

ORDINANCE NO. 612-11

AN EMERGENCY ORDINANCE REPEALING AND REENACTING CHAPTER 16 OF THE BENNETT MUNICIPAL CODE ENTITLED “LAND USE AND DEVELOPMENT” AND REPEALING THE BENNETT LAND DEVELOPMENT REGULATIONS

WHEREAS, the Board of Trustees of the Town of Bennett previously adopted Chapter 16 of the Bennett Municipal Code entitled “Land Use and Development,” which includes requirements for land development within the Town; and

WHEREAS, the Board of Trustees also previously adopted Land Development Regulations for the Town of Bennett, which include requirements concerning land development applications and review processes and procedures and establish development and operational standards for land use and development within the Town; and

WHEREAS, the Board of Trustees desires to repeal and reenact Chapter 16 of the Bennett Municipal Code to make revisions to the Town’s land development review standards; the Town’s annexation and land development application submittal, referral, and review requirements; supplemental regulations; and the land use table; and

WHEREAS, the Board of Trustees desires to repeal the Land Development Regulations in their entirety because relevant information from the regulations has been incorporated into the new Chapter 16; and

WHEREAS, the Board is authorized to adopt this ordinance pursuant to state law, including but not limited to, C.R.S. § 24-67-101 et seq. and C.R.S. § 31-23-301 et seq.; and

WHEREAS, the Board of Trustees anticipates that land use application requests may be submitted to the Town in the near future and finds that it is in the best interest of the citizens of Bennett, and in the interest of the public health and safety, to adopt this ordinance as an emergency ordinance in order to timely address and respond to such potential land use requests. Therefore, the Board of Trustees herewith further finds, determines and declares that it is necessary for this ordinance to take effect immediately upon adoption, provided the same has been adopted and signed by the Mayor and approved by three-fourths of the entire Board of Trustees.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO, AS FOLLOWS:

Section 1. Chapter 16 of the Bennett Municipal Code entitled “Land Use and Development” is hereby repealed and reenacted to read as follows:

CHAPTER 16

Land Use and Development

Article I

General Provisions

- Sec. 16-1-10 Title
- Sec. 16-1-20 Effective date
- Sec. 16-1-30 Authority and jurisdiction
- Sec. 16-1-40 Applicability
- Sec. 16-1-50 Purpose
- Sec. 16-1-60 Repeal
- Sec. 16-1-70 Severability
- Sec. 16-1-80 Interpretation
- Sec. 16-1-90 Rules of construction
- Sec. 16-1-100 Computation of time
- Sec. 16-1-110 Definitions

Article II

Administrative Process

- Sec. 16-2-10 Enforcement
- Sec. 16-2-20 Approval required
- Sec. 16-2-30 General submittal requirements
- Sec. 16-2-40 Site plan application requirements
- Sec. 16-2-50 Site plan review process
- Sec. 16-2-60 Certificate of Occupancy requirement
- Sec. 16-2-70 Compliance required
- Sec. 16-2-80 Town nonliability
- Sec. 16-2-90 Amendments to code
- Sec. 16-2-100 Amendment procedure
- Sec. 16-2-110 Board of Adjustment; generally
- Sec. 16-2-120 Board of Adjustment application and processing procedure
- Sec. 16-2-130 Public hearing notice requirements
- Sec. 16-2-140 Pre-application meeting requirement
- Sec. 16-2-150 Neighborhood meeting requirement

Article III

Annexation

- Division 1* *General Provisions*
- Sec. 16-3-10 Purpose
- Sec. 16-3-20 Responsibilities
- Sec. 16-3-30 Eligibility for annexation
- Sec. 16-3-40 Who may petition for annexation
- Sec. 16-3-50 Required annexation impact reports
- Sec. 16-3-60 Required dedications
- Sec. 16-3-70 Annexation agreement
- Sec. 16-3-80 Proposed zoning
- Sec. 16-3-90 Standards for annexation
- Division 2* *Annexation Procedure*
- Sec. 16-3-210 Staff action
- Sec. 16-3-220 Board of Trustees action
- Sec. 16-3-230 Effective date
- Sec. 16-3-240 Recording

Article IV	Vested Property Rights
	Sec. 16-4-10 Purpose
	Sec. 16-4-20 Definitions
	Sec. 16-4-30 Request for approval
	Sec. 16-4-40 Notice and hearing
	Sec. 16-4-50 Approval, effective date and amendments
	Sec. 16-4-60 Forfeiture of vested rights
	Sec. 16-4-70 Notice of approval
	Sec. 16-4-80 Payment of costs
	Sec. 16-4-90 Other provisions unaffected
	Sec. 16-4-100 Limitations
Article V	Zoning Districts and Standards
	<i>Division 1 General Provisions</i>
	Sec. 16-5-10 Uniformity of regulations
	Sec. 16-5-20 Zoning districts established
	Sec. 16-5-30 Official Zoning Map
	Sec. 16-5-40 Interpretation and general provisions
	Sec. 16-5-50 Conflict with other provisions of law
	Sec. 16-5-60 Conflict with private covenants or deeds
	<i>Division 2 Zone District Requirements</i>
	Sec. 16-5-210 A – Agricultural District
	Sec. 16-5-220 RE – Residential Estate District
	Sec. 16-5-230 RT – Reserved
	Sec. 16-5-240 R-1 – Single-family Residential District
	Sec. 16-5-250 R-2 – Two-family Residential District
	Sec. 16-5-260 R-3 – Multi-family Residential District
	Sec. 16-5-270 MH 1 – Mobile Home District
	Sec. 16-5-275 MH-2 – Mobile Home District
	Sec. 16-5-280 Reserved
	Sec. 16-5-290 C – General Commercial District
	Sec. 16-5-300 I-1 – Light Industrial District
	Sec. 16-5-310 I-2 – Heavy Industrial District
	Sec. 16-5-320 PD – Planned Development District
	Sec. 16-5-330 P – Public District
	<i>Division 3 Land Uses</i>
	Sec. 16-5-410 Land uses
	Sec. 16-5-420 Land use table
	Sec. 16-5-430 Lot and building requirements
Article VI	Sexually Oriented Businesses
	<i>Division 1 General Provisions</i>
	Sec. 16-6-10 Purpose and intent
	Sec. 16-6-20 Definitions
	Sec. 16-6-30 Exemptions
	Sec. 16-6-40 Location and design of sexually oriented businesses
	Sec. 16-6-50 Unlawful acts
	Sec. 16-6-60 Sign and display requirements
	Sec. 16-6-70 Interior lighting regulations
	Sec. 16-6-80 Stage required in adult cabaret and adult theater
	Sec. 16-6-90 Conduct in sexually oriented business
	Sec. 16-6-100 Employee tips
	Sec. 16-6-110 Regulation of peep booths

Sec. 16-6-120	Hours of operation
Sec. 16-6-130	Minimum age
Sec. 16-6-140	Inspection
<i>Division 2</i>	<i>License Regulations</i>
Sec. 16-6-210	License required
Sec. 16-6-220	License fees
Sec. 16-6-230	Application for license
Sec. 16-6-240	Duty to supplement application
Sec. 16-6-250	Investigation of application
Sec. 16-6-260	Issuance of business license
Sec. 16-6-270	Expiration of business license
Sec. 16-6-280	Suspension of business license
Sec. 16-6-290	Revocation of business license
Sec. 16-6-300	Business license suspension or revocation hearing
Sec. 16-6-310	Transfer of license
Sec. 16-6-320	Manager's license required; change of manager; inactive status
Sec. 16-6-330	Application for manager's license
Sec. 16-6-340	Expiration of manager's license
Sec. 16-6-350	Suspension of manager's license
Sec. 16-6-360	Revocation of manager's license
Sec. 16-6-370	Manager's license suspension or revocation hearing
Sec. 16-6-380	Notice
Sec. 16-6-390	Judicial review

Article VII Planned Development Zone Districts

Sec. 16-7-10	Intent
Sec. 16-7-20	General provisions
Sec. 16-7-30	Types of PD Districts
Sec. 16-7-40	Size of PD Districts; Prohibited Acts
Sec. 16-7-50	Outline Development Plan
Sec. 16-7-60	Final Development Plan
Sec. 16-7-70	Conditions and standards for approval
Sec. 16-7-80	Amendments to the Outline Development Plan
Sec. 16-7-90	Amendments to the Final Development Plan
Sec. 16-7-100	Recording of amendments
Sec. 16-7-110	Temporary structures
Sec. 16-7-120	Control of development
Sec. 16-7-130	Variances

Article VIII RESERVED

Article IX Design Guidelines

<i>Division 1</i>	<i>General Provisions</i>
Sec. 16-9-10	Intent
Sec. 16-9-20	Design review
Sec. 16-9-30	Site considerations
<i>Division 2</i>	<i>Residential Site Design</i>
Sec. 16-9-210	Single-family Residential District
Sec. 16-9-220	Multi-family Residential District
Sec. 16-9-230	Garage and carport structures
<i>Division 3</i>	<i>Architecture</i>
Sec. 16-9-310	Residential architecture
Sec. 16-9-320	Objectives

- Sec. 16-9-330 Character, scale and form
- Sec. 16-9-340 Porches and verandas
- Division 4 Miscellaneous Guidelines*
- Sec. 16-9-410 Neighborhood design
- Sec. 16-9-420 Commercial and industrial area design
- Sec. 16-9-430 Street grid layout
- Sec. 16-9-440 Design standards for subdivisions
- Sec. 16-9-450 Conformity with Comprehensive Plan

