The need for such a covenant, as well as the specific lands to be so covered, shall be determined solely by the Town.

Sec. 16-5-440. Expenses; payment by applicant.

The applicant shall be responsible for all expenses incurred by the Town in evaluating the contents of the application; specifically including the acceptability and yield of the water rights offered for dedication. This responsibility shall include fees charged by outside water consultants the Town may employ in the legal and engineering fields. Payment of said expenses shall be a condition precedent to application approval.

Sec. 16-5-445. Requirements adjusted for high-use commercial developments.

(a) For commercial developments that contain high water use activities or entities, the Board of Trustees, with assistance from the Town staff, shall make a determination of the amount of water projected to be required to serve the area described within any application for subdivision, resubdivision, building permit, change of use or water service extension approval. The determination of high water use activities shall be at the sole discretion of the Town staff. Such high water use activities may include, by way of example and not limitation, car washes, bars, restaurants and grocery

stores. If the results of the study indicate that the commercial development will require more water than the minimum amounts set forth in Section 16-5-410, the dedication requirement shall be adjusted accordingly, with credit given, if applicable, for any previously dedicated amount of water rights, and such additional dedication shall then be made in accordance with the other provisions of this Chapter.

(b) In addition to the foregoing, any car wash shall have, as a condition of water service, a system for the recycling and reuse of water, which system shall be subject to Town review and approval.

Sec. 16-5-450. Downward adjustment; owner's responsibility in event of projected shortfall.

(a) The Town recognizes that certain commercial developments may, when built, require less than eighty (80) gallons per day of water for each one thousand (1,000) square feet of gross building floor area. Therefore, should an applicant seeking subdivision, resubdivision, building permit, change of use or water service extension approval for a commercial subdivision believe that the requirement of eighty (80) gallons per day (gpd) of water for each one thousand (1,000) square feet of gross building floor area exceeds the amount of water needed to serve the proposed development when completed, the applicant shall have the option of presenting data to the Town Engineer documenting the development's projected annual water needs.

(b) The Town Engineer shall review the data so provided and may review any other pertinent data including, but not limited to, the actual water usage of other developments comparable to the proposed development. After reviewing the data, the Town Engineer shall determine whether the eighty (80) gallons per day of water for each one thousand (1,000) square feet of gross building floor area exceeds the amount of water that will be needed to serve the proposed development when completed. If the Town Engineer determines that the amount of water required to serve the commercial development is less than eighty (80) gallons per day of water for each one thousand (1,000) square feet of gross building floor area, an appropriate downward adjustment in the dedication requirement shall be made by the Town Engineer.

(c) All charges incurred by the Town in conjunction with the review process shall be assessed to the applicant. Payment of said charges shall be required as a condition precedent to application approval and to provision of water service. A decision of whether the data provided by an applicant is sufficient for purposes of conducting a meaningful review shall be determined solely by the Town. Adequate assurances that the lands described in the application will not develop in a manner such that the ultimate water usage exceeds the projected estimates (in the form of platting restrictions, covenants running with the land or similar legal mechanisms which will bind not only the applicant, but subsequent owners and lessees of both the land and all structures contained thereon) must be provided by the applicant. If, in the future, the annual water needs of the developed area exceed the projected level of usage, the then-current owner shall be responsible for providing the Town with the additional water rights, or cash in lieu of water rights, to make up for any shortfall. Said water rights or cash in lieu of water rights shall meet the criteria of the water rights dedication ordinance then in effect. Failure to comply with this requirement may result in the imposition of a moratorium on the issuance of new water taps for the development, the discontinuation of nonessential water service to the affected area, or both. The Board of Trustees may impose such a moratorium or discontinuation of nonessential water service, or both, by a resolution which may be recorded with the Clerk and Recorder of the county wherein the property is situated. The execution and recording of a resolution stating that any such failure to comply has been cured shall serve to lift any such moratorium or discontinuation of nonessential water service.

Sec. 16-5-455. Option to purchase.

Any person required to comply with the basic dedication requirement shall also grant to the Town the option to purchase any and all water rights which are appurtenant to the land involved, but which are in excess of the basic dedication requirement or which are deemed not to be satisfactory. Said option may be exercised by the Town at any time for a period of two (2) years following approval of the annexation, subdivision, resubdivision or water service extension. The option price shall be that price agreed upon by the parties. If the parties do not agree upon an option price within thirty (30) days after notice of the Town's intent to exercise its option is received by the owner, appraisal at the Town's expense will establish the price that reflects the fair market value of the water rights. The appraisal shall be conducted by one (1) appraiser appointed by the Town, one (1) appraiser appointed by the owner of the water rights and a third appraiser to be appointed by both parties' appraisers. The average of the three (3) appraisals shall be the option price. The terms and conditions of the payment and conveyance of said water rights shall be those that are mutually agreeable to both parties. Nonetheless, it is expected that payment and conveyance will be completed within one hundred eighty (180) days of the establishment of the option price.

Sec. 16-5-460. Right of first refusal.

In addition to the grant of said option to purchase by the applicant, there shall be a grant to the Town by the applicant of a right of first refusal regarding the water rights subject to said option to purchase. If the Town, for any reason, should choose not to exercise its option to purchase, the Town shall retain said right of first refusal, in the event the water rights are sold independently of the land, for a period of ten (10) years following final approval of annexation, subdivision, resubdivision or extension of water service to a subdivision. If the owner of the water rights subject to said right of first refusal wishes to sell said water rights to a third party, he or she shall give to the Town at least ninety (90) days' notice of his or her intention to effect a sale of said water rights by delivering to the Town a bona fide written offer to purchase made by a third party. During the ninety-day notice period provided for above, the Town shall enjoy its right of first refusal entitling it to purchase the water rights subject to its right and proposed for sale. If, within ninety (90) days following notice by the owner of his or her intention to sell his or her water rights, the Town chooses to exercise its right of purchase, the Town shall pay to the owner the fair market price of the water rights prevailing at the time of the offer, which price shall be at least equal to the amount tendered to the owner in the bona fide offer by the third party. In the event that the Town determines not to exercise its right to purchase the water rights offered for sale, the owner shall be free to sell the water rights to the third party; provided, however, that any such sale to a third party shall be pursuant to the terms and conditions which were the same as those tendered to and refused by the Town.

Sec. 16-5-465. Recording of option to purchase and right of first refusal.

The grant of any option to purchase and right of first refusal shall be by means of an agreement prepared by the Town and signed by the applicant, and shall be structured so that all subsequent purchasers of the water rights are placed on notice of the Town's prior senior claim. Such document shall be filed on record with the applicable County Clerk and Recorder's office and shall be presented to the secretary of any applicable ditch or reservoir company.

Division 5
Park and School Dedication and Improvement

Sec. 16-5-510. Dedication requirements.

(a) At the time of subdivision, the subdivider shall dedicate to the Town and improve to the Town's specifications usable tracts of land that are free from liens or encumbrances, for the following purposes:

(1) Park land and public facilities. This land may be used for public parks, trails, open space, public facilities or recreational purposes. The land dedication requirement shall be equal to ten percent (10%) of the total land area contained within the subdivision. This requirement applies to all subdivisions where additional lots are being created, regardless of zoning classification.

(2) School land. This land shall be dedicated to Bennett School District 29J and shall be used to provide a location for public schools to serve the area. The land dedication requirement shall be equal to eight percent (8%) of the total land area contained within the subdivision. This requirement applies to all subdivisions allowing residential use where additional lots are being created.

(b) Each of these dedication requirements is independent of the others, and is in addition to all other land dedications required for streets, roads, drainage facilities, etc.

Sec. 16-5-520. Cash-in-lieu requirements.

(a) The subdivider shall pay to the Town for parks or other public purposes or to the School District for school purposes cash in lieu of the required land dedication, as specified below, if the Town determines that:

(1) The proposed land dedication would be inconsistent with the provisions of the Comprehensive Plan;

(2) The proposed land dedication is at a location which is unacceptable to the Town or School District, as applicable; or

(3) The Town or School District would derive greater benefit at the time from a cash-in-lieu payment than from the provision of land for the development of the required facility.

(b) The amount of a cash-in-lieu payment shall be determined by the size of the required land dedication (in acres, rounded to two [2] decimal points), times:

(1) The average per-acre cost of undeveloped land zoned for single-family residential development within or immediately adjacent to the Town, as mutually determined by the subdivider and the Town, or, in the absence of such agreement, as determined by a real estate appraisal prepared by an appraiser acceptable to both the subdivider and the Town. The appraisal shall be secured and paid for by the Town, which shall in turn be reimbursed for such expense by the subdivider; and

(2) For the park land portion only, the average cost per acre to purchase and improve undeveloped land for park purposes pursuant to the Town's adopted standards and specifications.

(c) Cash-in-lieu payments shall be restricted to use in acquiring and improving land for the required public use within the Town, and shall be in an interest-bearing account, with all interest reserved for the same purposes.

(d) All cash-in-lieu payments shall be due and payable to the Town prior to recordation of the plat.

Sec. 16-5-530. Land dedication credit for private facilities.

Where parks, open space, trails and recreation facilities are developed for the exclusive use of the residents of a particular subdivision, a portion of the improvements, not to exceed seventy-five percent (75%), shall be credited against such requirements, provided that the Board of Trustees determines that it is in the public interest to do so, and that the following standards are met:

(1) The land and/or facilities are intended to be privately owned and maintained in perpetuity by the present and future residents of the subdivision;

(2) The private ownership and maintenance of the land and/or facilities are provided for in a written agreement acceptable to the Town;

(3) The proposed land area is suitable for use for parks and recreation purposes;

(4) The proposed facilities comply with the provisions of this Article and are approved by the Board of Trustees; and

(5) The proposed facilities are not inconsistent with the provisions of the Town's Parks, Trails and Open Space Master Plan and the Comprehensive Plan.

Sec. 16-5-540. Commencement and completion of improvements.

The development of all parks and recreation improvements must be commenced prior to issuance of a building permit for the second one-third (⅓) of the contemplated dwelling units in the subdivision, (e.g., in the case of a ninety-nine-unit subdivision, prior to issuance of a permit for the thirty-fourth unit). All parks and recreation improvements must be completed prior to issuance of a building permit for the final one-third (⅓) of the contemplated dwelling units in the subdivision (e.g., in the above example, prior to issuance of a permit for the sixty-seventh unit). Failure to comply with these deadlines shall result in a freeze on permit issuances until such deadlines are met. Extenuating circumstances which prevent compliance with this Section can be appealed to the Board of Trustees.

Sec. 16-5-605. Dedication requirements.

(a) Subdividers shall be required to dedicate rights-of-way for public streets and easements for drainage and utility facilities as needed to serve the area being annexed or developed.

(b) In cases where any part of an existing or planned road is in or adjacent to the tract being developed or subdivided, the subdivision applicant shall be required to dedicate such additional right-of-way as may be necessary to increase such roadway to the minimum width required in this Chapter and the Town of Bennett Storm Drainage Criteria Manual.

(c) Dedication of sites for flood control purposes and other municipal uses shall be mutually agreed upon between the subdivider and the Board of Trustees.

(d) The Town may assess fees to be paid by the subdivider to provide for the provision of public facilities necessitated by the development.

Sec. 16-5-610. Streets.

(a) Streets shall be aligned to join with planned or existing streets and formed to augment the existing grid pattern. Intersections of streets shall be at right angles. In areas where the grid pattern has not been followed, new subdivisions should be designed to return to the grid pattern to the extent possible. Streets shall be designed to connect through to future subdivisions.

(b) The street layout shall form an interconnected system of streets primarily in a rectilinear grid or modified pattern. The use of cul-de-sacs and other roadways with a single point of access is discouraged.

(c) New developments shall interconnect with existing neighborhoods wherever possible, through street, trail and open space connections.

(d) Dead-end streets shall be discouraged except in cases where such streets are designed to connect with future streets on adjacent land, in which case a temporary turnaround may be required. Turnarounds may not be required if no lots in the subdivision are dependent on the street for access.

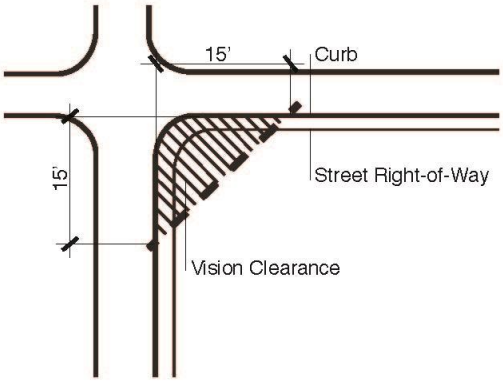
(e) Tracts subdivided into large parcels in anticipation of further subdivision shall be designed to accomplish logical streets and other linkages.

Sec. 16-5-615. Corner vision clearance triangle.

(a) In order to provide safe sight lines at intersections, a corner vision clearance triangle must be maintained at all public and private street intersections.

(b) The corner vision clearance triangle shall be described as that area lying within a triangle with its corners formed by the intersection of the extended curb lines of two (2) intersecting streets, and the points along the two (2) curb lines located fifteen (15) feet back from the point of intersection of the extended curb lines. See Figure 5-1.

Figure 5.1
Corner Vision Clearance Triangle Detail



(c) The corner vision clearance triangle shall be kept clear of all objects higher than twenty-four (24) inches that could obstruct view. The following exceptions are allowed:

(1) Street signs, traffic lights, streetlights, fire hydrants and similar public facilities.

(2) Street trees that are a deciduous variety, with the lowest branch and foliage at least eight (8) feet above the road surface.

Sec. 16-5-620. Existing supply and distribution systems.