Article X Supplemental Regulations

- Division 1 Nonconforming Regulations*
- Sec. 16-10-10 Nonconforming uses and structures
- Sec. 16-10-20 Change of use
- Sec. 16-10-30 Abandonment of use
- Sec. 16-10-40 Restoration
- Sec. 16-10-50 Enlargement of building containing nonconforming use
- Sec. 16-10-60 Alteration of nonconforming building
- Division 2 Temporary Uses*
- Sec. 16-10-210 Temporary uses
- Sec. 16-10-220 Temporary use approval process
- Sec. 16-10-230 Application content
- Division 3 Conditional Uses*
- Sec. 16-10-310 Purpose
- Sec. 16-10-320 Application requirements
- Sec. 16-10-330 Processing procedures
- Sec. 16-10-340 Approval criteria and conditions
- Sec. 16-10-350 Permitting and control of conditional use
- Division 4 Miscellaneous Regulations*
- Sec. 16-10-410 Yard regulations
- Sec. 16-10-420 Group home regulations
- Sec. 16-10-430 Manufactured homes
- Sec. 16-10-440 Mobile home parks
- Sec. 16-10-450 Cellular and wireless communications facilities
- Sec. 16-10-460 Utility installations
- Sec. 16-10-470 Fences, hedges and walls
- Sec. 16-10-480 Accessory buildings and uses
- Sec. 16-10-490 Home occupations
- Sec. 16-10-500 Corner vision clearance triangle
- Sec. 16-10-510 Performance standards for uses in all zoning districts
- Sec. 16-10-520 Lighting standards
- Sec. 16-10-530 Borrow pits
- Sec. 16-10-540 Mining
- Sec. 16-10-550 Reservoir construction

Article XI Sign Regulations

- Division 1 Sign Permits*
- Sec. 16-11-10 Authority and purpose
- Sec. 16-11-20 Permit required
- Sec. 16-11-30 Application filing
- Sec. 16-11-40 Zoning Administrator review and action
- Sec. 16-11-50 Approval criteria
- Sec. 16-11-60 Effect of approval; lapse

<i>Division 2</i>	<i>Revocable Permits</i>
Sec. 16-11-110	Permit required
Sec. 16-11-120	Application filing
Sec. 16-11-130	Zoning Administrator review and action
Sec. 16-11-140	Approval criteria
<i>Division 3</i>	<i>Sign Standards</i>
Sec. 16-11-210	Authority, purpose and relation to other laws
Sec. 16-11-220	Intent
Sec. 16-11-230	Signs allowed without a permit
Sec. 16-11-240	Sign schedule
Sec. 16-11-250	Exceptions and additional criteria
Sec. 16-11-260	Informational signs
Sec. 16-11-270	Changeable copy signs
Sec. 16-11-280	Temporary signs
Sec. 16-11-290	Portable signs
Sec. 16-11-295	Lighted signs
Sec. 16-11-300	Prohibited signs
Sec. 16-11-310	Sign measurement, removal, and alteration
Sec. 16-11-320	Minor modifications to sign standards
Sec. 16-11-330	Maintenance and upkeep of signs
Sec. 16-11-340	Nonconforming signs
Sec. 16-11-350	Enforcement

Article XII Landscaping Regulations

Sec. 16-12-10	Purpose
Sec. 16-12-20	Authorization
Sec. 16-12-30	Applicability
Sec. 16-12-40	Procedure
Sec. 16-12-50	Submittal requirements
Sec. 16-12-60	Irrigation
Sec. 16-12-70	Landscaping design criteria
Sec. 16-12-80	Plant selection
Sec. 16-12-90	Completion
Sec. 16-12-100	Maintenance
Sec. 16-12-110	Xeriscape

Article XIII Parking Regulations

Sec. 16-13-10	Intent
Sec. 16-13-20	General requirements
Sec. 16-13-30	Combination of uses
Sec. 16-13-40	Uses not listed
Sec. 16-13-50	Parking area design standards
Sec. 16-13-60	Minimum width of traffic aisles in parking lots

Article XIV Subdivision Regulations

<i>Division 1</i>	<i>General Provisions</i>
Sec. 16-14-10	Title
Sec. 16-14-20	Intent
Sec. 16-14-30	General provisions
Sec. 16-14-40	General responsibilities
Sec. 16-14-50	Status of existing plats
Sec. 16-14-60	Violations and enforcement
Sec. 16-14-70	Classification of subdivisions
<i>Division 2</i>	<i>Processing Procedure</i>

- Sec. 16-14-210 Subdivision processing procedures
- Sec. 16-14-220 Administrative adjustment review process
- Sec. 16-14-225 Boundary line adjustment review process
- Sec. 16-14-230 Major subdivision review process
- Sec. 16-14-240 Sketch plan review
- Sec. 16-14-250 Final plat review
- Division 3 Submittal Requirements*
- Sec. 16-14-310 Sketch plan submittal requirements
- Sec. 16-14-320 Final plat submittal requirements
- Division 4 Improvements on Land*
- Sec. 16-14-410 Required public improvements
- Sec. 16-14-420 Subdivision development agreement
- Sec. 16-14-430 Public improvement guarantees
- Sec. 16-14-440 Acceptance and warranty of improvements
- Sec. 16-14-450 Maintenance of public improvements
- Sec. 16-14-460 Release or use of performance guarantees
- Sec. 16-14-470 Private improvements
- Division 5 Land Dedications*
- Sec. 16-14-510 General provisions
- Sec. 16-14-520 Dedication requirements for parks, schools and other public purposes
- Sec. 16-14-530 Cash-in-lieu requirements
- Sec. 16-14-540 Land dedication credit for the development of private facilities
- Sec. 16-14-550 Commencement and completion of parks and recreation improvements
- Sec. 16-14-560 Acceptance of land dedication improvements

Article XV Public Improvements

- Sec. 16-15-10 Purpose
- Sec. 16-15-20 Project construction documents
- Sec. 16-15-30 Initiation of improvements
- Sec. 16-15-40 Water and wastewater line extension policy
- Sec. 16-15-50 Reimbursement policy and procedure
- Sec. 16-15-60 Line oversizing policy
- Sec. 16-15-70 Drainage and storm sewers
- Sec. 16-15-80 Water facilities
- Sec. 16-15-90 Sewerage facilities
- Sec. 16-15-100 Other utilities

Article XVI Water Rights Dedication Requirements

- Division 1 General Provisions*
- Sec. 16-16-10 Title
- Sec. 16-16-20 Intent and purpose
- Sec. 16-16-30 Definitions
- Sec. 16-16-40 Existing supply and distribution systems
- Sec. 16-16-50 Exceptions
- Sec. 16-16-60 Future obligations
- Sec. 16-16-70 Safety clause
- Division 2 Dedication Requirements*
- Sec. 16-16-210 Approvals conditioned upon dedication of water rights
- Sec. 16-16-220 Amounts of water to be dedicated
- Sec. 16-16-230 General requirements for dedications
- Sec. 16-16-240 Expansion of use
- Sec. 16-16-250 Acceptance of water rights by Town; determination of yield
- Sec. 16-16-260 Cash in lieu of water rights

- Sec. 16-16-270 Requirements adjusted for high-use commercial developments
- Sec. 16-16-280 Downward adjustment; owner's responsibility in event of projected shortfall
- Division 3 Procedure*
- Sec. 16-16-310 Application submission and contents
- Sec. 16-16-320 Number of acres; acre-feet of water
- Sec. 16-16-330 Preliminary determination regarding water rights
- Sec. 16-16-340 Submission to Board of Trustees
- Sec. 16-16-350 Board of Trustees action
- Sec. 16-16-360 Dry-up covenant
- Sec. 16-16-370 Expenses; payment by applicant
- Division 4 Option to Purchase and Right of First Refusal*
- Sec. 16-16-410 Option to purchase
- Sec. 16-16-420 Right of first refusal
- Sec. 16-16-430 Recording of option to purchase and right of first refusal
- Division 5 Required Information*
- Sec. 16-16-510 Water rights generally
- Sec. 16-16-520 Water rights appurtenant to subject land

Article XVII Rezoning

- Sec. 16-17-10 Town policy for rezoning
- Sec. 16-17-20 Initiation of rezoning
- Sec. 16-17-30 Application submittal requirements
- Sec. 16-17-40 Procedure
- Sec. 16-17-50 Limitation on rezoning requests

Article XVIII Land Development Review Fees

- Sec. 16-18-10 Purpose
- Sec. 16-18-20 Application and review fees
- Sec. 16-18-30 Additional expenses
- Sec. 16-18-40 Reimbursement of costs and expenses incurred by Town

Article XIX Development Impact Fees

- Division 1 General Provisions*
- Sec. 16-19-10 Legislative findings
- Sec. 16-19-20 Authority, applicability and effective date
- Sec. 16-19-30 Intent
- Sec. 16-19-40 Definitions
- Division 2 Regulation of Impact Fees*
- Sec. 16-19-210 Imposition and computation of impact fees
- Sec. 16-19-220 Payment of impact fees
- Sec. 16-19-230 Impact fee funds
- Sec. 16-19-240 Use of impact fees
- Sec. 16-19-250 Exemptions from impact fees
- Sec. 16-19-260 Refunds of impact fees paid
- Sec. 16-19-270 Credit against impact fees
- Sec. 16-19-280 Appeals
- Sec. 16-19-290 Miscellaneous provisions

Article XX Special Districts

- Sec. 16-20-10 Legislation declaration
- Sec. 16-20-20 Definitions
- Sec. 16-20-30 Reservation and construction
- Sec. 16-20-40 Required annual report
- Sec. 16-20-50 Review of annual report

Sec. 16-20-60	Material modification
Sec. 16-20-70	Determination of applicability
Sec. 16-20-80	Service plan amendment
Sec. 16-20-90	Partial exemption
Sec. 16-20-100	Required service plan amendments
Sec. 16-20-110	Review of financing
Sec. 16-20-120	Service plan consideration
Sec. 16-20-130	Presubmittal meeting
Sec. 16-20-140	Filing of proposed service plan
Sec. 16-20-150	Service plan contents
Sec. 16-20-160	Administrative review
Sec. 16-20-170	Public hearing
Sec. 16-20-180	Hearing and determination
Sec. 16-20-190	Written determination
Sec. 16-20-200	Appeal
Sec. 16-20-210	Capital facilities
Sec. 16-20-220	Sanctions

ARTICLE I

General Provisions

Sec. 16-1-10. Title.