(a) If an area proposed to be annexed is served by an existing water system, the Town as a condition of annexation may require that such system, including all water rights and facilities related thereto, be dedicated to the Town for integration into the Town water system. The Town in its sole and absolute discretion may determine not to require dedication of such existing system and, in such case, may make a downward adjustment in the dedication requirement if the Board of Trustees determines, in its sole and absolute discretion, that it is appropriate to do so to account for such existing system which is not required to be dedicated to the Town.

(b) In deciding whether to require dedication of an existing system, or whether to allow a downward adjustment in the dedication requirement for an existing system which is not required to be dedicated to the Town, the Board of Trustees, with assistance from the Town staff, shall make a full analysis of the potential future water supply burden which may be placed upon the Town by the property proposed to be annexed, and shall consider all factors affecting the water supply situation, including but not limited to the following:

(1) The probability that the applicant will continue to rely on the other system and not seek Town water service at some time in the future;

(2) The legal obligation of the Town to supply water to the annexed areas regardless of any existing system in the area;

(3) The extent to which water distribution lines have been extended into the area, or the extent to which the extension of such lines is assured;

(4) The age and condition of the existing water supply system; and

(5) The existence of any obligations or commitments respecting the continued use of such other water system.

Sec. 16-5-625. Water and wastewater line extension policy.

(a) Statement of purpose. It is the purpose of this policy to provide a fair and equitable distribution of the costs of installing water and wastewater lines and associated appurtenances to all the parties benefiting from their installation. This policy covers most cases, but recognition is made that special cases may occur. When special cases do occur, deviations may be made from the specifics of the policy, provided that the final arrangements maintain this fair and equitable intent. Such arrangements can be made by mutual agreement between the Board of Trustees and the developer of the property and shall be contained in a development agreement executed by both parties. This Article shall be interpreted and enforced to ensure that a developer will pay all direct costs and its proportionate share of indirect costs.

(b) Line installation policy. In order to facilitate the orderly continuation of the Town's water distribution and wastewater collection systems, water and wastewater mains shall be installed to the furthest point or points of a property. The developer shall install lines on all sides of the property and/or through more than one (1) internal easement or right-of-way if it is determined that those lines are needed to provide service to other properties beyond the subject property.

(c) All mains which are necessary for the service to or within a property or as required above shall be installed at the cost of the developer, except that mains larger than those required to serve the property but required by the Town shall be subject to the provisions of Section 16-5-635 below.

(d) The developer shall be responsible for payment of the Town's review of plans, inspection of installation and associated costs. Such costs shall be in accordance with the Town's fee schedules or the actual costs, where applicable. Payment of such costs shall be made prior to the Town's acceptance of the improvements.

(e) Upon completion of the work and written acceptance by the Town, the water distribution and wastewater collection systems shall become the property of the Town.

(1) The Town shall own and maintain the water mains, water main appurtenances and fire hydrants and appurtenances therein. The property owner shall maintain the service line attachment to the main line, meter, meter pit, vaults and all other appurtenances from the main line. For fire service lines, the Town's ownership ends at the valve on the main or the point of connection to the last domestic service off the line.

(2) The Town shall own and maintain the wastewater mains, manholes and regional wastewater lift stations. The property owner shall maintain the wastewater service line and attachment to the main line. Where a lift station is built to provide service to a specific development or area, the Town may either establish a special monthly assessment to cover

maintenance, overhead and depreciation or require a property owners' association to cover these costs.

(f) All workmanship and materials shall be warranted in writing by the developer against any defects for a period of two (2) years from the date of preliminary acceptance by the Town. Any repair or reconstruction performed during such warranty period as a result of defects in material and/or workmanship shall be warranted for a period of two (2) years from the acceptance of such repair or reconstruction by the Town.

Sec. 16-5-630. Reimbursement policy and procedure.

(a) Reimbursement for line extension through undeveloped property. In accordance with the Comprehensive Plan and the Master Plan, development is encouraged in areas directly adjacent to the Town. In the event a development is not located adjacent to the Town, a developer may find it necessary to install water or wastewater lines and appurtenances through undeveloped property to obtain service. The developer may request the establishment of a reimbursement agreement to recover a portion of the line installation costs from subsequent future development along the line.

(1) The establishment of a reimbursement agreement is optional and must be requested by the developer prior to construction of the line.

(2) The reimbursable amount shall not be increased or decreased to reflect fluctuations in construction costs and shall not be increased for interest or decreased for depreciation. The date of the construction quote or bid shall establish the initial index value.

(3) The reimbursement agreement shall expire after a period of ten (10) years from the acceptance of the line unless extended in writing by the Board of Trustees.

(4) Reimbursement payments shall be due and payable prior to the installation of any service or line extension to the undeveloped parcel.

(5) If the line is installed through or adjacent to more than one (1) property, the future developers shall pay for their proportional share based on the usage of the line generated through their property.

(b) Reimbursement for line extension through previously developed areas. A developer may find it necessary to replace an existing undersized or otherwise inadequate line to obtain service. The developer may be eligible to establish a reimbursement agreement in the following cases:

(1) If a property adjacent to the replacement line had a tap on the original undersized line and is later subdivided, the developer of this second property shall reimburse the original developer an amount determined pursuant to the provisions of this Chapter.

(2) If the line to be replaced is in such a condition or configuration that it would, in the opinion of the Town Engineer, be eligible for replacement, the Town may pay the portion of the cost that it would incur to replace or upgrade the line.

(c) Reimbursement for major structures. A developer may find it necessary to install a major structure to obtain water or wastewater service, in which case the developer may be eligible to establish a reimbursement agreement.

(1) A reimbursement agreement may be established if the major structure is a component of the water distribution or wastewater collection system that will bring direct benefits to an identifiable area. Examples are:

a. Wastewater lift stations.

b. Water booster pump stations.

c. River or highway crossings.

(2) The cost of the utility line or structure required by the project itself shall be paid by the developer. The cost of the remainder of the utility line, required by the Town may be paid by the Town.

Sec. 16-5-635. Line oversizing policy.

(a) General. The purpose of the line oversizing policy is to enable a developer to recover the costs incurred to install an oversized water or wastewater line. The oversized portion is the difference between the line size required by the proposed use of the property and the line size required by the Town to meet future growth demands. The developer is required to bear the full costs for installing eight-inch wastewater lines or larger if required to serve that development, and for installing all water lines six (6) inches in diameter or larger if required to serve that development.

(b) Line sizing. The actual size of the water or wastewater line required shall be initially established by the developer with supporting documentation to verify that the sizes of the water and wastewater lines meet the Town's specifications. Final evaluation and design shall be determined by the Town. Criteria to be used for this determination shall include, but shall not be limited to the following:

(1) Utility master plan requirements.

(2) Potential future demand on the water or wastewater system as related to the proposed development.

(3) Hydraulic design criteria of the water or wastewater system.

(c) Town participation in oversizing project. The Town may require a developer to install an oversized water or wastewater line. If an oversized line is required, the Town will participate in the project costs if the oversizing is required to provide service to the Town's existing customers.

(d) Developer reimbursement. When the Town requires a developer to oversize either water or wastewater lines to meet the needs of anticipated development, the developer may request the Town to enter into a reimbursement agreement. The agreement may provide that the developer will be reimbursed the cost of the required oversizing from future developments, which make use of the

oversizing. The reimbursement agreement shall expire upon repayment to the developer of the oversizing costs or the expiration of ten (10) years from the completion of the installation.

(e) Determination of eligible project costs.

(1) Only those components of the water or wastewater line project that are specifically related to the oversizing shall be included for oversizing participation. Eligible costs shall be limited to those additional costs of materials to furnish and install the oversized pipe, fittings, valves and service saddles. The costs for design, service lines, manholes, surface repairs and connected lines and appurtenances are not eligible.

(2) Construction quotes. If the developer is aware that there will be oversizing required and that the cost of the oversizing is estimated to be less than five thousand dollars ($5,000.00), the developer shall obtain a minimum of three (3) written quotes from qualified contractors for construction of the oversized line. The lowest quote shall be the basis for determining eligible oversizing costs.

(3) Competitive bids. If the cost of the oversizing is estimated to be greater than five thousand dollars ($5,000.00), the developer shall obtain competitive bids for the construction of the oversized line. The Town and the developer have the right to reject any and all bids, for cause.

(4) Determination of final costs. The developer's engineer shall submit to the Town a summary of the final eligible project costs. The final costs shall be based on the lower of the actual installation costs or the lowest bid received for the project.

(f) Water and wastewater development agreement. If the Town agrees to participate in an oversizing project, the developer shall prepare a reimbursement agreement, which will include:

(1) An estimate of the oversized line project costs, prepared by a professional engineer. Itemization of the cost estimate shall be attached to the agreement.

(2) Distribution of project costs between the Town and the developer.

(3) Time schedule or phasing plans with which the developer agrees to comply.

(4) Any reimbursement agreements between the developer and future developers along the oversized line.

(5) The water and wastewater development agreement shall be reviewed and signed by the Town Engineer, the Town Attorney and the developer.

Sec. 16-5-640. Drainage and storm sewers.

(a) General requirements.

(1) In conjunction with the final plat, the developer shall prepare a drainage study that will identify those measures and improvements needed to control, detain, retain or discharge, as appropriate, surface water flows within the subdivision.

(2) All drainage plans and specifications associated with a drainage study shall bear the seal of a professional engineer registered with the State and shall include a statement signed by the engineer attesting to the following:

a. That the plans and specifications are in full compliance with the Town's codes, ordinances, standards and criteria for drainage improvements;

b. That the plans and specifications will achieve the purposes for which the improvements are intended; and

c. That the engineer accepts responsibility for any liability caused by negligent acts, errors or omissions on the part of the engineer in preparing the plans and specifications.

(3) The developer shall be responsible for maintaining all drainage improvements until final acceptance of them by the Town, homeowners' or other owners' association.

(4) The developer shall dedicate to the Town or other appropriate entity all existing and proposed drainage easements on the final plat.

(5) The Town will allow the use of the street system for drainage to the extent permitted by the Town of Bennett Storm Drainage Criteria Manual.

(6) The drainage facilities for the subdivision shall be designed to accept flows from areas upstream of the subdivision and to release flows from the subdivision in a manner which does not adversely affect the downstream properties.

(7) Except where essential, as determined by the Town, drainage improvements shall be located solely within the subdivision they are intended to benefit.

(8) In those instances in which a proposed drainage system will carry water across private land outside the subdivision, appropriate drainage easements shall be secured by the developer, shall be identified on the final plat of the subdivision and shown by an appropriate instrument of grant, which shall be recorded with the County Clerk and Recorder of the county in which the property is located.

(b) Drainage way and floodplain restrictions.

(1) The Town may impose special restrictions on drainage ways and floodplains within a subdivision if it determines that such restrictions are necessary for the health, safety and/or welfare of the present or future inhabitants of the Town. These restrictions may include, but are not limited to, the following:

a. Preserving the drainage way or floodplain to ensure adequate width for maximum potential flow volumes and to permit proper maintenance of the drainage way.

b. Retaining the drainage way or floodplain vegetation or improving it pursuant to a landscape plan approved by the Town.

c. Prohibiting any clearing or grading activities or dumping of earth or waste material which may cause damage or destruction within the drainage way or floodplain.

(2) The developer shall maintain all drainage ways and floodplains within the subdivision pursuant to Town requirements until such areas are:

a. Transferred to a new owner, homeowners' association or other owners' association, at which time such party shall assume all responsibilities.

b. Dedicated to the Town as stipulated in the final plat and/or development agreement.

(c) Drainage area dedications and easements.

(1) Should a drainage way, watercourse or floodplain within a subdivision be designated for open space or park development in the Comprehensive Plan or other Master Plans for the Town, the developer shall either dedicate a perpetual drainage easement to the Town or convey the property to the Town by deed, at the Town's discretion.

(2) Where drainage facilities occur outside of dedicated street rights-of-way, perpetual drainage easements or a deed for the affected property shall be conveyed to the Town along with sufficient access to a public street for maintenance purposes.

(3) All drainage easements or property conveyances shall be of sufficient width to contain a drainage facility and to transport runoff from a one-hundred-year flood in compliance with the Town's codes, ordinances and the Town of Bennett Storm Drainage Criteria Manual.

(d) Site considerations.

(1) Grading should minimize disturbance of natural topography and existing trees.

(2) Steep or unstable land and/or areas having inadequate drainage shall not be subdivided into building lots unless the subdivider makes adequate provision to prevent the same from endangering life, health or other property.

(3) Any land subject to flooding or any natural drainage channels shall not be platted as building lots unless adequate provisions to eliminate or control flood hazards in the subdivision or on the building site or other affected lands are made by the subdivider in accordance with Article 7 of this Chapter and approved by the Town Engineer.

Sec. 16-5-645. Water facilities.

Water distribution systems shall be designed and installed in accordance with the Town's codes, ordinances and the Town of Bennett Sanitary Sewer and Water System Design and Construction Standards Manual.

(1) General requirements.

a. The developer shall be responsible for the installation or extension of water distribution facilities to the subdivision which provide adequate water for potable use, landscaping watering, fire suppression and other uses as are permitted by the zoning classification of the land.

b. The water system shall be designed and installed by the developer in accordance with this Article and the Town's codes, ordinances and the Town of Bennett Sanitary Sewer and Water System Design and Construction Standards Manual.

c. Water lines shall be installed to serve each subdivision lot and/or building envelope.