This Chapter shall be known as the *Bennett Land Use Code* or *this Code* and may be so cited. (Ord. 446 §11.01.010, 2001; Ord. 467 §1, 2002)

Sec. 16-1-20. Effective date.

This Code will be in full force and effective upon adoption. (Ord. 446 §11.01.020, 2001; Ord. 467 §1, 2002)

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 through zoning (Section 31-23-3, 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 Code is later amended or superceded, this Code is deemed amended to refer to the amended section or section that most nearly corresponds to the superceded section. (Ord. 446 §11.01.030, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

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 Code.

(b) All applications for land use changes initiated on and after (adoption date), shall be reviewed pursuant to the review process and standards set forth in this Code, as amended by Ord. No. 2011-x and effective on that date. All applications for land use changes submitted for review prior to (adoption date), shall be reviewed pursuant to the process and under the criteria set forth in applicable portions of this Code and the Bennett Land Development Regulations in force prior to that date. This entitlement to review all land use applications under prior regulations is limited to review of the then-presently pending stage of the application only; for example, a pending sketch plan application is reviewed under the prior regulations, but once that application is approved, the subsequent final plat application is reviewed under the requirements of this Code. Such prior regulations are continued for that limited purpose only. Upon approval or denial of all such remaining applications, the prior regulations shall be deemed repealed. In no event shall resubmission of an application after its rejection or any application filed after the effective date of this Code be reviewed under any such prior regulations. The expiration dates and deadlines and requirements for finalizing and recording applications for land use changes approved by the Board of Trustees prior to (adoption date) shall be

as set forth in the portions of this Code and the Bennett Land Development Regulations in force prior to that date.

Sec. 16-1-50. Purpose.

These regulations have been adopted 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) Encourage traditional neighborhood design that encourages pedestrian circulation and that promotes the civic vitality of neighborhoods and of the Town;
- (4) Ensure that adequate storm drainage, water service, sewage disposal and other utilities, services and improvements are provided;
- (5) Promote logical extensions of and efficient use of the Town's infrastructure;
- (6) Promote resource conservation and protect the quality of natural resources;
- (7) Provide for adequate and safe transportation systems, including nonvehicular modes of transportation;
- (8) Support programs and help provide facilities that meet the recreational, cultural, public safety and educational needs of the community;
- (9) Promote cooperation and coordination in planning and growth management between the Town and neighboring jurisdictions. (Ord. 446 §11.01.040, 2001; Ord. 467 §1, 2002)

Sec. 16-1-60. Repeal

All regulations, ordinances and amendments to such regulations and ordinances of the Town in effect prior to the adoption of this Code are hereby repealed. The repeal of any prior regulations or ordinances does not revive any other regulation or ordinance or portion thereof. This repeal shall not affect or prevent the prosecution or punishment for the violation of any ordinance or regulation hereby repealed, for any offense committed prior to the repeal. This Code is not intended to abrogate, annul, govern over or prevail over any permits or easements issued prior to the effective date of their adoption.

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. (Ord. 446 §11.01.070, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

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) Uses that are similar to but not specifically listed in the land use table in Section 16-5-420 of this Chapter may be approved with relevant design standards by the Zoning Administrator.

(c) 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. (Ord. 446 §11.01.080, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

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

(a) Words used in the present tense include the future tense.

(b) Words in the singular include the plural, and words in the plural include the singular.

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

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

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

(f) A *building* or *structure* includes any part thereof. (Ord. 446 §11.01.090, 2001; Ord. 467 §1, 2002)

Sec. 16-1-90. Computation of time.

Unless specifically provided otherwise, all time references in this Chapter will be calendar days and shall be computed by excluding the first day and by including the last. Where the last day falls on a Saturday, Sunday or holiday, the next general working day will be used. When the period of time prescribed is less than seven (7) days, the intermediate Saturdays, Sundays and holidays shall be excluded. (Ord. 446 §11.01.095, 2001; Ord. 467 §1, 2002)

Sec. 16-1-100. 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 this Chapter in which they occur. For the

purposes of this Chapter, the words and phrases used in this Chapter 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.

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; or a portion of the principal structure, but no more than fifty percent (50%) of the livable floor area of a dwelling unit, that is used with, and clearly incidental and subordinate to, the principal building or use.

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.

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.

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 building lots generally abuts. Its use is for secondary access to the lot and/or service purposes. An alley shall not be considered a street.

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.

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 rented rather than owner-occupied. See definition of *multi-family dwelling* below in *Dwelling, multi-family*.

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.

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.

Assisted living facility means a state-licensed group living facility regulated as an assisted living residence under Section 25-27-101, et seq., C.R.S.

Automobile wrecking or salvage yard 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.

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

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 adult business use.

Basement means any level of a building where more than one-half (1/2) of the vertical distance between the floor and the ceiling is below the grade of the site at the foundation wall.

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

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.

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.

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

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

Boundary line adjustment 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.

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.

Business services means retail or service establishments whose customers are primarily other businesses, including but not limited to: duplicating services, electronic data processing and employment service; mailing, addressing, stenographic services; and specialty business service such as travel bureau, news service, exporter, importer, interpreter, appraiser and film library.

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

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.

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

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 Article X, Division 3 of this Chapter.

Contractor's office means a mobile trailer or any temporary structure used by a construction contractor for office/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 ready-to-eat food products (not intended for on-premises consumption), gasoline, groceries and sundries and 3.2 beer.

Courier services means an establishment primarily engaged in the delivery of individually addressed letters, parcels and packages which are generally less than one hundred (100) pounds.

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

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.

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 mentally retarded 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. Children being cared for in a day care home are under the age of twelve (12) years and are not related to the care provider. 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 attending full-day school. Operation of a day care home is considered, for purposes of this Code, to be an accessory use to a principal residential use, as well as a home occupation.

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

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 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 annexation, rezoning, subdivision and/or PD approval. Development agreements may include provisions clarifying the phasing of construction; the timing, location and financing of infrastructure; reimbursement for oversized infrastructure; vesting of property rights for periods beyond the three-year statutory term; assurances that adequate public facilities (including roads, water, sewer, fire protection and emergency medical services) will be available as they are needed to serve the development; mitigation of anticipated impacts of the development on the general public; performance guarantees pertaining to infrastructure improvements and service provision; and any other related terms and requirements.

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.

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.

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.

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.

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.

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

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.

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.

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.

Fast food restaurant means an eating/ drinking establishment that may be either a freestanding operation, or a nonfreestanding 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.

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.

Flag means any fabric containing distinctive colors, patterns or symbols used as symbol of a government, political subdivision or other entity.

Floodplain means the area adjoining any creek, watercourse or other body of standing water which is subject to the one-hundred-year flood or one-percent frequency flood.

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

Frontage means all sides of a lot adjacent to a street.

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 with retail sales means a retail establishment 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.

Greenhouse/nursery without retail sales means a building/structure in which plants and gardening supplies are kept within an enclosed building or a fully screened enclosure.

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 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.

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

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

Height, building/structure 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.

Height, telecommunications antenna means the distance measured from the lowest point at grade within ten (10) feet of the tower to the highest point on the tower, including the base pad and any antenna.

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 household, 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).

Improvement survey plat means a land survey plat resulting from a monumented land survey showing the location of all structures, visible utilities, fences, hedges or walls situated on the described parcel and within five (5) feet of all boundaries of such parcel, any conflicting boundary evidence or visible encroachments, and all easements, underground utilities and tunnels for which properly recorded evidence is available from the County Clerk and Recorder, a title insurance company or other sources as specified on the improvement survey plat.

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 (salvage) means scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys; bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles, old cotton; used utensils, used boxes or crates, used pipe or pipe fittings, used, wrecked or inoperable vehicles, automobiles or airplane parts, and other manufactured goods that are too worn, deteriorated or obsolete as to make them unusable in their existing condition; and all other products subject to being dismantled or recycled.

Junk yard (salvage yard) means any lot, parcel or tract used for storage, keeping, sale or abandonment of automobiles, or other junk or parts thereof.

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 means 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. The net site area for this category must not exceed two (2) acres. All equipment in this category must be stored within an enclosed area or building. This use category does not include the rental, storage or maintenance of large

construction equipment. Such vehicles are restricted to the broader use category of vehicle/equipment sales and rentals. All maintenance of equipment must be conducted within an enclosed building.

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; or a single parcel as delineated and identified on a subdivision plat.

Lot area means the total square footage or acreage contained within the boundaries of an individual lot.

Lot, corner means a lot that has at least two (2) adjacent edges abutting a street.

Lot, interior means a lot with both side lot lines abutting other lots.

Lot line means a property line bounding a lot.

Lot merger means the merging of not more than three (3) contiguous lots into a lesser number of lots than had originally existed.

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.

Lot width means the width of a lot measured along the front setback line.

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.

Lumens (lm) means unit of luminous flux; used to measure the amount of light emitted by lamps. One foot-candle is one 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. Built on a permanent chassis;
- b. Designed to be used with or without a permanent foundation as a dwelling when connected to utilities;
- c. Transportable in one (1) or more sections;

d. Eight (8) feet or more in body width or forty (40) feet or more in body length when transported, or, when erected on-site, contains three hundred twenty (320) square feet or more; and

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

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 semifinished 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 semifinished 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 candela per meter squared. This is a standard unit of measurement for luminance which is the amount of brightness leaving a surface.

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

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 Code 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.

Nursing home means a state-licensed group living facility regulated as a skilled nursing facility, as defined in Section 26-4-103(11), 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.

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.

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. Typical uses include real estate, insurance, property management, investment, employment, travel, advertising, law, doctor, dentist, out-patient medical laboratories, architecture, design, engineering, accounting and similar offices.

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 Code.

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.

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 establishment'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* above.) 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.

Parking stall 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.

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

Performance guarantee means any form of financial guarantee such as a cash deposit, surety bond, 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.

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

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

Personal services means establishments engaged in the provision of informational, instructional, personal improvement, personal care and similar services, such as portrait shops, photography studios, art and music schools, licensed massage therapists, driving schools, riding academies, health and fitness studios, handicraft or hobby instruction, laundry and dry-cleaning retail outlets, beauty and barber shops, shoe repair and tailor/ alterations shops.

Pet shop means a retail establishment which sells domesticated or tamed animals, birds and fish as household pets, and related supplies. *Pet shop* may also include as an accessory use the grooming of pets. *Pet shop* does not include the sale of large agricultural animals such as horses, cattle, pigs, sheep or goats, or the boarding of animals, birds or fish.

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 Code.

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.

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 Article V of this Code would constitute the establishment of a principal use on a given lot or parcel.

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 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.

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 Code, 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.

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, including facilities with more than ten (10) coin-controlled amusement device of any description (e.g., baseball, foosball, football, pinball amusements), bowling alleys, miniature golf courses, driving ranges, swimming pools and ice-skating rinks.

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 establishment 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*.

Retail establishment 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., food/ beverage sales, convenience stores, restaurants). Typical uses include department stores, furniture stores, clothing stores and establishments providing the following products or services: antiques, art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, hardware, home improvements, household products, jewelry, pet food, pharmaceuticals, printed material, sporting goods, stationery and videos; and new automotive parts and accessories (excluding service and installation).

Resubdivision means a subdivision of land resulting in further division of previously subdivided lots.

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.

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 owner's or 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*."

School District means Bennett School District 29J.

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 Code.

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 Code.

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 Code.

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.

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 or 3.2 beer, such use shall be classified as a *convenience store* as provided above.

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, advertising means a sign which directs attention to or identifies a business commodity, activity, service or product not necessarily conducted, sold or offered upon the premises where the sign is located.

Sign, changeable copy means any sign capable of conveying messages to the public by means of changing the individual letters or numbers.

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 identifying the name of a structure or use of land such as a subdivision, or directs attention to or identifies a business, profession, commodity, service or

entertainment sold or offered upon the premises where such sign is located or to which it is attached.

Sign, informational means an on-premises sign which gives direction, instructions or facility information such as parking, exit or entrance signs, and does not contain the name or logo of an establishment or contain any advertising copy

Sign, projecting means a sign which is attached perpendicular to the wall of a building or structure.

Sign, wall means any sign attached parallel to, but within eighteen (18) inches of a wall of a building. This definition includes individual letters, cabinet signs, signs attached to a mansard roof or signs painted on the surface of a wall.

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 upon the windowpanes or glass and is visible from the exterior of the window.

Single-family attached means a residential building on one (1) lot designed for the occupancy of one (1) family but which shares a common wall concurrent with the lot line of an adjacent lot.

Single-family detached means a residential building on one (1) lot designed for the occupancy of one (1) family.

Site plan means a plan which has been submitted to the Town describing with reasonable certainty the type and intensity of use for a specific parcel of property.

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.

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 multifamily residential development.

Stables mean a building for housing domestic animals or livestock.

Staff means the Zoning Administrator and his or her designees.

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.

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 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.

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 subsection 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 Town Board of Trustees not to be within the intent and scope of this Chapter.

Subdivision, administrative means a simple, administrative subdivision process that is intended to correct errors in plats or to make minor adjustments to an approved and recorded subdivision. An administrative subdivision is also referred to as an *administrative adjustment or boundary line adjustment*.

Subdivision development agreement (see *Development agreement*) *Telecommunications facilities* mean a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area and other accessory development. A telecommunication facility operates at less than one thousand (1,000) watts of effective radiated power. A telecommunication facility does not include residential television antennas, wireless cable satellite dish antennas, amateur radio antennas or dish antennas less than one (1) meter in diameter or measured diagonally.

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.

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.

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.

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.

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 Code, 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 Code, including telecommunications facilities.

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.

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.

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.

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 veterinarian clinic or office* shall 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.

Yard, front 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.

Yard, rear 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.

Yard, side 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.

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

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. (Ord. 570 §4, 2007; Ord. 592 §1, 2009)

ARTICLE II

Administrative Process

Sec. 16-2-10. Enforcement.

(a) General. 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 one thousand dollars (\$1,000.00) per violation.

(b) Complaints regarding violations. Whenever the Zoning Administrator becomes aware of an alleged violation of this Code, 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) Persons liable. 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 Code, may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided. (Ord. 446 §11.02.010, 2001; Ord. 467 §1, 2002)

(d) Enforcement methods. 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. (Ord. 446 §11.02.020, 2001; Ord. 467 §1, 2002)

Sec. 16-2-20. Approval required.

(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.

(b) No building permit shall be issued and no use shall commence on any land until the land has been the subject of a subdivision plat approved by the Town, and the building and/or use has been approved by the Zoning Administrator as part of a site plan application. A site plan is to be reviewed

and approved by the Zoning Administrator, provided that the plan conforms with Town development standards and criteria, zoning requirements and design guidelines, special area plans and other Town master plans.

(c) Table 2-1, 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.

Table 2.1 REVIEW PROCESS CHART

<i>Approval Requested</i>	<i>Pre-App</i>	<i>Preliminary Review</i>			<i>Final Review</i>				<i>Reference/Notes</i>
	<i>Staff</i>	<i>Staff</i>	<i>PC</i>	<i>TB</i>	<i>Staff</i>	<i>PC</i>	<i>TB</i>	<i>BOA</i>	
Annexation	ZA	ZA		M			H		See Article III
Code Amendment		ZA				H	H		See Sec. 16-2-90
Conditional Use	ZA	ZA				H	H		See Article X, Division 3
Development Impact Fee Appeal					ZA		CU		See Sec. 16-19-280
Development Review Fee Waiver					ZA		CU		See Sec. 16-18-20
PD-ODP	ZA	ZA				H	H		See Article VII
PD-FDP	ZA	ZA					H		See Article VII
PD Amendment (ODP/FDP) - Minor					ZA				See Article VII
PD Amendment (ODP) - Major	ZA	ZA				H	H		See Article VII
PD Amendment (FDP) - Major	ZA	ZA					H		See Article VII
Rezoning	ZA	ZA				H	H		See Article XVII
Sexually Oriented Business License (A&B) and Manager's License		ZA			ZA				See Article VI, Division 2
Sign Permit					ZA				See Article XI, Division 1
Sign Permit – Revocable (R.O.W.)					ZA/TE				See Article XI, Division 2
Site Plan	ZA				ZA		CU		See Sec. 16-2-50; Appeal to TB, not BOA
Subdivision: Admin. Adjustment	ZA				ZA				See Sec. 16-14-220; Appeal to TB, not BOA
Subdivision: Boundary Line Adjustment	ZA				ZA				See Sec. 16-14-225; Appeal to TB, not BOA
Subdivision: Development Agreement		ZA					M		See Sec. 16-14-420
Subdivision: Sketch Plan		ZA	M						See Sec. 16-14-240
Subdivision: Final Plat		ZA				H	H		See Sec. 16-14-250
Temporary Use Permit					ZA		CU		See Article x, Division 2; Appeal to PC and TB

	<i>Pre-App</i>	<i>Preliminary Review</i>			<i>Final Review</i>				
<i>Approval Requested</i>	<i>Staff</i>	<i>Staff</i>	<i>PC</i>	<i>TB</i>	<i>Staff</i>	<i>PC</i>	<i>TB</i>	<i>BOA</i>	<i>Reference/Notes</i>
Water Rights Dedication		ZA					M		See Article XVI, Division 3
Variance / Appeal		ZA						H	See 16-2-110 & 120; ZA may approve antennae height variance < 20%
Vested Rights/ Site Specific Development Plan	ZA						H		See Article IV

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)

(Ord. 446 §11.02.030, 2001; Ord. 467 §1, 2002; Ord 570 §5, 2007)

(d) 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.

(e) For certain applications where the Zoning Administrator has administrative approval authority (see Table 2.1), 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.

Sec. 16-2-30. General submittal requirements

The following requirements are applicable to all submittal applications:

(1) Development submittal requirements are as shown for each individual submittal application. In cases where two 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 C.R.S. §29-20-108, 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 120 days after submission of a preliminary application, if a preliminary application is required by this Chapter, or within 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. (Ord. 446 §11.14.090, 2001; Ord. 467 §1, 2002)

Sec. 16-2-40. Site plan application requirements.