(2) Water line easements and groundwater dedication.

a. All proposed water utility easements shall be dedicated to the Town and shown on the final plat.

b. Water line easements shall be a minimum of thirty (30) feet in width or as otherwise required by the Town to accommodate the installation and maintenance of the lines and facilities.

c. Water line easements shall be dedicated as exclusive easements.

d. Structures or other obstructions shall be prohibited within water line easements.

e. Water line easements acquired in adjoining properties shall be recorded with the County Clerk and Recorder of the county in which the property is located.

(3) Fire suppression requirements.

a. The subdivider shall install and maintain exterior fire suppression systems for the subdivision, including fire hydrants and water storage facilities, and shall maintain the system until final acceptance of the system by the Town.

b. All new developments may be required to install water re-use lines.

c. Fire flows and durations for all types of construction shall conform to Appendix III of the Fire Code.

Sec. 16-5-650. Sewerage facilities.

Wastewater collection systems shall be designed and installed in accordance with the Town's codes, ordinances and the Town of Bennett Sanitary Sewer and Water System Design and Construction Standards Manual.

(1) General requirements.

a. The developer shall be responsible for the installation or extension of sanitary sewer facilities to the subdivision which are sufficient for such uses as are permitted by the zoning classification of the land.

b. The sewerage facilities shall be designed and installed by the developer in accordance with this Article and the Town's codes, ordinances and the Town of Bennett Sanitary Sewer and Water System Design and Construction Standards Manual.

c. Sewerage lines shall be installed to serve each subdivision lot and/or building envelope.

d. The Town may prohibit the installation of trees and certain other plantings within sewer easements.

(2) Sewer line easements.

a. All proposed sewer utility easements shall be dedicated and shown on the final plat.

b. Sewer main easements shall be a minimum of twenty (20) feet in width or as otherwise required by the Town to accommodate the installation and maintenance of the lines and facilities.

c. Sewer main easements shall be dedicated as exclusive easements.

d. Structures or other obstructions shall be prohibited within sewer line easements.

e. Sewer main easements acquired in adjoining properties shall be recorded with the County Clerk and Recorder of the county in which the property is located.

Sec. 16-5-655. Location of other utilities.

(a) All new utility lines, including but not limited to gas, electric, telephone and cable television lines, shall be located underground throughout the subdivision.

(b) Existing overhead utility lines that are within or adjacent to the subdivision, other than major electric transmission lines, shall be buried at the expense of the developer.

(c) Any above-ground utility devices or installations approved by the Town shall be located, wherever possible, in areas where they are visually unobtrusive and do not detract from local aesthetics.

(d) All existing and proposed nonwater or sewer utility easements shall be dedicated to the appropriate entity and shown on the final plat.

Division 7
Performance Guarantees

Sec. 16-5-710. Development agreement.

(a) Subdividers shall be required to design, install, pay for and warranty streets, utilities, drainage improvements and other infrastructure needed to support subdivision developments.

(b) The obligation for constructing and installing the improvements stipulated in the development agreement or annexation agreement and for fulfilling all other obligations contained in the agreement shall fall upon the subdivider, the subdivider's successors in interest, assignees or any other parties who acquire title to the land or to any lot or part thereof.

(c) Subdividers shall be required to arrange for the provision of adequate and timely services by utilities provided by entities other than the Town, including gas, electric and telephone.

(d) Public improvements provided by subdividers shall meet the requirements of the applicable Town design criteria manuals, the Town's adopted street and drainage standards, other requirements of Town ordinances, requirements of the Colorado Department of Transportation, and requirements of all other state and federal agencies.

(e) Unless otherwise provided for in an annexation agreement or development agreement, subdividers shall be responsible for public improvements throughout a subdivision, including those improvements serving abutting land dedicated for public use, and the provision of extensions that will be necessary to serve adjacent land.

(f) The development agreement shall be prepared by the Town and shall include the following:

(1) An itemized listing of those improvements described in the construction plans, as well as any other improvements specified in the final plat approval or annexation agreement, or otherwise required by the Town.

(2) An estimate, acceptable to the Town, of the expected cost of the improvements, expressed in total unit quantities, per unit cost and total cost per improvement.

(3) A time schedule, acceptable to the Town, for the completion of the improvements. If the improvements are to be completed on a phased basis, deadlines for the completion of each phase must be specified and a map provided which illustrates clearly the location of each phase.

(4) A warranty period, as specified by the Town, covering each of the improvements. Generally, the warranty period will be two (2) years; however, due to individual circumstances, this period might be longer.

(5) The specific amounts of cash-in-lieu payments, if any, to be made to the Town.

(6) Any other requirements that the subdivider must satisfy as a condition of the approval of the final plat.

(7) Prior to recording, a copy of the Town ordinance or resolution approving the final plat shall be included as an appendix to the agreement.

(g) The improvements to be constructed and installed by the subdivider, pursuant to the Town's design standards and construction specifications, shall include, but not necessarily be limited to:

(1) Road grading and surfacing;

(2) Curbs and gutters;

(3) Sidewalks and ADA ramps;

(4) Sanitary sewer system;

(5) Storm sewers or storm drainage system;

(6) Water distribution facilities, including fire hydrants and storage tanks;

(7) Street lights;

(8) Underground telephone and electrical lines;

(9) Landscaping and irrigation improvements;

(10) Street signs and traffic control devices;

(11) Permanent survey reference monuments and monument boxes;

(12) Natural gas distribution lines;

(13) Other facilities as may be required or specified by the Board of Trustees.

(h) The development agreement shall be reviewed and acted upon by the Board of Trustees, following a determination by the Town staff that the agreement is adequate in terms of format and content.

(i) Once approved, the development agreement shall be signed by the subdivider, the property owner (if other than the subdivider) and the Mayor.

(j) Unless otherwise specified in the development agreement, each phase of a subdivision must be served by all required improvements.

(k) It shall be the responsibility of the subdivider to have competent inspections performed on all phases of construction of required public improvements, and to provide to the Town as-built drawings and inspection reports as may be required by the Town Engineer to ensure that construction was performed according to plans and specifications approved by the Town Engineer.

(l) Requests for extension of development agreement. All requests by an owner for an extension of time to complete improvements or to otherwise perform under the terms of a development

agreement shall be considered by the Board of Trustees at a public meeting. Prior to consideration of such requests, the subdivider shall submit a letter of explanation. The letter shall include a request for a specific extension of time for completing the remaining improvements, accompanied by a statement indicating what improvements have been completed and the degree of their completion, a statement indicating what circumstances have prevented the completion of the improvements and a statement indicating what surety will be provided.

Sec. 16-5-720. Public improvement guarantees.

(a) Prior to the approval by the Board of Trustees of the development agreement, the subdivider shall submit to the Town performance guarantees in accordance with the provisions of this Article to ensure that the required public improvements will be satisfactorily completed and paid for by the date specified in the agreement.

(b) The development agreement shall specify conditions of default and the terms under which the Town may draw upon the guarantee to complete required public improvements in the event of default.

(c) In phased subdivisions, the Town may, at its discretion, permit improvement guarantees and dedication assurances in conformance with the phasing schedule authorized in the development agreement.

(d) The amount of the financial guarantee shall be sufficient to cover the entire cost of mobilizing and completing the improvements in the event that the owner does not complete the improvements according to the terms of the development agreement. The amount of the guarantee must be specified in the agreement. The required amount is one hundred fifteen percent (115%) of the estimated construction costs as agreed to by the subdivider and the Town Engineer. The Town may, at its discretion, require a lower amount if warranted.

(e) Subject to approval by the Town Attorney, the types of guarantees listed below are acceptable to the Town:

(1) An irrevocable letter of credit from a bank or financial institution. The letter of credit shall provide for payment upon demand to the Town if the developer has not performed the obligations specified in the development agreement and if the issuer has been notified of such default. The issuer of the letter of credit shall guarantee that at all times the total amount of the credit will be retained until released in whole or in part by the Town.

(2) An escrow agreement, with cash in escrow, providing that the escrow agent shall be a bank or financial institution acceptable to the Town, that the escrow agent guarantees that the escrowed funds will be used for required improvements as specified in the development agreement and for no other purpose, and that the escrow agent will not release any portion of such funds without prior approval of the Town. If the Board of Trustees determines that there is a default of the development agreement, the escrow agent shall release any remaining escrowed funds to the Town.

(3) A cash deposit with the Town.

(f) It shall be the responsibility of the subdivider to keep all the performance guarantees current. The Town shall have the right to increase or decrease the amount of the guarantees at one-year intervals to reflect updated estimates of the cost of the required improvements.

Sec. 16-5-730. Acceptance and warranty of improvements.

(a) Following the construction and installation of all public improvements specified in the development agreement, and delivery to the Town of as-built drawings and inspection reports on all required public improvements, the subdivider shall submit a written request for preliminary acceptance of the improvements. Following a physical inspection of the improvements and upon being satisfied that they meet all Town requirements, the Town Engineer may issue a preliminary acceptance of the improvement, subject to a two-year warranty.

(b) Prior to preliminary acceptance, the subdivider shall provide to the Town a proper warranty for any defects discovered in the public improvements within two (2) years after preliminary acceptance for maintenance. Under the terms of the warranty, the subdivider shall be responsible for the repair, replacement and/or maintenance of any improvement required by the Town which fails to meet the Town's standards or to function properly, due to defects in material, workmanship, construction and/or installation, within a period of two (2) years from the date of acceptance. The warranty shall provide a financial guarantee equal to fifteen percent (15%) of the cost of installation, and shall be in a form acceptable to the Town Attorney.

(c) Should the warranty security provided to the Town prove inadequate to pay the total costs of repairing or replacing defective improvements, the subdivider shall be responsible for such costs, and the Town may utilize any or all of the measures proscribed by law to achieve prompt compliance.

(d) Upon completion of the two-year warranty period, the subdivider shall be entitled to obtain final acceptance of the improvements if the Town Engineer finds that the improvements are substantially free of defects in materials and workmanship and have been repaired and maintained to the extent required in the development agreement. If the Town Engineer finds that any part of the improvements are not substantially free of defects in materials and workmanship or have not been repaired and maintained as required under the development agreement, the subdivider shall thereupon take such action as is necessary to cure any noncompliance.

(e) At the time of final acceptance of the improvements, the subdivider shall be entitled to a release and return of the warranty security.

Sec. 16-5-740. Maintenance of public improvements.

The subdivider shall be required to maintain all required public improvements described in the development agreement until:

(1) The Town Engineer has issued a notice of final acceptance of the public improvements to the subdivider; and/or

(2) In the event that some improvements that serve multiple properties in the subdivision are intended for private maintenance, the Town has performed a final inspection of the private improvements and has approved them, and the subdivider has in turn conveyed the title and the

maintenance obligation for the improvements to a homeowners' association, to a landowners' association or to some other responsible entity approved by the Town.

Sec. 16-5-750. Release or use of performance guarantees.

The Town may release or use performance guarantees as follows:

(1) In the event that all or a portion of the public improvements are satisfactorily completed and approved by the Town Engineer a prorated portion of the performance guarantee may be released by the Town.

(2) In the event the required public improvements are not fully and satisfactorily completed in compliance with the terms of the development agreement, the Town may declare the agreement in default and can:

a. Deny further issuance of building permits, certificates of occupancy, water meters or water and sewer tap hookups until the improvements are fully and satisfactorily completed;

b. Require that all uncompleted improvements be constructed and installed without delay regardless of the extent of subdivision development at the time of default; and/or

c. Utilize the performance guarantees to complete the remaining improvements, either through use of one (1) or more contractors or through use of the Town's work force. Upon completion of the remaining improvements, any unused portion of the performance guarantees, minus the Town's legal costs and the Town's administrative costs, equal to twenty percent (20%) of the total of all costs associated with the completion of the remaining improvements, and any other documented costs incurred by the Town, shall be released or returned.

Sec. 16-5-760. Private improvements.

(a) The Town will accept for maintenance only those improvements that are constructed to the standards of the Town.

(b) In the event a subdivision is to contain any improvements or facilities that are not for public use, but which are for the private use of the owners or occupants of two (2) or more lots or dwelling units, and where such private improvements are approved by the Town, the maintenance and operation of such privately owned improvements must be provided for in a written agreement with the Town. The private improvements might consist of, but not necessarily be limited to, tennis courts, swimming pools, parkways, roadways or greenbelts.

(c) All privately maintained roadways that provide primary access to two (2) or more residential lots must be covered by a public access easement, providing unrestricted access by the public and by emergency vehicles.

(d) All privately maintained roadways that provide primary access to two (2) or more commercial or industrial lots must be covered by a public access easement, providing unrestricted access by emergency vehicles.

(e) The development agreement shall contain any provisions the Town deems necessary to assure that:

(1) The proposed private facilities will be constructed or installed as represented; and

(2) Measures have been taken to assure the proper future operation and maintenance of the improvements.

Division 8
Special Districts

Sec. 16-5-805. Legislative declaration.

(a) Special districts ("Districts") organized under Title 32, Article 1, C.R.S. (the "Special District Act"), under appropriate circumstances, provide an economic alternative to the development of municipal infrastructure at the expense and risk of the Town.

(b) The intent of this Division is to impose conditions, restrictions and requirements on the development by Districts of public improvements and the issuance of debt, in order to preserve the financial integrity of the Town and the health, safety, prosperity, security and general welfare of all of the residents and citizens of the Town. The Special District Act may not in certain respects adequately address the local concerns and interests of the Town in regulating the Districts' development of public improvements and incurrence of debt to finance such development, both of which ultimately have a direct financial consequence to the Town. It is necessary and advisable to specify the events and conditions which, under the Special District Act, likely constitute material modifications to an approved District service plan, in the context of the particular business and legal relationship between the Town and Districts. The provisions of this Division are also intended to provide procedures for the processing and review of proposals for formation of new Districts, and to define the restrictions and limitations which may be imposed by the Town as a condition to the approval of such Districts consistent with the policy and intent of this Division.

(c) The primary purpose of Districts within the Town is to fund the local and regional public improvements and facilities necessary for the development of private property. A District shall be authorized to construct Public Improvements as the same are more specifically defined in an Approved Development Plan, the Intergovernmental Agreement, or other agreement to which the Town is a party or otherwise gives its written consent. Districts may provide for the continued operation and maintenance of such facilities only as provided in their respective approved service plans and the Intergovernmental Agreement executed by the District and the Town.

(d) The Town, in furtherance of the best interests of its residents and the preservation and protection of the health, safety, prosperity, security and general welfare of its residents, declares its intent:

(1) To prevent the indebtedness incurred by Districts from adversely affecting the credit worthiness and credit ratings of the Town;

(2) To ensure that the cost burden of infrastructure in newly developed areas is placed upon those benefitting from such infrastructure improvements;

(3) To prevent the shifting of development risk to non-developers;

(4) To minimize the likelihood of excessive tax and fee burdens upon Town residents located within Districts;

(5) To require facilities and services to be provided efficiently;

(6) To prevent the shifting of costs of Districts to residents of the Town who do not live

within the geographic boundaries of a District; and

(7) To permit the use of Districts to serve only those residential, commercial or industrial developments that will enhance the quality of the entire community.

(e) The adoption of this Division is necessary, requisite and proper for the government and administration of local and municipal matters under the Town's authority.

Sec. 16-5-810. Reservation and construction.

In addition to the power, authority and protection set forth in this Division, the[8]Town reserves all the powers and authority granted to municipalities by the Special District Act and Article XX of the Constitution of the State of Colorado. The provisions of this Division shall be construed and applied to supplement the applicable provisions of the Special District Act and in the event that any conflicts exist between the Special District Act and this Division, such inconsistencies are specifically intended and the provisions of this Division shall control, it being the intention that all requirements for the processing of proposed service plans for Districts within the Town's boundaries are contained in this Division.

Sec. 16-5-815. Model Service Plan and Intergovernmental Agreement.

In addition to the requirements of C.R.S. § 32-1-202 (2), as the same may be amended from time to time, the proposed service plan shall provide as follows:

(a) The Maximum Debt Mill Levy the District shall be authorized to impose is fifty (50) mills for so long as the total amount of aggregate Debt of the District exceeds fifty percent (50%) of the District's assessed valuation. At such time as the total amount of aggregate Debt of the District is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance of any Debt or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy if End Users cast the majority of affirmative votes taken by the District's Board of Directors at the meeting authorizing such action, and, as a result, the mill levy may be such amount as is necessary to pay the debt service on such Debt, and the Board may further provide that such Debt shall remain secured by such increased mill levy, notwithstanding any subsequent change in the District's Debt to assessed value ratio. The Maximum Debt Mill Levy shall be subject to a Mill Levy Adjustment. The Maximum Debt Mill Levy does not include the BRI Mill Levy.

(b) The Maximum Operation and Maintenance the District shall be authorized to impose is fifty (50) mills until such time that the District issues Debt. After the District issues Debt, the Maximum Operation and Maintenance Mill Levy shall be ten (10) mills. The Maximum Operation and Maintenance Mill Levy shall apply to the District's ability to increase its mill levy as necessary for provision of operation and maintenance services to its taxpayers and service users until such time as End Users cast the majority of affirmative votes taken by the District's Board of Directors at a meeting authorizing an increase of such Maximum Operation and Maintenance Mill Levy.

(c) The Maximum Aggregate Mill Levy shall be the maximum combined mill levy District is permitted to impose upon the taxable property within the District for payment of all

expense categories, including but not limited to Debt, capital costs, organizational costs, and Operation and Maintenance Costs, except that the Maximum Aggregate Mill Levy shall not include the BRI Mill Levy. The Maximum Aggregate Mill Levy shall be sixty (60) mills until such time as End Users cast the majority of affirmative votes taken by the District's Board of Directors at a meeting authorizing an increase of such Maximum Aggregate Mill Levy. The foregoing notwithstanding, any action taken by a District to increase the Maximum Debt Mill Levy must be taken in accordance with subsection (a) above.

(d) All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State law. On or before the effective date of approval of an Approved Development Plan by the Town, the District shall not: (a) issue any Debt; nor (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; (c) impose and collect any fees used for the purpose of repayment of Debt, or (d) levy any special assessments.

(e) The District shall not pledge any revenue or property of the Town as security for the indebtedness set forth in the service plan. Approval of the service plan shall not be construed as a guarantee by the Town of payment of any of the District's obligations; nor shall anything in the service plan be construed so as to create any responsibility or liability on the part of the Town in the event of default by the District in the payment of any such obligation.

(f) The District shall not issue Debt in excess of the Total Debt Limit, as set forth in the service plan, which Total Debt Limit includes any Debt issued for Public Improvements and Regional Improvements; provided that the Total Debt Limit does not include the principal amount of Debt which has been refunded or which is a contractual pledge of taxes or other revenue from a District to another District.

(g) Any Debt issued by a District with a pledge or which results in a pledge that exceeds the Maximum Debt Mill Levy (subject to the Mill Levy Adjustment) shall be deemed a material modification of the Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the Town as part of a Service Plan Amendment. The Town shall be entitled to all remedies available at law to enjoin such actions of the District, including the remedy of enjoining the issuance of additional authorized but unissued debt, until such material modification is remedied.

(h) A district shall impose the BRI Mill Levy and shall convey it as follows:

(1) If a district has executed a BRI Authority Establishment Agreement and the Town has been offered the opportunity to participate in the BRI Authority Establishment Agreement, the terms of which provide for the Town to appoint no less than thirty percent (30%) and no more than forty-nine percent (49%) of the board members who will serve as the board of directors of the BRI Authority to be established by such BRI Authority Establishment Agreement, regardless as to whether the Town becomes a party to such BRI Authority Establishment Agreement, the revenue from the BRI Mill Levy shall be conveyed to the BRI Authority for the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements set forth in the BRI Master Plan and for the operations of such BRI Authority; or

(2) If the Town and a district have executed an agreement then the revenue from the BRI Mill Levy shall be conveyed to the Town for use in planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users and taxpayers of the district in accordance with such agreement; or

(3) If neither (h)(1) or (h)(2) above is applicable then the revenue shall be conveyed to the Town and (A) the Town shall place in a special account all revenues received from the BRI Mill Levy imposed in the property within the district boundaries and shall not expend such revenue until an agreement is executed between the district establishing the terms and conditions for the provision of the Regional Improvements; and (B) if the agreement is not executed within two (2) years from the date of the approval of the service plan by the Town and neither (h)(1) or (h)(2) above have occurred within two (2) years from the date of the approval of the service plan by the Town, then the revenue from the BRI Mill Levy shall be conveyed to the Town for use by the Town in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users or taxpayers of the district as prioritized and determined by the Town.

(4) A district may, pursuant to written agreement with the Town, extend the terms for application of the BRI Mill Levy beyond the years set forth in the definition of BRI Mill Levy in Section 16-5-210.

(5) A district shall cease to be obligated to impose, collect and convey to the Town the revenue from the BRI Mill Levy at such time as the area within the District's boundaries is included within a different district organized under the Special District Act, or a General Improvement District organized under Section 31-25-601, et seq., C.R.S., or Business Improvement District organized under Section 31-25-1201, et seq., C.R.S., which other district has been organized to fund a part or all of the Regional Improvements.

(6) A district shall have the authority to issue Debt for the Regional Improvements in an amount not to exceed the amount set forth in the service plan.

(h) Unless otherwise modified in the provisions of the Intergovernmental Agreement between the Town and the district, the district shall comply with the following requirements, which shall be set forth in the service plan:

(1) Operation and Maintenance Limitation. The District shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan, the Intergovernmental Agreement, and other rules and regulations of the Town and applicable provisions of the Town Code. Except for park and recreation improvements, the District shall not be authorized to operate and maintain any part or all of the Public Improvements unless the provision of such operation and maintenance is pursuant to the Intergovernmental Agreement with the Town. Unless otherwise specified in the Intergovernmental Agreement, all parks and trails shall be open to the general public free of charge. The District shall have the power to provide ongoing covenant enforcement and design review services in accordance with the Special District Act as part of its operation and maintenance activities.

(2) Fire Protection Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to a written agreement with the Town and with Bennett Fire Protection District. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision.

(3) Television Relay and Translation Limitation. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to the Intergovernmental Agreement.

(4) Limitation on Extraterritorial Service. The District shall be authorized to provide services or facilities outside the District boundaries or service area, or to establish fees, rates, tolls, penalties or charges for any services or facilities only in accordance with an Approved Development Plan, the Intergovernmental Agreement, or other agreement to which the Town is a party or otherwise gives its written consent.

(5) Telecommunication Facilities. The District agrees that no telecommunication facilities shall be constructed except pursuant to the Intergovernmental Agreement and that no such facilities owned, operated or otherwise allowed by the District shall affect the ability of the Town to expand its public safety telecommunication facilities or impair existing telecommunication facilities.

(6) Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. The District will obtain the approval of civil engineering plans from the appropriate jurisdiction and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

(7) Zoning and Land Use Requirements. The District shall be subject to all of the Town’s zoning, subdivision, building code and other land use requirements.

(8) Growth Limitations. The Town shall not be limited in implementing Board of Trustee or voter approved growth limitations, even though such actions may reduce or delay development within the District and the realization of District revenue.

(9) Conveyance. The District agrees to convey to the Town, upon written notification from the Town and at no cost to the Town, any interest in real property owned by the District that is necessary, in the Town's sole discretion, for any Town capital improvement projects for transportation, utilities or drainage, so long as such conveyance does not interfere with the District’s ability to construct, operate and/or maintain Public Infrastructure, as the same may be limited by the service plan.

(10) Eminent Domain. The District shall be authorized to utilize the power of eminent domain only in accordance with the Intergovernmental Agreement. In the event the limit on

the District's ability to exercise the power of eminent domain inhibits the District's ability to issue debt, or will cause the interest on any Debt issued by the District to be included in gross income for federal income tax purposes, and the District shall have obtained the written opinion of bond counsel with respect to the foregoing, the limit set forth herein or in the Intergovernmental Agreement on the District's ability to exercise the power of eminent domain shall be of no further force or effect, and shall be retroactive to the date of the organization of the District if the avoidance of the interest on Debt being included in gross income for federal income tax purposes as described in this paragraph so necessitates.

(11) Water Rights/Resources Limitation. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except as otherwise provided pursuant to the Intergovernmental Agreement.

(12) Inclusion Limitation. Without prior written notice to the Town, the District shall not include into its boundaries any property except the property within the Inclusion Area Boundaries. No property will be included within the District at any time unless such property has been annexed into the Town's corporate limits.

(13) Exclusion Limitation. The District shall not exclude from its boundaries any property within the District Boundaries without the prior written consent of the Town, in the event the District is governed by a single-district service plan, or without the prior written notice to the Town, in the event the District is governed by a multiple-district service plan. The District shall not exclude from its boundaries property upon which a Debt mill levy has been imposed for the purpose of the inclusion of such property into another district that has been or will be formed under the Special District Act, without the prior written consent of the Town.

(14) Overlap Limitation. The boundaries of the District shall not overlap with any other district formed under the Special District Act if such overlap will cause the District mill levy to exceed the Maximum Debt Mill Levy, the Maximum Operation and Maintenance Mill Levy and/or the Maximum Aggregate Mill Levy.

(15) Sales and Use Tax. The District shall not exercise its Town sales and use tax exemption.

(16) Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except pursuant to the Intergovernmental Agreement. This Section shall not apply to specific ownership taxes which shall be distributed to and be a revenue source for the District without any limitation.

(17) Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one of the other Districts to which the service plan applies.

(18) Sub-district Limitation. The District shall not create any sub-district pursuant to Section 32-1-1101, C.R.S. without the prior written consent of the Town.

(19) Fees. The District may impose and collect Fees for services, programs or facilities furnished by the District, and the District may from time to time increase or decrease the Fees. The District may use the revenue from Fees for the payment of Operation and Maintenance Costs and for the payment of any indebtedness of the District.

(20) Special Assessments. If authorized in the Intergovernmental Agreement, the District may establish one or more special improvement districts within the District Boundaries and may levy a special assessment with the special improvement district in order to finance all or part of the costs of any Public Improvements to be constructed or installed that the District is authorized to finance.

(21) Bankruptcy Limitation. All of the limitations contained in the service plan, including, but not limited to, those pertaining to the Maximum Aggregate Mill Levy, the Maximum Debt Mill Levy, the Maximum Operation and Maintenance Mill Levy, and Fees have been established under the authority of the Town to approve a service plan pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(A) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(B) Are, together with all other requirements of Colorado law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable non-bankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

The filing of any bankruptcy petition by the District shall constitute, simultaneously with such filing, a material departure of the express terms of the service plan, thus necessitating a material modification that must be submitted to the Town for its consideration as a Service Plan Amendment.

(22) Reimbursement Agreement. If the District utilizes reimbursement agreements to obtain reimbursements from third-party developers or adjacent landowners for costs of improvements that benefit third-party landowners, such agreements shall be done in accordance with Town Code. If a reimbursement agreement exists or is entered into for an improvement financed by the District, any and all resulting reimbursements received for such improvement shall be deposited in the District's debt service fund and used for the purpose of retiring the District's debt.

(i) Intergovernmental Agreement. The District shall enter into a written agreement with the Town, to be executed at the first District meeting after such District is formed, that the District will be bound by each of the terms and conditions set forth in its approved service plan.