To initiate a site plan review, the applicant must submit to the Zoning Administrator the following items:

- (1) A completed application form in a format approved by the Zoning Administrator.
- (2) An application fee as determined by Article XVIII of this Chapter.
- (3) A cover letter describing the intent of the proposed structures or use.
- (4) A site plan, drawn to scale, containing the following information:
 - a. The property boundary.
 - b. The date of preparation, north arrow and scale.

c. The location of all existing features on the property (i.e., major vegetation, drainage ways, roads, structures).

d. The location, size and description of all proposed structures and uses, and vehicular access.

(5) A vicinity map showing the location of the property.

(6) A deed indicating the correct ownership of the land.

(7) Plans and elevations of all proposed buildings.

(8) Any other information that the Zoning Administrator determines to be necessary for the review of the proposal. The Zoning Administrator may waive any of the preceding items if they are determined to be unnecessary for the review of the proposal. (Ord. 446 §11.02.031, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-2-50. Site plan review process.

(a) The applicant shall submit copies of the required application materials to the Zoning Administrator, with the number of copies to be determined by the Zoning Administrator.

(b) The Zoning Administrator may elect to send the materials out to any appropriate agency or surrounding property owners for review and comment. The comment period shall not exceed twenty one (21) days.

(c) 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 Code, other published Town ordinances and technical criteria and Town policies.

(d) If the applicant is not satisfied with the decision, the applicant may appeal the decision to the Board of Trustees. The appeal notice and procedure shall be as follows:

(1) To initiate an appeal, a written request must be submitted to the Zoning Administrator.

(2) Upon receipt of an appeal, the Zoning Administrator shall schedule a public hearing before the Board of Trustees to consider the appeal.

(3) Notice of the appeal hearing shall be provided as follows:

a. The applicant shall post the subject property, in a format as approved by the Town.

b. The Town shall mail notice of the hearing to the owners of real property within three hundred (300) feet of the property lines of the property subject to the application, and shall publish a notice in a newspaper of general circulation within the Town. The applicant shall reimburse the Town for the cost of mailing and publication of the notice of public hearing.

(4) At the end of the public hearing or within thirty (30) days following the hearing, the Board of Trustees shall pass a resolution to approve, approve with conditions or deny the application.

The Board of Trustees has the option of continuing the hearing to a later date for additional testimony if necessary. The Board of Trustees' resolution shall include findings supporting its decision. (Ord. 446 §11.02.032, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-2-60. 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 within five (5) days after all final inspections have been approved and all development impact fees have been paid pursuant to Article XIX of this Chapter. (Ord. 446 §11.02.040, 2001; Ord. 467 §1, 2002; Ord. 582 §1, 2008)

Sec. 16-2-70. 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. (Ord. 446 §11.02.050, 2001; Ord. 467 §1, 2002)

Sec. 16-2-80. 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. (Ord. 446 §11.02.060, 2001; Ord. 467 §1, 2002)

Sec. 16-2-90. 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. (Ord. 446 §11.02.070, 2001; Ord. 467 §1, 2002)

Sec. 16-2-100. Amendment procedure.

(a) The applicant shall submit the application or petition to the Zoning Administrator.

(b) The Zoning Administrator shall schedule public hearings.

(c) The Planning Commission shall conduct a public hearing. At least fifteen (15) days prior to the hearing, Town staff shall publish a notice in a newspaper of general circulation within the Town. The applicant shall reimburse the Town for the cost of publication.

(d) At the end of the public hearing or within thirty (30) days following the hearing, the Planning Commission shall make a recommendation for the Board of Trustees to approve, approve with conditions or deny the request. The Planning Commission has the option of continuing the hearing to a later date for additional testimony, if necessary.

(e) After receiving the recommendation from the Planning Commission, the Board of Trustees shall hold a public hearing regarding the request. At least fifteen (15) days prior to the public hearing, the Town shall publish a notice in a newspaper of general circulation within the Town. The applicant shall reimburse the Town for the cost of publication.

(f) At the end of the public hearing or within thirty (30) days following the hearing, the Board of Trustees shall pass a resolution to approve, approve with conditions or deny the request. The Board of Trustees has the option of continuing the hearing to a later date for additional testimony, if necessary. The Board of Trustees' resolution shall include findings supporting its decision. (Ord. 446 §11.02.071, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-2-110. Board of Adjustment; generally

(a) A Board of Adjustment for the Town is hereby established.

(b) The Board of Adjustment shall have the following powers and duties, all of which shall be subject to and in compliance with state law and in harmony with the purpose and intent of this Chapter and with the most appropriate development of the neighborhood:

(1) To hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcement of the provisions of this Chapter;

(2) To hear and decide all matters referred to it or upon which it is required to pass under this Chapter.

(3) To authorize variances from the terms of this Chapter where the strict enforcement of this Chapter would create unreasonable restrictions to the use of the property, or in circumstances where the property owners most directly affected, e.g., owners of adjacent property, concur with the variance provided that:

- a. Such relief may be granted without substantial detriment to the neighborhood or the public good and without substantially impairing the intent and purposes of this Chapter;
- b. The condition requiring the variance is not self-inflicted by the property owner;
- c. There are exceptional circumstances applying to the specific property which do not generally apply to the remaining property in the same zoning area or neighborhood; and
- d. No variance shall authorize any use other than the uses permitted in the zoning district.

(4) To perform each and all of the duties specified in Section 31-23-307, C.R.S., together with all other duties and authority which may hereafter be conferred on it by state law.

(c) The Board of Adjustment shall consist of seven (7) members, appointed by the Board of Trustees, who shall be residents of the Town for at least one (1) year preceding the date of their appointment, and shall hold no other elected or appointed office or position, or any position of employment, with the Town.

(d) The terms of office for members of the Board of Adjustment shall be as follows:

(1) Beginning in 2007, the Board of Trustees, shall, in January of each year, appoint members to the Board of Adjustment for a three-year term, except that appointments in 2007 may be for a shorter term in order to achieve overlapping tenure. Appointments shall specify the term of each member.

(2) Members shall serve until the Board of Trustees has made appointments for the succeeding term.

(e) Any vacancy created during the unexpired term of a member shall be filled to the end of unexpired term with a replacement appointed by the Board of Trustees.

(f) Members of the Board of Adjustment shall serve without compensation.

(g) The Board of Adjustment shall conduct meetings as needed. All meetings shall be open to the public. The Town Clerk shall serve as secretary to the Board of Adjustment and shall record official minutes of all meetings. Copies of all records and minutes of all meetings shall be kept in the office of the Town Clerk for public inspection.

(h) Rules of procedure. The Board of Adjustment shall adopt rules of procedure which shall be approved by the Board of Trustees.

(i) Each year, at the first regular meeting of the Board of Adjustment, following appointment of members, the Board of Adjustment shall select a Chair and a Vice-Chair for the year. The Chair shall preside at all meetings. The Vice-Chair shall preside in the absence of the Chair.

(j) The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter, or grant any variance.

(k) A quorum of the Board of Adjustment shall be four (4) members. (Ord. 446 §11.02.100, 2001; Ord. 467 §1, 2002; Ord. 550 §1—3, 2006)

Sec. 16-2-120. Board of Adjustment application and processing procedure.

(a) In order to file an application for a variance or appeal, the landowner or owner's representative shall submit the following information to the Zoning Administrator:

(1) A completed application form in a format approved by the Zoning Administrator

(2) Application fees.

(3) A list of the names and addresses of the surrounding property owners. The list shall include the names and addresses of such owners within three hundred (300) feet of the outside boundaries of the property subject to the application. This list shall be based on records from the County Assessor's office and/or the County Clerk and Recorder's office, and must be certified by the applicant as true and complete within one (1) month prior to submitting the application.

(4) A written statement describing the nature of the request for the variance or appeal, and explanation of why the applicant believes that the request should be approved.

(5) Maps, drawings or other documentation that the Zoning Administrator determines to be necessary for the review of the application.

(6) A current Adams (or Arapahoe) County tax statement for the property.

(b) Once a completed application has been submitted to the Zoning Administrator, the request will be scheduled for the next available hearing before the Board of Adjustment. The specific processing steps shall consist of the following:

(1) Referral mailings. The applicant shall submit the number of copies of the application materials for referral mailing as requested by the Zoning Administrator. The referral contents shall be placed in appropriately sized envelopes with the proper postage. Do not use postage-metered stamps; use regular stamps only. Do not seal the envelopes. The Town staff will check the mailings to assure that they have been properly prepared. The Town staff will then seal and take the envelopes to the post office. These notices shall be mailed at least fifteen (15) days prior to the Board of Adjustment hearing, not including the day of the hearing.

(2) Staff report. By no later than five (5) days prior to the Board of Adjustment hearing, the Town staff will complete a staff report. A copy of such report will be transmitted to the applicant and shall be made available to all interested parties.

(3) Notification of surrounding property owners. See section 16-2-130.

(4) Property posting. See section 16-2-130.

(5) Town staff will publish proper notice of the Board of Adjustment hearing in a newspaper of general circulation within the Town.

(6) The Board of Adjustment shall conduct a hearing on the request at the scheduled time. After taking testimony, the Board of Adjustment may continue the case for additional testimony; or shall either approve, approve with conditions or deny the request.

(7) 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. (Ord. 446 11.02.101; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 550 §4, 2006)

Sec. 16-2-130. 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 2.1. 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 2.2, except that notice requirements for Site Specific Development Plans shall be as provided in Article 4, Vested Property Rights.