Sec. 16-5-820. Hearing and determination.

(a) A public hearing shall be held by the Board of Trustees to consider the service plan. Any testimony or evidence which, in the discretion of the Board of Trustees, is relevant to the organization of the District shall be considered.

(b) After consideration of the service plan, reports and any evidence and testimony accepted or taken at the public hearing, the Board of Trustees shall approve without condition, approve with condition or disapprove the proposed service plan or amendment, applying the following criteria:

(1) Whether there is a sufficient existing and projected need for organized service in the area to be serviced by the proposed District;

(2) Whether the existing service in the area to be served by the proposed District is inadequate for present and projected needs;

(3) Whether the proposed District is capable of providing economical and sufficient service to the area within its proposed boundaries; and

(4) Whether the area to be included in the proposed District has or will have the financial ability to discharge the proposed indebtedness on a reasonable basis.

(c) Within twenty (20) days after the public hearing, the Board of Trustees shall adopt a resolution regarding the proposed service plan. If the service plan is approved, a resolution of approval shall be adopted. If the service plan is disapproved, a resolution for such disapproval shall be adopted, including the reasons for such disapproval. If the service plan is conditionally approved, the amendments to be made in, or additional information relating to, the service plan, together with the reasons for such amendments or additional information, shall be set forth in writing, and the hearing shall be continued until such amendments or additional information is incorporated in the service plan. Upon the incorporation of such amendments or additional information in the proposed service plan, the Board of Trustees shall adopt a resolution of approval.

(d) The Board of Trustees resolution shall document the Board of Trustees' final determination for the purpose of any appeal to the district court.

Sec. 16-5-825. Material modification.

The Model Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District enumerated below shall be deemed to be material modifications to the service plan requiring a Service Plan Amendment, and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the district, including the remedy of enjoining the issuance of additional authorized but unissued debt, until such material modification is remedied:

(1) The occurrence of any event or condition which is defined under the service plan or Intergovernmental Agreement as necessitating a Service Plan Amendment.

(2) The material default by the District under any Intergovernmental Agreement with the Town.

(3) Any change in the stated purposes of the District or additions to the types of facilities, improvements or programs provided by the District;

(4) Any action or proposed action by the District which would interfere with or delay any planned or required dissolution of the District.

(5) Any of the events or conditions enumerated in Section 32-1-207(2), C.R.S.

Sec. 16-5-830. Determination of applicability.

Should the District dispute that one (1) or more of the occurrences enumerated in Section 16-5-825 above is a material modification, the District may request a hearing before the Board of Trustees after consultation with Town staff. After hearing and receipt of any relevant information presented by the District and the recommendation of Town staff, the Board of Trustees shall make a finding as to whether such occurrence constitutes a material modification. In the event it is found that a material modification has taken place, the District shall submit its request for an amendment in accordance with this Division, unless waived by the Board of Trustees. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment. The Board of Trustees may, however, require a later amendment if the change or deviation, on a cumulative basis, subsequently becomes material. In making its determination, the Board of Trustees shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the Town.

Sec. 16-5-835. Service plan amendment.

(a) Except as otherwise provided in the approved service plan and except when the Board of Trustees has determined that no material modification has occurred pursuant to Section 16-5-830 above within ninety (90) days of the occurrence of an action, event or condition enumerated in Section 16-5-825 above, the Board of Directors shall forward an appropriate petition to the Board of Trustees for approval requesting a Service Plan Amendment. The petition for amendment shall include:

(1) Any information or documentation required under the applicable provisions of the Special District Act;

(2) Any material changes since the service plan was last reviewed and approved by the Board of Trustees to any of the information, assumptions or projections furnished in conjunction with the petition for approval of organization of a District or contained in the service plan;

(3) A detailed explanation of the activity, events or conditions which resulted in the material modification, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition;

(4) The impact of the material modification on the District's ability to develop the public improvements necessary to meet its capital development plan;

(5) The effect of the material modification on the District's ability to retire as scheduled its debt and its ability to issue and market additional debt, if any;

(6) A current financial plan for the District reflecting development absorption rates anticipated within the District's service area, projected annual revenues and expenditures based upon such projected absorption rates, debt issuance and amortization schedules and a projection of anticipated capital outlays;

(7) The financial impact of the modification on existing residents of the District;

(8) An updated five-year capital improvements plan; and

(9) What alternatives or options are available to the District if the requested amendment is not approved.

(b) All of the required information shall be supported by appropriate technical analysis, reports and supporting documents of qualified professionals and consultants. The amendment shall be processed and reviewed in the same manner as prescribed by the Applicant Guide for an initial service plan, except that the submittal requirements of this Section shall apply t. Additionally, the District shall execute a cost agreement and funds deposit agreement constituting its agreement to reimburse all Town costs incurred by the Town in review of the application, including but not limited to attorney, financial advisor, engineer and similar consultant fees. The application fee set by Town resolution shall be a deposit applied to such costs. This Section shall not impair the right of the Town to bring an action in the district court to enjoin the activities of the District pursuant to Section 32-1-207(3)(b), C.R.S.

Sec. 16-5-840. Partial exemption.

If any District has not undertaken development of public improvements or issued any debt, it may apply to the Board of Trustees for an exemption from compliance with this Division for a period of time not to exceed two (2) years. The Board of Trustees may grant an exemption if the Board of Directors submits a resolution to the Town Board of Trustees stating that, upon issuance of the exemption, the District's authorization under the service plan and the Intergovernmental Agreement with the Town to undertake development of public improvements or issue any debt is temporarily suspended. With issuance of the partial exemption, the District shall be excluded from compliance with this Division, except that the District annually, not later than September 1, shall submit financial statements from the previous year and the budget for the current year.

Sec. 16-5-845. Capital facilities.

Districts are prohibited from developing or constructing any public improvements unless such public improvements are authorized under the service plan and intergovernmental agreement and any applicable Town ordinances.

Sec. 16-5-850. Sanctions.

Should any District fail to comply with any applicable provision of this Division, the Board of Trustees by resolution may impose one (1) or more of the following sanctions, as it deems appropriate:

(1) Exercise any applicable remedy under the Special District Act;

(2) Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development or construction of public improvements;

(3) Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or

(4) Exercise any other legal remedy, including seeking injunctive relief against the District, to ensure compliance with the provisions of this Division.

ARTICLE VI: SEXUALLY ORIENTED BUSINESSES

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ARTICLE VI

Sexually Oriented Businesses

Division 1
Purpose and Applicability

Sec. 16-6-10. Purpose and intent.

The purpose and intent of this Article is to regulate and require annual licensing of sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location, design and concentration of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.

Sec. 16-6-20. Unlawful acts.

It is unlawful for a licensee, manager or employee to violate any of the requirements of this Article or to knowingly permit any patron to violate the requirements of this Article.

Sec. 16-6-30. Inspection.

(a) An applicant, licensee or manager shall permit representatives of the Town, any law enforcement agency, an applicable County Health Department and/or Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(b) It is unlawful for any person, applicant, licensee or manager who operates a sexually oriented business or his or her agent to refuse to permit such lawful inspection of the premises at any time that it is occupied or open for business.

Sec. 16-6-40. Exemptions.

The provisions of this Article regulating nude model studios do not apply to:

(1) A college, junior college or university supported entirely or partly by taxation;

(2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) A business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one (1) nude model is on the premises at any one (1) time.

Division 2
Definitions

Sec. 16-6-210. Definitions.

Words and phrases used in this Article shall have the meanings defined below:

Adult amusement or entertainment means amusement or entertainment which is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas, or which features topless dancers, exotic dancers, strippers, male or female impersonators or similar entertainment.

Adult arcade means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, video cassette players or similar machines, or other image- or virtual-reality-producing machines, for viewing by five (5) or fewer persons per machine at any viewing, are used regularly to show films, motion pictures, video cassettes, slides or other photographic, digital or electronic reproductions describing, simulating or depicting specified sexual activities or specified anatomical areas.

Adult bookstore, *adult novelty store* or *adult video store* means a commercial establishment which devotes a significant or substantial portion of its stock-in-trade or interior floor space to, or has as one (1) of its principal business purposes, the sale, rental or viewing, for any form of consideration, any one (1) or more of the following:

a. Any books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, however produced, that depict or describe specified sexual activities or specified anatomical areas; or

b. Any instruments, devices or items which are designed or intended for use in connection with specified sexual activities.

Adult cabaret means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment which features:

a. Persons who appear nude or in a state of nudity or semi-nudity; or

b. Live performances which are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

Adult motel means a hotel, motel or similar commercial establishment which offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other media productions, however produced, which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which commercial establishment has a sign visible from the public right-of-way which advertises the availability of this adult type of media production.

Adult motion picture theater means a commercial establishment which is distinguished or characterized by showing, for any form of consideration, of films, motion pictures, video cassettes, slides or similar photographic reproductions, on more than one hundred (100) days per year, that have

an X rating or that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

Adult theater means a theater, concert hall, auditorium or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of specified anatomical areas or by specified sexual activities.

Commercial establishment, with respect to the regulation of sexually oriented businesses, may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas. The term *commercial establishment* includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships.

Employee means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

Establishment of a sexually oriented business means and includes any of the following:

a. The opening or commencement of any such business as a new business;

b. The conversion of an existing business into a sexually oriented business;

c. The addition of a different sexually oriented business to any other existing sexually oriented business; or

d. The relocation of a sexually oriented business.

Foyer means an architectural element of a building that consists of an entry hall or vestibule that is completely enclosed and contains one (1) door to provide access to areas outside of the building and a separate door to provide access to areas inside of the building.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a sexually oriented business license.

Licensing Officer means the Zoning Administrator or his or her designee.

Manager means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

Nude model studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

Nudity or *state of nudity* means:

a. The appearance of human bare buttocks, anus, male genitals, female genitals, pubic region or the areola or nipple of the female breast; or

b. A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

Operator means and includes the owner, license holder, custodian, manager, operator or person in charge of any licensed premises.

Peep booth means a room, semi-enclosure or other similar area located within a licensed premise wherein a person may view representations of specified anatomical areas or specified sexual activities.

Photo studio, adult, means an establishment which, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing specified anatomical areas.

Premises or *licensed premises* means any premises that requires a sexually oriented business license and that is classified as a sexually oriented business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business.

Principal business purpose means, as to any establishment, having as a substantial or significant portion of its stock-in-trade the items listed in Subparagraphs a. and b. of the definition of *adult bookstore, adult novelty store* or *adult video store* above and having on the premises at least thirty percent (30%) of the establishment's display space occupied by the display of the items described therein.

Principal owner means any person owning, directly or beneficially:

a. Any membership or partnership interest in a limited liability company or limited liability partnership if such person has any legal control or authority over the management or operation of the entity; or

b. In the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity, except for shareholders, but including such shareholders who are corporate officers or directors or who otherwise have any legal control or authority over the management or operation of the entity.

Public park means an area of land owned by a governmental entity designated or used for any park, open space or recreational uses or activities, including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball court, tennis court, bike or pedestrian path, open space, wilderness area or similar land within the Town.

Religious institution means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

School means any public or private educational facility, including but not limited to child care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, special education schools, junior colleges and universities. *School* includes school grounds, but does not

include any studio for professional work or teaching of any form of fine arts, photography, music, drama or dance.

Seminude or *semi-nudity* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breasts, as well as portions of the body covered by supporting straps or devices, which supporting straps or devices are used to support or enable the wearing of such clothing.

Sexually oriented business means and includes an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater or nude model studio. The definition of *sexually oriented business* does not mean or include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional licensed by the State engages in medically approved and recognized sexual therapy.

Specified anatomical areas means and includes any of the following:

a. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, that are not completely and opaquely covered; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal acts means sexual crimes against children, sexual abuse, sexual assault or crimes connected with another sexually oriented business, including but not limited to distribution of obscenity, prostitution or pandering.

Specified sexual activities means and includes any of the following:

a. The 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 or sodomy;

c. Masturbation, actual or simulated;

d. Human genitals in a state of sexual stimulation, arousal or tumescence; or

e. Excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a. through d. of this definition.

Transfer of ownership or *control of a sexually oriented business* means and includes any of the following:

a. The sale, lease or sublease of the business;

b. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange or similar means; or

c. The establishment of a trust, management arrangement, gift or other similar legal device that transfers ownership or control of the business, including a transfer by bequest or operation of law.

Division 3
Administration and Procedures

Sec. 16-6-305. License required.

(a) No person shall operate a sexually oriented business without first having obtained a valid type A or type B sexually oriented business license issued by the Town.

(1) A type A sexually oriented business license shall be required for sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code and/or fermented malt beverages, as defined by the Colorado Beer Code, are allowed pursuant to a valid license issued by the Town pursuant to the provisions of this Code.

(2) A type B sexually oriented business license shall be required for all sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code and/or fermented malt beverages, as defined by the Colorado Beer Code, are not allowed.

(b) It is unlawful to operate or cause to be operated a sexually oriented business when said person knows or reasonably should know that:

(1) The business does not have a sexually oriented business license;

(2) The business has a sexually oriented business license that is under suspension;

(3) The business has a sexually oriented business license that has been revoked;

(4) The business has a sexually oriented business license which has expired; or

(5) The business operates under a type B sexually oriented business license and allows alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, on the premises.

Sec. 16-6-310. License fees.

(a) The annual fee for a sexually oriented business license shall be set forth in the Town's adopted fee schedule.

(b) The annual manager's license fee shall be set forth in the Town's adopted fee schedule.

(c) An applicant for a sexually oriented business license shall pay a nonrefundable application fee in an amount set forth in the Town's adopted fee schedule at the time of filing an application.