(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 Sec. 16-3-20), 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 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 signs. The applicant shall be responsible for checking the signs during the posting period. If a sign has been moved, 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 an annexation or 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 (registered 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 C.R.S. § 24-65.5-101 and 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 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 2-2 identifies when public notice is required, either by publishing, posting or mailing:

**Table 2.2
Public Notice Requirements**

<i>Approval Requested</i>	<i>Notice Required</i>		
	<i>Publish</i>	<i>Post</i>	<i>Mail</i>
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
Variance	X	X	X
Appeals (unless otherwise specified in this Chapter)	X	X	X

Key: PD Planned Development

Sec. 16-2-140. Pre-application conference

Applicants requesting annexation, rezoning, subdivision, planned development, site plan approval, 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 2.1 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. 16-2-150 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.

ARTICLE III

Annexation

Division 1 General Provisions

Sec. 16-3-10. Purpose.

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 adequate and available to the property, that the costs of annexation are paid by the owner of the petitioning property, and that all statutory requirements relating to annexation per C.R.S. § 31-12-101, et. seq., are fulfilled. (Ord. 446 §11.03.010, 2001; Ord. 467 §1, 2002)

Sec. 16-3-20. Responsibilities.

(a) Applicant. An applicant for annexation is required to prepare all necessary documents in a professional manner and submit sufficient copies of complete sets of all documents as required.

(b) Zoning Administrator. The Zoning Administrator shall administratively process the proposed annexation. Upon receipt of an annexation petition, the Zoning Administrator shall determine if the petition is complete and meets the following minimum requirements:

(1) That the property meets the State statutes required for annexation.

(2) That the property is within the urban area of the Bennett Comprehensive Plan, or that prior to completion of annexation, a three-mile area plan will be in place per Section 31-12-105 (1)(e), C.R.S.

(3) That the annexation is consistent with any intergovernmental agreements the Town may have with any other governments. (c) Town Clerk. The Town Clerk will publish the resolution and the public notice of hearing before the Board of Trustees for four (4) successive weeks in the Town's official newspaper. The first publication shall be at least thirty (30) days prior to the public hearing before the Board of Trustees. The Town Clerk will also send a copy of the notice to the planning department of the county in which the property is located, and to any special district or school district having territory within the area to be annexed at least twenty-five (25) days prior to the date fixed for such hearing.

(d) Board of Trustees. The Board of Trustees shall serve as the governing body for approving or denying the proposed annexation.

Sec. 16-3-30. Eligibility for annexation.

Properties proposed for annexation by petition must meet the following requirements:

(1) The owners of more than fifty percent (50%) of the total land area within the boundary of the land proposed to be annexed (including streets and alleys) shall sign the petition.

(2) Not less than one-sixth ($\frac{1}{6}$) of the outside perimeter of the area to be annexed shall be contiguous to the existing Town limits.

(3) All other eligibility requirements of Section 31-12-104, C.R.S. (Ord. 446 §11.03.030, 2001; Ord. 467 §1, 2002)

Sec. 16-3-40. Who may petition for annexation.

Only owners of the land proposed for annexation or their legal representatives may petition the Town for annexation. (Ord. 446 §11.03.040, 2001; Ord. 467 §1, 2002)

Sec. 16-3-50. Required annexation impact reports.

(a) An annexation impact report is required for parcels larger than ten (10) acres, unless the County officials and the Town agree that the report may be waived. If a report is required, the Zoning Administrator shall complete the report at least twenty-five (25) days before the Board of Trustees' hearing date and file the report with the County twenty (20) days before said hearing date.

(b) The annexation impact report shall be prepared in compliance with Section 31-12-108.5, C.R.S. The applicant shall provide the Zoning Administrator with the following information for the annexation impact report:

(1) A copy of any annexation or pre-annexation agreement;

(2) The identity of existing districts within the area to be annexed;

(3) The effect of the annexation on the School District, including the estimated number of students generated and the capital construction required to educate such students;

(4) The effect of the annexation on the Fire District;

(5) A statement of the applicant's plans (if any) for extending, financing and providing municipal services within the area to be annexed (Note: the Zoning Administrator will need to supplement the applicant's information with any Town plans for extending, financing and providing municipal services within the area to be annexed);

(6) A statement identifying all existing special districts within the area to be annexed;

(7) A map of the Town and adjacent area showing:

a. Present and proposed boundaries of the Town in the vicinity of the proposed annexation;

b. The present streets, major trunk water lines, sewer interceptors and outfalls, other utility lines and ditches and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation;

c. The existing and proposed land use patterns in the areas to be annexed.

(8) An annexation plat containing the survey and legal description of the land proposed to be annexed, and the computed length of contiguity with the existing Town boundary.

(c) The Town may also require that a fiscal impact report be prepared under its direction at the petitioner's expense. This report should provide the information needed by the Town to evaluate the fiscal costs and benefits of the proposed annexation over a multi-year period. (Ord. 446 §11.03.050, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-3-60. 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 shall dedicate to the Town, by special warranty deed or such other instruments as the Town may require, free and clear of all liens, encumbrances and assessments, all right, title and interest in and to all water, water rights and groundwater rights associated with the property, including but not limited to any and all rights, whether vested, conditional or inchoate, tributary, nontributary and not-nontributary 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 the Laramie-Fox Hills Aquifers, including those provided for in determinations of water rights for the property by the Colorado Groundwater Commission. Such dedication shall also include approved replacement plans by the Groundwater Commission as necessary to allow the ability to pump the not-tributary groundwater included with the dedication. Such dedication and transfer shall be made at no cost to the Town and prior to recording of any annexation ordinance for the property.

(c) 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.

(d) As a condition of annexation, and except as may be specifically provided in an annexation agreement, the petitioners may be required to dedicate land for public purposes, or cash in lieu thereof, in accordance with the provisions of this Chapter or as otherwise adopted by ordinance. (Ord. 446 §11.03.060, 2001; Ord. 467 §1, 2002; Ord. 492 §2, 2003)

Sec. 16-3-70. Annexation agreement.

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

(b) Annexation agreements may contain any of the items required in a subdivision development agreement, as stated in Section 16-14-420, including provisions for financial guarantees.

(c) All executed annexation agreements shall be recorded with the appropriate County Clerk and Recorder. (Ord. 446 §11.03.070, 2001; Ord. 467 §1, 2002)

Sec. 16-3-80. Proposed zoning.

(a) The proposed zoning for the area to be annexed may be included in the annexation agreement. The Town may agree to disconnect 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. (Ord. 446 §11.03.080, 2001; Ord. 467 §1, 2002)

Sec. 16-3-90. Standards for annexation.

In considering a petition for annexation, the Board of Trustees shall make findings of fact and conclusions based upon the following standards for annexation:

(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.

(2) Areas proposed for annexation shall not divide tracts in order to prevent further annexation of adjoining parcels.

(3) Areas proposed for annexation which, due to their configuration, cause excessive police, fire, utility and street cost may not be accepted.

(4) Zoning of the area proposed for annexation shall be reasonable in terms of existing Town zoning classifications and consistent with the Comprehensive Plan.

(5) The area proposed for annexation shall 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 shall be agreed upon prior to annexation.

(6) 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.

(7) Adequate water rights are provided to serve the proposed development on the property proposed for annexation and/or fees in lieu of water rights transfer are agreed to be paid.

(8) Whether annexation of the area is in the best interests of the Town. (Ord. 446 §11.03.090, 2001; Ord. 467 §1, 2002)

Division 2
Annexation Procedure

Sec. 16-3-210. Staff action.

(a) Upon receipt of a complete annexation petition and supportive documents, the Zoning Administrator shall provide all reviewing agencies with a copy of the pertinent information for their review and comment. The agencies shall be provided with an opportunity to submit written comments to the Zoning Administrator.

(b) The Zoning Administrator shall schedule the request for the next available meeting before the Board of Trustees in conformance with state law.

(c) After the Board of Trustees meeting determining that the annexation petition is in substantial compliance with State statutes, the Town staff shall cause the notice of the proposed annexation hearing to be published in accordance with state law requirements, and shall mail notice of the annexation hearing to the owners of all property within three hundred (300) feet of the land that is proposed for annexation. The mailing shall occur at least fifteen (15) days prior to the annexation hearing. The applicant shall reimburse the Town for the cost of publication and mailing.

(d) The Zoning Administrator shall prepare a report containing the Town staff's recommendations and the comments received from the reviewing agencies.

Sec. 16-3-220. Board of Trustees action.

The Board of Trustees shall follow the procedure required by state statutes, to include the following:

(1) Determination of eligibility. The Board of Trustees shall adopt a resolution finding whether the petition is in substantial compliance with the statutory requirements for annexation. The Board of Trustees will set the date, time and place for a public hearing to determine if the annexation meets the requirements of Sections 31-12-104 and 31-12-105, C.R.S. This hearing will be held not less than thirty (30) days nor more than sixty (60) days after the effective date of the resolution setting the hearing, and will comply with all other notice provisions of Section 31-12-108, C.R.S.

(2) Annexation hearing. On the designated date and time specified in the resolution of substantial compliance, the Board of Trustees shall hold a public hearing on the annexation petition in compliance with Sections 31-12-109 and 31-12-110, C.R.S.

(3) Annexation ordinance. If the Board of Trustees determines that all applicable statutory sections have been met and that an election is not required and does not determine that additional terms and conditions are to be imposed, the Board of Trustees may annex the area proposed to be annexed by ordinance. (Ord. 446 §11.03.130, 2001; Ord. 467 §1, 2002)

Sec. 16-3-230. 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. (Ord. 446 §11.03.140, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-3-240. Recording.

After final passage of the annexation ordinance, the Town will file one (1) copy of the annexation plat with the original of the annexation ordinance in the office of the Town Clerk and record with the appropriate County Clerk and Recorder three (3) certified copies of the annexation ordinance and map of the area annexed containing a legal description of such area. (Ord. 446 §11.03.150, 2001; Ord. 467 §1, 2002)

ARTICLE IV

Vested Property Rights

Sec. 16-4-10. Purpose.

The purpose of this Article is to provide the procedures necessary to implement the provisions of Article 68 of Title 24, C.R.S. (Ord. 446 §11.05.010, 2001; Ord. 467 §1, 2002)

Sec. 16-4-20. Definitions.

As used in this Article:

Site specific development plan means and shall be limited to the following:

- a. Final subdivision plat;
- b. Final site plan; or
- c. Final development plan, in the case of a planned development.

d. If more than one (1) of the above three (3) development applications is required for a development, a *site specific development plan* shall mean the final approval step of a development, which occurs prior to a building permit application.

The Board of Trustees may, by agreement with the developer, designate an approval other than those described above to serve as the site specific development plan approval for a specific project.

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. (Ord. 446 §11.05.020, 2001; Ord. 467 §1, 2002)

Sec. 16-4-30. Request for approval.

If an applicant wishes the approval of a site specific 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. 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. (Ord. 446 §11.05.030, 2001; Ord. 467 §1, 2002)

Sec. 16-4-40. 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. 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. (Ord. 446 §11.05.040, 2001; Ord. 467 §1, 2002)

Sec. 16-4-50. 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. (Ord. 446 §11.05.050, 2001; Ord. 467 §1, 2002)

Sec. 16-4-60. 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. (Ord. 446 §11.05.060, 2001; Ord. 467 §1, 2002)

Sec. 16-4-70. 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. (Ord. 446 §11.05.070, 2001; Ord. 467 §1, 2002)

Sec. 16-4-80. Payment of costs.

In addition to any and all other fees and charges imposed by this Code 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. (Ord. 446 §11.05.080, 2001; Ord. 467 §1, 2002)

Sec. 16-4-90. 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. (Ord. 446 §11.05.090, 2001; Ord. 467 §1, 2002)

Sec. 16-4-100. 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. (Ord. 446 §11.05.100, 2001; Ord. 467 §1, 2002)

ARTICLE V

Zoning Districts and Standards

*Division 1
General Provisions*

Sec. 16-5-10. Uniformity of regulations.

The regulations established by this Chapter within each zone district shall apply uniformly to each type of structure or land. No building, structure or land shall be used or occupied, and no building or structure or part thereof shall be erected, changed, constructed, moved or structurally altered unless in conformity with all of the regulations herein specified for the zone district in which it is located. (Ord. 446 §11.06.010, 2001; Ord. 467 §1, 2002)

Sec. 16-5-20. Zoning districts established.

In order to carry out the purposes of this Chapter, the Town is hereby divided into the following zoning districts:

- A Agricultural District
- RE Residential Estate District

- R-1 Single-Family Residential District
- R-2 Two-Family Residential District
- R-3 Multi-Family Residential District
- MH-1 Mobile Home One District
- MH-2 Mobile Home Two District
- C General Commercial District
- I-1 Light Industrial District
- I-2 Heavy Industrial District
- P Public District
- PD Planned Development District

(Ord. 446 §11.06.020, 2001; Ord. 467 §1, 2002; Ord. 570 §6, 2007)

Sec. 16-5-30. 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 Code 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 be drawn on durable media on one (1) or more sheets at a scale that provides for easy interpretation of district boundary lines. It 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 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;

- (3) Centerlines of stream beds;
- (4) Section lines;
- (5) Town boundary lines; and
- (6) Other lines drawn to scale on the Zoning Map. (Ord. 446 §11.06.021, 2001; Ord. 467 §1, 2002)

Sec. 16-5-40. Interpretation and general 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) 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.

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

(1) For residential use, not more than one (1) principal structure plus permitted accessory structures per lot or tract of land in A, RE, R-1, R-2, MH-1 and MH-2 Zone Districts. 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 structures in the R-3 Zone District, no limit or as otherwise approved in an outline development plan.

(3) For commercial and industrial uses in the C, I-1 and I-2 Zone Districts, no limit or as otherwise approved in an outline development plan.

(4) For any use in the P Zone District, no limit or as otherwise approved in an outline development plan.

(5) For any use in the PD Zone District, refer to the approved plan.

(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) All uses are subject to the performance standards contained in Section 16-10-510.

(g) Only one (1) detached garage is permitted per residentially zoned lot or parcel and shall be set back according to Section 16-5-430 of this Article. Detached garages shall be of similar color and architectural style as the principal building and construction materials shall be similar to the principal building. Eighty-five percent (85%) of the exterior color treatment shall be subdued in color and not reflective. Bright colors shall be used sparingly and limited to accenting the structure (excluding glass treatment). 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, with a maximum height not to exceed the height of the principal dwelling unit or in accordance with Section 16-5-430, whichever is less. All sloped roofs shall have a roof pitch of not less than four (4) inches in twelve (12) inches or a one-foot rise for every three feet (1:3 pitch roof) and be covered with a subdued color roofing material and not reflective.

(h) Only one (1) accessory building or structure, not including a detached garage, is permitted per residentially zoned lot or parcel and shall be set back according to Section 16-5-430. Accessory buildings are not permitted in the front yards or in the side yards that face a public street. Accessory buildings shall be of similar color as the principal building and may not exceed two hundred fifty (250) square feet of floor area with a maximum height according to Section 16-5-430. Construction materials shall be similar to the principal building. Bright colors shall be used sparingly and limited to accenting the structure color.

(i) Maximum cumulative coverage of all accessory buildings, including detached garages regardless of location, shall not exceed the building footprint of the principal building.

(j) 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.

(k) 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. (Ord. 446 §11.06.022, 2001; Ord. 467 §1, 2002; Ord 570 §§7,8, 2007)

Sec. 16-5-50. Conflict with other provisions of law.

Where this Chapter is different in any way than other provisions of law or ordinance, the most restrictive provision shall control. (Ord. 446 §11.06.023, 2001; Ord. 467 §1, 2002)

Sec. 16-5-60. Conflict with private covenants or deeds.

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. (Ord. 446 §11.06.024, 2001; Ord. 467 §1, 2002)

Division 2
Zone District Requirements

Sec. 16-5-210. A – Agricultural District.

- (a) The A District provides for the continuation of agricultural activities.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 446 §11.06.101, 2001; Ord. 467 §1, 2002)

Sec. 16-5-220. 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 16-5-420.

(c) Lot and building requirements for the RE District shall be as shown in the table in Section 16-5-430. If there is any conflict between this Section and any other section of the Code, the more restrictive shall control.

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

(1) All homes shall exhibit four-sided architecture by having windows on all elevations.

(2) The minimum residential dwelling building footprint shall be one thousand five hundred (1,500) square feet (excluding any garage area).

(3) The minimum residential floor area square footage shall be two thousand (2,000) (excluding basements, attic or garage area).

(4) A minimum of thirty percent (30%) of the front elevation of the residential dwelling (including the garage if attached) shall be comprised of natural-appearing rock or brick.

(5) Only one (1) detached garage is permitted per lot or dwelling unit and shall be set back in accordance to Section 16-5-430. Detached garages shall have the following minimum characteristics:

a. It shall be of a similar color and architectural style, and constructed of similar materials as the main building.

b. Eighty-five percent (85%) of the exterior color treatment shall be subdued in color and not reflective. Bright colors shall be used sparingly and limited to accenting the structure (excluding glass treatment).

c. 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.

d. A roof pitch of not less than four (4) inches in twelve (12) inches or a one-foot rise for every three feet (1:3 pitch roof).

e. All sloped roofs shall be covered with a subdued color roofing material and not reflective. Bright colors shall be used sparingly and limited to accenting the structure color.

f. Eighty percent (80%) of all eaves shall protrude from the exterior wall (not including the width of any gutter) no less than twelve (12) inches. This minimum overhang shall apply to all roofs, irrespective of pitch.

g. The height of the detached garage shall not exceed the height of the principal residential dwelling or eighteen (18) feet, whichever is less.

(6) Only one (1) accessory building, not including a detached garage, is permitted per lot and shall be set back in accordance with Section 16-5-430. Accessory buildings are not permitted in the front yards or in side yards that abut a public street. Accessory buildings shall be of a similar color as the principal building, may not exceed a height of twelve (12) feet and shall not exceed two hundred fifty (250) square feet of floor area. Construction materials shall be similar to the principal building.

(7) All dwelling roofs shall have the following minimum characteristics:

a. A minimum of six (6) roof planes per building, to add articulation. For the purposes of this Section, portions of roofs less than ten percent (10%) of the total plan view roof area shall not constitute a roof plane.

b. A pitch of not less than four (4) inches in twelve (12) inches or a one-foot rise for every three feet (1:3 pitch roof).

c. Eighty percent (80%) of all eaves shall protrude from the exterior wall (not including the width of any gutter) no less than twelve (12) inches. This minimum overhang shall apply to all roofs, irrespective of pitch.

(8) All single family dwellings shall have at least a two-car garage.

(9) Eighty-five percent (85%) of the exterior color treatment for all residential dwellings and accessory uses shall be subdued in color and not reflective. Bright colors shall be used sparingly and limited to accenting the structure (excluding glass treatment).

(10) All sloped roofs shall be covered with a subdued color roofing material and not reflective. Bright colors shall be used sparingly and limited to accenting the structure color.

(11) The keeping of any fowl, swine, sheep, goats, cattle, horses or other livestock is prohibited, unless otherwise approved in a final development plan. (Ord. 446 §11.06.121, 2001; Ord. 467 §1, 2002; Ord. 570 §9, 2007)

Sec. 16-5-230. Reserved.