Sec. 16-6-315. Application for license.

(a) The Licensing Officer is responsible for granting, denying, revoking, renewing and suspending sexually oriented business licenses for proposed or existing sexually oriented businesses.

(b) Any person desiring to operate a sexually oriented business shall file with the Licensing Officer an original and two (2) copies of a sworn sexually oriented business license application on the standard application form supplied by the Licensing Officer.

(c) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and any aliases, and submit satisfactory proof that he or she is twenty-one (21) years of age or older in the case of a type A sexually oriented business license or eighteen (18) years of age or older in the case of a type B sexually oriented business license.

(2) If the applicant is a legal entity, the application shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized and, if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado; the full legal names, dates of birth and capacity of all officers, directors, managers and principal owners; and the name of the registered agent and the address of the registered agent for service of process, if any.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the sexually oriented business's fictitious name must be stated.

(4) Whether the applicant or any of the other individuals listed pursuant to Paragraph (1) or (2) above have been convicted of a specified criminal act as set forth in Subparagraph 16-6-330(c) (1)i., and if so, the specified criminal act involved, the date of conviction and the place of conviction.

(5) Whether the applicant or any of the other individuals listed pursuant to Paragraph (l) or (2) above has had a previous license under this Article or any other sexually oriented business license from another city, town or county denied, suspended or revoked; and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

(6) Whether the applicant or any other individuals listed pursuant to Paragraph (l) or (2) above has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license has previously been denied, suspended or revoked; and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(7) Whether the applicant or any other individual listed pursuant to Paragraph (1) or (2) above holds any other licenses under this Article or any other sexually oriented business ordinance from another city, town or county; and, if so, the name of such city, town or county, and names and locations of such other licensed businesses.

(8) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number.

(9) Proof of the applicant's right to possession of the premises wherein the sexually oriented business will be conducted.

(10) The applicant's mailing address and residential address.

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but

it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Section 16-6-450, the sketch shall show the locations and dimensions of any manager's stations and demonstrate that there is an unobstructed view from at least one (1) of the manager's stations of every area of the premises to which any patron is permitted access, excluding rest rooms. The floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises.

(12) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting:

a. The property lines and the structures of the property to be certified; and

b. The location of the property lines of any church, school, dwelling, public park, licensed child care facility or residential zone district within one thousand (1,000) feet of the property to be certified; and

c. The location of the property lines and structures on the property of any other sexually oriented business within one thousand (1,000) feet of the property to be certified.

For purposes of this Subsection, a use shall be considered existing or established if it is in existence or pending at the time an application is submitted.

(13) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a sexually oriented business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applying entity must sign the application for a sexually oriented business license as applicant.

(d) In the event the Licensing Officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a sexually oriented business license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(e) The fact that a person possesses other types of state or town licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license.

Sec. 16-6-320. Duty to supplement application.

(a) Applicants for a sexually oriented business license under Section 16-6-315 shall have a continuing duty to promptly supplement any application information required by that Section in the event that said information changes in any way from what is stated on the application.

(b) The failure to comply with said continuing duty to supplement an application within thirty (30) days from the date of such change shall be grounds for suspension of a sexually oriented business license.

Sec. 16-6-325. Investigation of application.

Upon receipt of an application for a sexually oriented business license properly filed with the Licensing Officer and upon payment of the nonrefundable application fee, the Licensing Officer shall immediately stamp the application as received and promptly conduct an investigation of the applicant, application and the proposed sexually oriented business. The Licensing Officer's investigation shall be completed within twenty (20) days of receipt of the application.

Sec. 16-6-330. Issuance of business license.

(a) The Licensing Officer shall grant or deny an application for a sexually oriented business license within thirty (30) days from the date of its proper filing. Upon the expiration of the thirty (30) days, the applicant shall be licensed to begin operating the business for which the sexually oriented business license is sought, unless and until the Licensing Officer notifies the applicant, by first-class mail to the address set forth on the application, of a denial of the application and states the reasons for that denial.

(b) Grant of application license.

(1) The Licensing Officer shall grant the sexually oriented business license unless one (1) or more of the criteria set forth in Subsection (c) below is present.

(2) The sexually oriented business license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of application license.

(1) The Licensing Officer shall deny the application for any of the following reasons:

a. An applicant is under twenty-one (21) years of age in the case of an application for a type A sexually oriented business license, or under eighteen (18) years of age in the case of an application for a type B sexually oriented business license.

b. An applicant is overdue on payment to the Town of taxes, fees, fines or penalties assessed against or imposed in relation to a sexually oriented business.

c. An applicant has failed to provide information required by this Article for the issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form and has refused to provide corrected information.

d. The premises to be used for the sexually oriented business will be in violation of any provision of this Section or any other statute, ordinance, regulation or law in effect in the Town.

e. The application or sexually oriented business license fees have not been paid.

f. An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this Section.

g. The granting of the application would violate a statute, ordinance or court order.

h. The applicant has or had a sexually oriented business license under this Section, or under the regulatory provisions of another jurisdiction, that was suspended or revoked within the previous twelve (12) months. In the case of a denial of an application due to the suspension or revocation of the applicant's license in another jurisdiction, the applicant shall be entitled to a hearing before the Hearing Board. After the hearing, the Hearing Board may grant the application without regard to the suspension or revocation of the applicant's license in another jurisdiction if it finds that the grounds for suspension or revocation in that jurisdiction would not be grounds for suspension or revocation of a license pursuant to this Section.

i. An applicant has been convicted of a specified criminal act or acts for which:

1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or

3. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act or acts may qualify for a sexually oriented business license only when the time period required above has elapsed.

(2) If the Licensing Officer denies the application, he or she shall notify the applicant, by first-class mail to the address set forth on the application, of the denial and state the reasons for the denial. A copy of such denial shall be forwarded to the Town Attorney.

Sec. 16-6-335. Expiration of business license.

(a) Each sexually oriented business license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 16-6-315, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts (for renewals, filing of original survey shall be sufficient). Application for renewal of a sexually oriented business license shall be made at least thirty (30) days before the expiration date of the sexually oriented business license.

(b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the sexually oriented business license has been corrected, the applicant shall be granted a sexually oriented business license if no more than ninety (90) days have elapsed since the date denial became final.

Sec. 16-6-340. Suspension of business license.

(a) The Licensing Officer may suspend a sexually oriented business license for a period not to exceed one hundred fifty (150) days, unless the period is extended by operation of Subsection (b) below, if he or she determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any subsection of this Section or any other section of this Code regulating sexually oriented businesses; or

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Section; or

(3) Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees or the licensee; or

(4) Operated the sexually oriented business in violation of a building, fire, health or zoning code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the department, division or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the Licensing Officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the twenty-day period, the Licensing Officer shall forthwith suspend the sexually oriented business license and shall notify the licensee, in writing sent by first-class mail to the address set forth on the application, of the suspension; or

(5) Operated the sexually oriented business in violation of the hours of operation provisions set forth in Section 16-6-460; or

(6) Transferred a sexually oriented business license contrary to the provisions of Section 16-6-355. In the event of such suspension, the Licensing Officer shall forthwith notify the original licensee of the suspension, in writing sent by first-class mail to the address set forth on the application, and shall notify the transferee of the suspension by first-class mail to the address of the premises. The suspension shall remain in effect until the applicable section of this Article has been satisfied.

(b) The suspension shall remain in effect until and including the last day in the Licensing Officer's order and the violation of the statute, code, ordinance or regulation in question has been corrected.

Sec. 16-6-345. Revocation of business license.

(a) The Licensing Officer shall revoke a sexually oriented business license upon determining that:

(1) A cause of suspension as set forth in Section 16-6-340 occurred and the sexually oriented business license has been suspended within the preceding twelve (12) months;

(2) A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a sexually oriented business license;

(3) A licensee, manager or employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises;

(4) A licensee, manager or an employee has knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises;

(5) A licensee, manager or employee knowingly operated the sexually oriented business during a period of time when the licensee's sexually oriented business license was suspended;

(6) A licensee has been convicted of a specified criminal act for which the time period set forth in Subparagraph 16-6-330(c)(1)i. has not elapsed;

(7) On two (2) or more occasions within a twelve-month period, a person or persons committed an offense, occurring in or on the licensed premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the sexually oriented business license;

(8) A licensee is delinquent in payment to the Town or State for any taxes or fees;

(9) A licensee, manager or employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises; or

(10) The licensee has operated more than one (1) sexually oriented business within the same building, structure or portion thereof.

(b) When the Licensing Officer revokes a sexually oriented business license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective.

Sec. 16-6-350. Business license suspension or revocation hearing.

(a) A licensee shall be entitled to a hearing before the Hearing Board if the Town seeks to suspend or revoke his or her sexually oriented business license based on a violation of this Article or any other Article of this Chapter regulating sexually oriented businesses. The business may continue to operate during the hearing process.

(b) The Hearing Board shall consist of three (3) persons appointed by the Board of Trustees, who shall be residents of the Town, and who shall serve two-year terms. The Hearing Board shall be appointed in January of even-numbered years if there are, as of January 1 of such year, any current licenses issued in the Town; otherwise, appointments in such term shall be made within thirty (30) days after the issuance of a license, for a prorated term. A majority vote of the Hearing Board shall be required for any decision. Notwithstanding the foregoing, the Board of Trustees may, at its sole discretion, appoint an administrative law judge (ALJ) to serve as the Hearing Board. Any ALJ appointed to serve as the Hearing Board shall be an attorney licensed in the State having experience in administrative and constitutional law matters.

(c) When there is probable cause to believe that a cause for suspension or revocation exists, the Town Attorney may file a written complaint with the Hearing Board setting forth the circumstances of the alleged violation.

(d) The Hearing Board shall provide a copy of the complaint to the licensee, together with notice to appear before the Hearing Board for the purpose of a hearing on a specified date to show cause why the licensee's sexually oriented business license should not be suspended or revoked.

(e) At the hearing, the Hearing Board shall hear such statements and consider such evidence as law enforcement officers, the owner, occupant, lessee or other party in interest, or any other witness shall offer which is relevant to the violation alleged in the complaint. The Hearing Board shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Hearing Board determines that a cause for suspension or revocation exists, it shall issue an order suspending or revoking the sexually oriented business license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or

served on the licensee at the address on the license. In performing its duties pursuant to this Subsection, the Hearing Board may retain independent counsel to advise it with regard to any matter.

(f) The order of the Hearing Board made pursuant to Subsection (e) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rules of Civil Procedure 106(A)(4). Failure of a licensee to timely appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the sexually oriented business license.

(g) The Hearing Board shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Hearing Board conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Hearing Board. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State.

(h) All hearings held before the Hearing Board regarding suspension or revocation of a sexually oriented business license issued under this Article shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Hearing Board and shall pay all costs of preparing such record.

(i) In the event of suspension, revocation or cessation of business, no portion of the sexually oriented business license fee shall be refunded.

Sec. 16-6-355. Transfer of business license.

(a) A licensee shall not operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application for the sexually oriented business license.

(b) A licensee shall not transfer his or her sexually oriented business license to another person unless and until such other person satisfies the following requirements:

(1) Such person obtains an amendment to the sexually oriented business license from the Licensing Officer which provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with the Licensing Officer setting forth the information called for under Section 16-6-315 in the application; and

(2) Such person pays a transfer fee of twenty percent (20%) of the annual sexually oriented business license fee.

(c) No sexually oriented business license may be transferred when the Licensing Officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(d) Any attempt to transfer a sexually oriented business license either directly or indirectly in violation of this Section is hereby declared void.

Sec. 16-6-360. Manager's license required; change of manager; inactive status.

(a) A manager or designee shall be on the premises of a sexually oriented business at all times during operation. It is unlawful for any person to work as a manager of a sexually oriented business without first obtaining a manager's license for such premises.

(b) In the event a manager ceases to be employed at the premises listed in his or her application, the manager shall immediately report such change to the Licensing Officer within ten (10) days of such change.

(c) Provided that a manager has complied with the requirements of Subsection (b) above, his or her license shall remain in inactive status until it expires or is reactivated. A manager who is re-employed at the premises listed in the manager's license may reactivate his or her license, provided that the Licensing Officer determines that he or she still meets the requirements of Section 16-6-365.

Sec. 16-6-365. Application for manager's license.

(a) A manager shall submit an application for a manager's license for each sexually oriented business the manager proposes to manage on a form to be provided by the Licensing Officer. The application shall contain the applicant's name, address, date of birth, telephone number, address, the names and addresses of the sexually oriented businesses the manager proposes to manage and the information required in Section 16-6-315.

(b) The Licensing Officer shall cause an investigation to be conducted to determine if the applicant has been convicted of a specified criminal act within the times set forth in Subparagraph 16-6-330(c)(1)i.

(c) The Licensing Officer shall grant the application within ten (10) days of its filing unless:

(1) The applicant is under the age of twenty-one (21) in the case of a type A sexually oriented business license or under the age of eighteen (18) in the case of a type B sexually oriented business license;

(2) The applicant has failed to provide the information required by this Subsection;

(3) The license fee has not been paid; or

(4) The applicant has been convicted of a specified criminal act within the times set forth in Subparagraph 16-6-330(c) (1)i.

Sec. 16-6-370. Expiration of manager's license.

(a) Each manager's license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 16-6-365, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts. Application for renewal of a manager's license shall be made at least thirty (30) days before the expiration date of the manager's license.

(b) If, subsequent to denial of the renewal, the Licensing Officer finds that the basis for denial of the renewal of the manager's license has been corrected, the applicant shall be granted a manager's license if no more than ninety (90) days have elapsed since the date denial became final.

Sec. 16-6-375. Suspension of manager's license.

(a) The Licensing Officer may suspend a manager's license for a period not to exceed ninety (90) days, unless the period is extended by operation of Subsection (b) below, if he or she determines that the manager has:

(1) Violated or is not in compliance with any Section of this Article;

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Section;

(3) Knowingly allowed repeated disturbances of public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees or the licensee; or

(4) Operated the sexually oriented business in violation of the hours of operation provisions set forth in Section 16-6-460.

(b) The suspension shall remain in effect until and including the last day in the Licensing Officer's order and the violation of the statute, code, ordinance or regulation in question has been corrected.

Sec. 16-6-380. Revocation of manager's license.

(a) The Licensing Officer shall revoke a sexually oriented business license upon determining that:

(1) A cause of suspension in Section 16-6-375 occurred and the sexually oriented business license has been suspended within the preceding twelve (12) months;

(2) A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a manager's license;

(3) The manager knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises;

(4) The manager knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises;

(5) The manager knowingly operated the sexually oriented business during a period of time when the sexually oriented business license was suspended;

(6) The manager has been convicted of a specified criminal act for which the time period set forth in Subparagraph 16-6-330(c) (1)i. has not elapsed;

(7) The manager has knowingly allowed any specified sexual activity to occur in or on the licensed premises; or

(8) The manager has knowingly allowed more than one (1) sexually oriented business to be operated within the same building, structure or portion thereof.

(b) When the Licensing Officer revokes a manager's license, the revocation shall continue for one (1) year and the licensee shall not be issued a manager's license for one (1) year from the date revocation became effective.

Sec. 16-6-385. Manager's license suspension or revocation hearing.

(a) A manager shall be entitled to a hearing before the Hearing Board if the Town seeks to suspend or revoke the manager's license based on a violation of this Article or any other Article of this Chapter

regulating sexually oriented businesses. The manager may continue to manage during the hearing process.

(b) The Hearing Board shall consist of three (3) persons appointed by the Board of Trustees, who shall be residents of the Town, and who shall serve two-year terms. The Hearing Board shall be appointed in January of even-numbered years if there are, as of January 1 of such year, any current licenses issued in the Town; otherwise, appointments in such term shall be made within thirty (30) days after the issuance of a license, for a prorated term. A majority vote of the Hearing Board shall be required for any decision. Notwithstanding the foregoing, the Board of Trustees may, at its sole discretion, appoint an administrative law judge (ALJ) to serve as the Hearing Board. Any ALJ appointed to serve as the Hearing Board shall be an attorney licensed in the State having experience in administrative and constitutional law matters.

(c) When there is probable cause to believe that a cause for suspension or revocation exists, the Town Attorney may file a written complaint with the Hearing Board setting forth the circumstances of the alleged violation.

(d) The Hearing Board shall provide a copy of the complaint to the manager, together with notice to appear before the Hearing Board for the purpose of a hearing on a specified date to show cause why the manager's license should not be suspended or revoked.

(e) At the hearing, the Hearing Board shall hear such statements and consider such evidence as law enforcement officers, the owner, occupant, lessee or other party in interest, or any other witness shall offer which is relevant to the violation alleged in the complaint. The Hearing Board shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Hearing Board determines that a cause for suspension or revocation exists, it shall issue an order suspending or revoking the manager's license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the manager and the licensee at the address on the license. In performing its duties pursuant to this Subsection, the Hearing Board may retain independent counsel to advise it with regard to any matter.

(f) The order of the Hearing Board made pursuant to Subsection (e) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rules of Civil Procedure 106(A)(4). Failure of a manager or licensee to timely appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the manager's license.

(g) The Hearing Board shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Hearing Board conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Hearing Board. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State.

(h) All hearings held before the Hearing Board regarding suspension or revocation of a manager's license issued under this Article shall be recorded by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Hearing Board and shall pay all costs of preparing such record.

(i) In the event of suspension, revocation or cessation of business, no portion of the manager's license fee shall be refunded.

Sec. 16-6-390. Notice.

Any notice required by this Article shall be deemed sufficient if it is deposited in first-class mail, postage prepaid, to the address on the application, and shall be effective upon mailing.

Sec. 16-6-395. Judicial review.

After denial of an application, denial of a renewal of an application or suspension or revocation of a license, such act shall be a final decision. Therefore, the applicant or licensee may seek judicial review of such administrative action pursuant to the Colorado Rules of Civil Procedure. The court shall promptly review such administrative action.

Division 4
Standards

Sec. 16-6-410. Location and design of sexually oriented businesses.

(a) Sexually oriented businesses shall be located only within the General Commercial District (C), Industrial District (I), and a Planned Development District (PD) that provides for industrial or commercial land uses. It is unlawful to operate or cause or permit the operation, establishment or maintenance of a sexually oriented business outside of these areas.

(b) It is unlawful to operate or cause or permit the operation, establishment or maintenance of a sexually oriented business unless a license has been obtained pursuant to Section 16-6-305 of this Article, and unless the use is in compliance with such approval and all applicable regulations of this Chapter.

(c) It is unlawful to operate or cause or permit the operation, establishment or maintenance of a sexually oriented business within one thousand (1,000) feet of:

(1) Any church;

(2) Any school meeting all requirements of the compulsory education laws of the State;

(3) An existing dwelling;

(4) Any licensed day care facility;

(5) Any public park;

(6) The boundary of a residential zone district; or

(7) Another sexually oriented business.

(d) The distance between 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, or in the case of a sexually oriented business operating within a condominium estate or leasehold estate, from the closest airspace boundary of such condominium estate or from the closest wall of such leasehold estate.

(e) The distance between a sexually oriented business and any church, school, existing dwelling, public park, licensed child care facility or boundary of a residential zone district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a church, school, existing dwelling, public park, licensed child care facility or boundary of a residential zone district. If the premises where the sexually oriented business is conducted is comprised of a condominium estate or leasehold estate, such distance shall be measured in a straight line without regard to intervening structures or objects, from the nearest airspace boundary of such condominium estate or from the nearest wall of such leasehold estate used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school, existing dwelling, public park, licensed child care facility or boundary of a residential zone district.

(f) No more than one (1) sexually oriented business shall be established, operated or maintained within the same building, structure, premises or portion thereof.

(g) Any sexually oriented business lawfully operating on the effective date of the ordinance codified herein that is in violation of Subsection (c) above will be permitted to continue for a period of six (6) months from the effective date of the ordinance codified herein.

(h) Notwithstanding the provisions of Subsection (g) above, the Licensing Officer may, after a hearing to be held within thirty (30) days of the application, grant an extension of time during which a sexually oriented business in violation of Subsection (c) above will be permitted to continue upon a showing, by competent evidence, that the owner of the business has not had a reasonable time to recover the initial financial investment in the business. No such extension of time shall be for a period greater than that reasonably necessary for the owner of the business to recover his or her initial financial investment in the business. A sexually oriented business in violation of Subsection (c) above may continue during such extended period unless the business is sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such business shall not be enlarged, extended or altered except that the business may be brought into compliance with this Subsection.

(i) If two (2) or more sexually oriented businesses are within one thousand (1,000) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at the particular location will be deemed to be in compliance with Subsection (c) above, and the later established businesses will be deemed to be in violation of this Subsection.

(j) A sexually oriented business which, at the time it received its sexually oriented business license, was in compliance with the location requirements of Subsection (c) above does not violate that Subsection if, when the sexually oriented business applies to renew its valid sexually oriented business license, a church, school, dwelling, public park or licensed child care facility is now located within one thousand (1,000) feet of the sexually oriented business; or a church, public building, day care facility, dwelling or residential zone district is now located within one thousand (1,000) feet of the sexually oriented business. This provision applies only to the renewal of a valid sexually oriented business license and does not apply to an application for a sexually oriented business license that is submitted as a result of the previous sexually oriented business license expiring or being revoked.

(k) All exterior windows in a sexually oriented business shall be opaque to such an extent that interior objects viewed from outside shall be so obscure as to be unidentifiable. Exterior windows in sexually oriented businesses shall not be used for any display or sign except for a sign that complies with the requirements of Section 16-6-420.

(l) All doors for ingress and egress to a sexually oriented business, except emergency exits used only for emergency purposes, shall be located on the front of the sexually oriented business. For purposes of this Subsection, the front of a sexually oriented business shall be deemed to be that facade of the building that faces the front lot line of the lot or parcel on which the business is located. Every sexually oriented business shall have a foyer at every point of ingress or egress, except for emergency exits. In the case of a sexually oriented business having more than one (1) front lot line, the sexually oriented business shall be oriented such that the front of the business faces away from the nearest of any of the land uses listed in Subsection (c) above.

Sec. 16-6-420. Sign and display requirements.

(a) In addition to any applicable requirements of this Chapter, sexually oriented businesses shall comply with the sign and display requirements set forth in this Section.

(b) Signs for sexually oriented businesses shall not contain flashing lights, words, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities. Such signs shall contain a statement of the fact that the premises is off limits to minors or those under the age of twenty-one (21) years, as the case may be. Such signs may contain only the name of the enterprise and a phrase denoting the type of sexually oriented business by reference to the classifications set forth in this Chapter, such as adult arcade, adult bookstore or adult theater.

(c) For any adult bookstore, adult novelty shop or adult video store, there shall be presented to the Licensing Officer with the application required under Section 16-6-215 a scaled floor plan showing the specific locations within the commercial establishment where the stock-in-trade describing or depicting specified sexual activities or specified anatomical areas, or designed or intended for use with or in specified sexual activities, will be displayed and sold. The plan shall also describe the method of display of such stock-in-trade.

(d) For any commercial establishment that is open for other business purposes to persons under the age of twenty-one (21), the sexually oriented business shall segregate such stock-in-trade into a separate and distinct area within the establishment that may be accessed only by persons over the age of twenty-one (21) and where the stock-in-trade may not readily be viewed by persons outside such area regardless of age. Alternatively, such stock-in-trade need not be segregated into a separate and distinct area if any matter describing or depicting specified sexual activities or specified anatomical areas is covered by an opaque material, such as an opaque magazine, book or video sleeve, that prevents viewing of such matter by persons under the age of twenty-one (21). It is the specific intent of this Article to require that adult books, magazines, videos and novelty items, and any other adult materials displayed in the establishment, either be displayed only in areas not accessible to persons under the age of twenty-one (21), or be displayed only after matter describing or depicting specified sexual activities or specified anatomical areas is first shielded from view by opaque covering.

Sec. 16-6-430. Interior lighting regulations.

(a) The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

(b) 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.

Sec. 16-6-440. Stage required in adult cabaret and adult theater.

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the sexually oriented business license. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable and located inside the building in which the adult use operates. No seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

Sec. 16-6-450. Regulation of peep booths.

(a) It is unlawful for a person who operates or causes to be operated a sexually oriented business with peep booths to violate the requirements of this Section.

(b) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises. The interior of the premises shall be configured in such a manner that such employee shall be clearly visible from every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. If the premises has two (2) or more manager's stations designated, the interior of the premises shall be configured in such a manner that there is an unobstructed view of the employee from at least one (1) of the manager's stations from each area of the premises to which any patron is permitted access for any purpose. The view required in this Subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 16-6-315.

(c) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video display equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 16-6-315.

(d) No peep booth may be occupied by more than one (1) person at any one (1) time.

(e) No door, two-way mirror, screen, opaque covering or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

Sec. 16-6-460. Hours of operation.

It is unlawful for a sexually oriented business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons upon the licensed premises during the following time periods:

(1) On any Tuesday through Saturday from 2:00 a.m. until 7:00 a.m.;

(2) On any Monday, other than a Monday which falls on January 1, from 12:00 a.m. until 8:00 a.m.;

(3) On any Sunday from 2:00 a.m. until 8:00 a.m.;

(4) On any Monday which falls on January 1 from 2:00 a.m. until 7:00 a.m.

Sec. 16-6-470. Minimum age.

(a) Except for such employees as may be permitted by law, it is unlawful for any person under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that operates pursuant to a type A sexually oriented business license. It is unlawful for any person under the age of eighteen (18) years to be upon the premises of a sexually oriented business.

(b) It is unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of twenty-one (21) years, except for such employees as may be permitted by law, to be upon the premises of a sexually oriented business operated pursuant to a type A sexually oriented business license. It is unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of a sexually oriented business.

Sec. 16-6-480. Conduct in sexually oriented businesses.

(a) No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a defense to prosecution for a violation of this Section that an employee of a sexually oriented business exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room which is accessible only to employees.

(b) No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the genitals, pubic region, buttocks, anus or breasts of any person.

Sec. 16-6-490. Employee tips.

(a) It is unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in Subsection (c) below.

(b) 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 such employees shall be placed by the patron of the sexually oriented business into the tip box.

(c) A sexually oriented business that provides tip boxes for its patrons as provided in this Section shall post one (1) or more signs to be conspicuously visible to the patrons on the premises, in bold letters at least one (1) inch high to read as follows:

> All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited.

ARTICLE VII: FLOOD DAMAGE PREVENTION REGULATIONS

Division 1	*Purpose and Applicability*
Sec. 16-7-10	Title
Sec. 16-7-20	Authority
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ARTICLE VII

Flood Damage Prevention Regulations

Division 1

Purpose and Applicability

Sec. 16-7-10. Title.

This Article shall be known as the *Flood Damage Prevention Regulations of the Town of Bennett*, and may be so cited and pleaded.

Sec. 16-7-20. Authority.

The Legislature of the State of Colorado has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town adopts this Article based on the following findings of fact:

(1) The flood hazard areas of Bennett are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Sec. 16-7-30. Purpose.

It is the purpose of this Article to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in 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 critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;

(6) Maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

(7) Ensure that potential buyers are notified that property is located in a flood hazard area.

Sec. 16-7-40. Methods of reducing flood losses.

In order to accomplish its purposes, this Article uses the following methods:

(1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) Control filling, grading, dredging and other development which may increase flood damage; and

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Sec. 16-7-50. Application.

This Article shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the Town.

Sec. 16-7-60. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this Article and other applicable regulations. Nothing herein shall prevent the Town from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

Sec. 16-7-70. 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 Article, Chapter, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 16-7-80. 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 Town; and

(3) Deemed neither to limit nor repeal any other powers granted under State law.

Sec. 16-7-90. Warning 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. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the Special Flood Hazard Area 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 or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision made there under.

Division 2

Definitions

Sec. 16-7-210. Definitions.

The words and phrases used in this Article shall have the meanings defined below:

Addition means any activity that expands the enclosed footprint or increases the square footage of an existing structure.

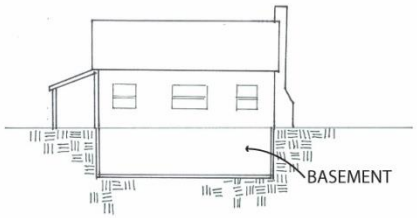
Alluvial fan flooding means a fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

Area of shallow flooding means a designated Zone AO or AH on the Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood Elevation (BFE) means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

Basement means any area of a building having its floor sub-grade (below ground level) on all sides. See Figure 7.1.

Figure 7.1



Channel means the physical confine of a stream or waterway consisting of a bed and stream banks, existing in a variety of geometries. See Figure 7.2.

Channelization means the artificial creation, enlargement or realignment of a stream channel.

Code of Federal Regulations (CFR) means the codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

Critical facility means a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the Town at any time before, during and after a flood.

Development means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DFIRM database means data and analyses that accompany DFIRMs. The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

Digital Flood Insurance Rate Map (DFIRM) means a FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

Elevated building means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters (See FEMA Lowest Floor Guide).

Federal register means the official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

FEMA means Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of water from channels and reservoir spillways;

b. The unusual and rapid accumulation or runoff of surface waters from any source; or

c. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of

normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

Flood, 100-year means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-percent-chance-annual flood). The terms "one-hundred-year flood" and "one percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

Flood, 500-year means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annualflood). The term does not imply that the flood will necessarily happen once every five hundred years.
Flood control structure means a physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood Insurance Rate Map (FIRM) means an official map on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the Town.

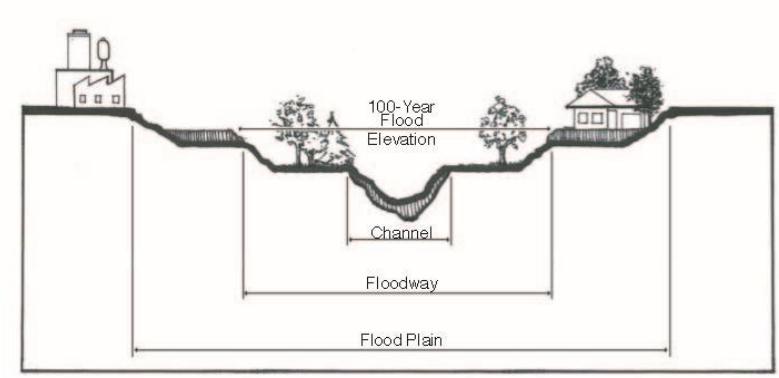
Flood Insurance Study (FIS) means the official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

Floodplain or flood-prone area means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir. See Figure 7.2.

Floodplain, 100-year means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

Floodplain, 500-year means the area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

Figure 7.2



Floodplain Administrator means the Town official designated by title to administer and enforce the floodplain management regulations.

Floodplain development permit means a permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within the Town, the Town shall require permits for all proposed construction or other development in the Town including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this Article.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations (including this Article), in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (regulatory floodway) means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. See Figure 7.2.

Freeboard means the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to

flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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 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.

Letter of Map Revision (LOMR) means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

Letter of Map Revision Based on Fill (LOMR-F) means FEMA’s modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

Letter of Map Revision, Conditional (CLOMR) means FEMA's comment on a proposed project, which does not revise an effective floodplain map that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

Levee means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

Levee system means a flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood-resistant enclosure, usable solely for parking or 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 non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Manufactured home park, existing means a manufactured home park 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 this Article.

Manufactured home park, expansion to existing 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).

Manufactured home park, new means a manufactured home park 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 this Article.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a Flood Insurance Rate Map are referenced.

Material Safety Data Sheet (MSDS) means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

National Flood Insurance Program (NFIP) means FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

New construction means a structure for which the "start of construction" commenced after March 5, 2007 in Adams County and December 17, 2010 in Arapahoe County, and includes subsequent improvements to the structure.

No-rise certification means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

Physical Map Revision (PMR) means FEMA's action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or plan features.

Recreational vehicle means a vehicle which is:

a. Built on a single chassis;

b. 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.

Special Flood Hazard Area (SFHA) means the land in the floodplain within the Town subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

Start of construction means the date the initial building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either 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 basement, footings, piers or foundations 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 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, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

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 50 percent of the market value of the structure just prior to when the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "Start of Construction" of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This 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 conditions or

b. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Threshold Planning Quantity (TPQ) means a quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

Variance means a grant of relief to a person from one or more requirements of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Article.

Violation means the failure of a structure or other development to be fully compliant with this Article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in floodplains.

Division 3

Administration and Procedures

Sec. 16-7-310. Designation of the Floodplain Administrator.

The Town Administrator is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this Article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

Sec. 16-7-320. Duties and responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

(1) Maintain and hold open for public inspection all records pertaining to the provisions of this Article, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any flood proofing certificate required by Section 16-7-340 (a) (3).

(2) Review, approve, or deny all applications for Floodplain Development Permits required by adoption of this Article.

(3) Review Floodplain Development Permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.

(4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

(5) Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this Article, including proper elevation of the structure.

(6) Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

(7) When Base Flood Elevation data has not been provided in accordance with Section 16-7-410, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and Floodway data available from a Federal, State, or other source, in order to administer the provisions of Division 5 of this Article.

(8) For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the Flood Insurance Rate Map, unless it is

demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the Town.

(9) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, the Town may approve certain development in Zones A1-30, AE, AH, on the Flood Insurance Rate Map which increases the water surface elevation of the base flood by more than one-half foot, provided that the Town first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.

(10) Notify adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.

(11) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

Sec. 16-7-330. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required to ensure conformance with the provisions of this Article.

Sec. 16-7-340. Floodplain Development Permit procedures.

(a) Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:

(1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures.

(2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed.

(3) A certificate from a registered Colorado Professional Engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 16-7-430.

(4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

(b) Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:

(1) The danger to life and property due to flooding or erosion damage;

(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(3) The danger that materials may be swept onto other lands to the injury of others;

(4) The compatibility of the proposed use with existing and anticipated development;

(5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

(7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

(8) The necessity to the facility of a waterfront location, where applicable;

(9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(10) The relationship of the proposed use to the comprehensive plan for that area.

Sec. 16-7-350. Variance procedures.

The Floodplain Administrator shall hear and render judgment on requests for variances from the requirements of this Article as follows:

(1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided the relevant factors in Section 16-7-340 have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(2) Upon consideration of the factors noted above and the intent of this Article, the Floodplain Administrator may attach such conditions to the granting of variances as deemed necessary to further the purpose and objectives of this Article as stated in Section 16-7-30.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) 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.

(5) Prerequisites for granting variances:

a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

b. Variances shall only be issued upon:

1. Showing a good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and

3. 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, or conflict with existing Town ordinances.

c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(6) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:

a. The criteria outlined in Section 16-7-350, (1) – (5) are met, and

b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(7) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

Division 4

Standards

Sec. 16-7-410. Basis for establishing the Special Flood Hazard Area.

The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in scientific and engineering reports entitled, "The Arapahoe County, Colorado, and Incorporated Areas, Flood Insurance Study," dated December 17, 2010 and "The Flood Insurance Study for Adams County, Colorado, and Incorporated Areas," dated March 5, 2007 with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this Article. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated by the Town. These supplemental studies may include Flood Hazard Area Delineation (FHAD) studies produced by the Urban Drainage and Flood Control District, or other 100-year floodplain studies approved by the Town, Adams County, Arapahoe County or other local, regional, state or federal agencies.

Sec. 16-7-420. General standards.

In all Special Flood Hazard Areas the following provisions are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;

(4) All new construction or 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;

(5) All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. 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.

(6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,

(8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Sec. 16-7-430. Specific standards.

In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in Section 16-7-410 or Section 16-7-320, the following provisions are required:

(1) Residential Construction. New construction and Substantial Improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

(2) Nonresidential Construction. With the exception of Critical Facilities, outlined in Section 16-7-480, new construction and Substantial Improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be maintained by the Floodplain Administrator, as stated in Section 16-7-340.

(3) Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b. The bottom of all openings shall be no higher than one foot above grade.

c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(4) Manufactured Homes. All manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the Flood Insurance Rate Map on sites (i) outside of a manufactured home park, (ii) in a new manufactured home park, (iii) in an expansion to an existing manufactured home park, or (iv) in an existing manufactured home park on which manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. All manufactured homes, placed or substantially improved on sites in an existing manufactured home park within Zones A1-30, AH and AE on the FIRM that are not subject to provisions (i), (ii), (iii) or (iv) above, shall be elevated so that either:

a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are one foot above the base flood elevation, or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(5) Recreational Vehicles. All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the FIRM either:

a. Be on the site for fewer than 180 consecutive days,

b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions), or

c. Meet the permit requirements of Section 16-7-340, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

(6) Prior Approved Activities. Any activity for which a Floodplain Development Permit was issued by the Town or a CLOMR was issued by FEMA prior to February 11, 2014 may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this Article if it meets such standards.

Sec. 16-7-440. Standards for areas of shallow flooding (AO/AH Zones).

Located within the Special Flood Hazard Area established in Section 16-7-410 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

(1) Residential Construction. All new construction and Substantial Improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the Flood Insurance Rate Map (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

(2) Nonresidential Construction. With the exception of Critical Facilities, outlined in Section 16-7-480, all new construction and Substantial Improvements of non-residential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the FIRM (at least three feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures. A registered Colorado Professional Engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as stated in Section 16-7-340, are satisfied.

Sec. 16-7-450. Floodways.

Located within Special Flood Hazard Area established in Section 16-7-410, are areas designated as Floodways. The State of Colorado has adopted Floodway standards that are more stringent than the FEMA minimum standard. The Colorado statewide standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing Floodway delineations may continue to use the Floodway criteria in place at the time of the existing floodway delineation. Since the Floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following additional provisions shall apply:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory Floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed

encroachment would not result in any increase (requires a No-Rise Certification) in flood levels within the Town during the occurrence of the base flood discharge.

(2) If Section 16-7-450 (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Article.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the Town may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations, provided that the Town first applies for a CLOMR and floodway revision through FEMA.

Sec. 16-7-460. Alteration of a watercourse.

For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

(1) Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.

(2) Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.

(3) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable floodplain management regulations.

(4) Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.

(5) All activities within the regulatory floodplain shall meet all applicable floodplain management regulations.

(6) Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions in the Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the Town first applies for a CLOMR and Floodway revision in accordance with Section 16-7-450.

(7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

Sec. 16-7-470. Properties removed from the floodplain by fill.

A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

(1) Residential Construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.

(2) Nonresidential Construction. The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

Sec. 16-7-480. Standards for Critical Facilities.

(a) Critical Facilities are classified under the following categories: Essential Services; Hazardous Materials; At-risk Populations; and Vital to Restoring Normal Services. It is the responsibility of the Floodplain Administrator to identify and confirm that specific structures in the Town meet the following criteria:

(1) Essential services facilities, unless exempted per paragraphs g and h below, include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines, as follows:

a. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);

b. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors offices, and non-urgent care medical structures that do not provide these functions);

c. Designated emergency shelters;

d. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);

e. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including

towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and

f. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

g. Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

h. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town on an as-needed basis upon request.

(2) Hazardous materials facilities, unless exempted per paragraphs f and g below, include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the workplace, and the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Public Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this Article, but exclude later amendments to or editions of the regulations. These facilities may include:

a. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);

b. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;

c. Refineries;

d. Hazardous waste storage and disposal sites; and

e. Above ground gasoline or propane storage or sales centers.

f. Specific exemptions to this category include finished consumer products within retail centers and households containing hazardous materials intended for household use; pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products; and agricultural products intended for agricultural use.

g. Specific exemptions to this category also include buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public. These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

(3) At-risk population facilities include medical care, congregate care, and schools. These facilities consist of:

a. Elder care (nursing homes);

b. Congregate care serving 12 or more individuals (day care and assisted living);

c. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);

(4) Facilities vital to restoring normal services including government operations, unless exempted per paragraph c below. These facilities consist of:

a. Essential government operations (public records, courts, jails, building permitting and inspection services, Town administration and management, maintenance and equipment centers);

b. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

c. These facilities may be exempted if it is demonstrated to the Floodplain Administrator that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this Article, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Floodplain Administrator on an as-needed basis upon request.

(b) Protection for Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this Article, protection shall include one of the following:

(1) Location outside the Special Flood Hazard Area; or

(2) Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.

(c) Ingress and Egress for New Critical Facilities. New Critical Facilities shall, when practicable as determined by the Floodplain Administrator, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.