Sec. 16-5-240. R-1 – Single-Family Residential District.

(a) The R-1 District provides for the development of low-density single-family residential dwellings.

(b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.

(c) Lot and building requirements for the R-1 District or the PD Overlay with an underlying R-1 District shall be as shown in the table in Section 16-5-430 and as stated herein. If there are any conflicts between this Section and any other section of the Code, the more restrictive shall control.

(d) The following additional standards are established for residential development in the R-1 District:

(1) The minimum residential building square footage shall be eight hundred (800) (excluding basements, attic or garage area).

(2) All roofs shall have the following minimum characteristics:

a. A pitch of not less than four (4) inches in twelve (12) inches or a one-foot rise for every three feet (1:3 pitch roof).

b. Eighty percent (80%) of all eaves shall protrude from the exterior wall (not including the width of any gutter) no less than eight (8) inches. This minimum overhang shall apply to all roofs, irrespective of pitch.

(3) Eighty-five percent (85%) of the exterior color treatment for all residential buildings and accessory structures shall be subdued in color and not reflective. Bright colors shall be used sparingly and limited to accenting the structure (excluding glass treatment).

(4) All sloped roofs shall be covered with a subdued color roofing material and not reflective. Bright colors shall be used sparingly and limited to accenting the structure color. (Ord. 446 §11.06.123, 2001; Ord. 467 §1, 2002; Ord. 570 §11, 2007)

Sec. 16-5-250. R-2 – Two-Family Residential District.

(a) The R-2 District provides 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 16-5-420.

(c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 446 §11.06.124, 2001; Ord. 467 §1, 2002)

Sec. 16-5-260. R-3 – Multi-Family Residential District.

- (a) The R-3 District provides for multi-family residential development.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 446 §11.06.125, 2001; Ord. 467 §1, 2002)

Sec. 16-5-270. MH-1 – Mobile Home District.

- (a) The MH-1 District provides for the residential use of mobile homes or manufactured homes.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430.
- (d) Additional requirements are stated in Section 16-10-440. (Ord. 446 §11.06.126, 2001; Ord. 467 §1, 2002; Ord. 570 §12, 2007)

Sec. 16-5-275. MH-2 – Mobile Home District.

- (a) The MH-2 District provides for the residential use of mobile homes or manufactured homes.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430.
- (d) Additional requirements are stated in Section 16-10-440. (Ord. 570 §13, 2007)

Sec. 16-5-280. Reserved.

Sec. 16-5-290. C – General Commercial District.

- (a) The C District provides 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 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430.
- (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; notwithstanding the provisions of Article X, Division 1 of this Chapter, those residential uses existing prior to the effective date of Ordinance No. 570 codified herein 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 X, Division 1 of this Chapter, requesting a mobile or manufactured home replacement, the following minimum standard(s) 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. (Ord. 446 §11.06.141, 2001; Ord. 467 §1, 2002; Ord. 570 §15, 2007)

Sec. 16-5-300. I-1 – Light Industrial District.

- (a) The intent of the I-1 District is to accommodate limited or light industrial businesses which, by their nature, have minimal detrimental effect on the neighboring properties.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 446 §11.06.151, 2001; Ord. 467 §1, 2002)

Sec. 16-5-310. I-2 – Heavy Industrial District.

- (a) The intent of the I-2 District is to accommodate general industrial businesses which produce higher levels of traffic and more intensive uses, but which have minimal detrimental effect beyond the zone district in which they are located.
- (b) Land uses are permitted as shown in the Land Use Table in Section 16-5-420.
- (c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 446 §11.06.152, 2001; Ord. 467 §1, 2002)

Sec. 16-5-320. PD – Planned Development District.

- (a) The PD District is a distinct zoning district that provides a means by which specific development standards and permitted land uses can be defined for a specific site. The intent of the PD District is to encourage flexibility and innovation in the design of residential, commercial and industrial development and to provide an alternative to the conventional zoning district regulations.
- (b) 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. (Ord. 446 §11.06.171, 2001; Ord. 467 §1, 2002)

(c) Requirements for Planned Developments are contained in Article VII of this Chapter.

Sec. 16-5-330. 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 16-5-420.

(c) Lot and building requirements shall be as shown in the table in Section 16-5-430. (Ord. 570 §16, 2007)

*Division 3
Land Uses*

Sec. 16-5-410. Land uses.

(a) Land uses permitted within each specific zone district (other than the Planned Development) are designated by symbols in Section 16-5-420, Land Use Table. The listed symbols are defined as follows:

P = Use permitted by right.

C = Conditional use, permitted pursuant to Division 3 of Article X of this Chapter.

H = Home occupation, permitted pursuant to Section 16-10-490.

T = Temporary use, permitted pursuant to Division 2 of Article X of this Chapter.

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

(c) Land uses as listed are subject to Design Guidelines, as provided in Article IX of this Chapter; applicable Supplemental Regulations provided in Article X of this Chapter; and all applicable special area plans, master plans and design standards adopted by the Town. (Ord. 446 §11.06.200, 2001; Ord. 467 §1, 2002)

Sec. 16-5-420. Land Use Table.

The following Land Use Table describes land uses for the zoning districts:

Land Use Categories	Zone Districts										
	A	RE	R-1	R-2	R-3	MH-1	MH-2	C	I-1	I-2	P
A. AGRICULTURAL USE											
(1) Crop production, pasture grazing land or private ranching	P										

(2) Greenhouse/nursery with retail sales	C							P	C	C	
(3) Greenhouse/nursery without retail sales	P								C	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	P	
(3) Animal hospital, small	C							C	P	P	
(4) Pet shop								P			
(5) Veterinary offices or clinics	C							P	P	P	
C. RESIDENTIAL											
(1) Assisted living facility				C	P						
(2) Bed and breakfast establishments	C	C	C	C	C						
(3) Group home	C	C	C	C	C						
(4) Group home for elderly, developmentally disabled or mentally ill persons	P	P	P	P	P						
(5) Group home for juvenile offenders					C						
(6) Hotels and motels								P			
(7) Mobile or manufactured homes						P	P	Sec. 16-5-290 (d)			
(8) Multi-family residence (3 or more units)					P						
(9) Nursing home				C	P						
(10) Rooming, lodging or boarding houses					P						
(11) Single-family attached				P	P						
(12) Single-family detached	P	P	P	P	P	P	P				
(13) Two-family residence				P	P						
D. OFFICE, CLERICAL AND SERVICES NOT RELATED TO GOODS OR MERCHANDISE											
(1) Administrative and executive; business and professional; and general offices								P	C		
(2) Financial services (such as banks, savings and loan and brokerages)								P	P	P	

with drive-in facilities											
(3) Financial services (such as banks, savings and loan, and brokerages) no drive-in facilities					C				P	P	P
(4) Instructional services, studies									P	C	C
(5) Medical, dental or other health-related offices									P	C	
(6) Personal services									P	P	P
E. RESTAURANT FOOD SERVICE											
(1) Bar, tavern, nightclub									P	C	C
(2) Fast food									P	C	C
(3) Fast food with drive-thru									C	C	C
(4) Restaurant, other									P	C	C
F. COMMERCIAL USES											
(1) Building materials and services (retail) landscape equipment, hardscape materials	C							C	C	P	
(2) Building materials and services (retail) all others									C	P	P
(3) Business services, courier services, catering and others									P	P	P
(4) Cleaning/laundry operations (within enclosed structure) serving general public									P	P	
(5) Convenience or grocery store									P	C	C
(6) Open air, farmers' and flea markets									C	C	
(7) Other food retail (delicatessen, retail bakery, specialty food market)									P		
(8) Outdoor retail display and sales	C								C	C	
(9) Pawnshops									C	C	
(10) Repair, furniture and major household appliance									P	P	P
(11) Repair, other									P	P	P
(12) Retail firewood storage and sales	C										P
(13) Retail establishments or rental services									P		
(14) Sexually oriented business									P	P	P
(15) Wholesale retail sales in conjunction with wholesaling									P	P	P
(16) Wholesaling including stock										P	
G. LABORATORY, RESEARCH AND DEVELOPMENT											

(1) Laboratory: medical, dental, optical, scientific									C	P	P	
(2) General research and development									C	P	P	
H. MOTOR VEHICLE-RELATED SALES AND SERVICE OPERATIONS												
(1) Automobile rentals									C	P	P	
(2) Automobile washing facility									P	P	P	
(3) Limited equipment rental									C	P	P	
(4) Major vehicle/equipment repair (includes auto body repair, paint shops and incidental sales of parts)									C	C	C	
(5) Minor vehicle repair (includes minor repair where vehicles are not stored in an inoperable condition)									P	P	P	
(6) Motor vehicle dealer/sales, new and used (includes RVs, trailers, mobile homes)									C	C	C	
(7) Motor vehicle showroom (interior display)									P			
(8) Service stations (minor repairs and sales of gasoline included)									P	P	P	
(9) Truck stops									C	C	C	
(10) Vehicle/equipment sales and rentals (other than motor vehicles)									C	P	P	
(11) Vehicle or automobile wrecking or salvage yard (including outdoor storage of inoperable vehicles)											C	
(12) Vehicle storage (operable vehicles only)										C	P	
(13) Vehicle towing services										P	P	
I. RECREATION OR AMUSEMENT FACILITIES, PRIVATE OR PUBLIC												
(1) Golf course	C	C	C	C	C							
(2) Indoor									P	P	P	
(3) Outdoor bungee jumping										C	C	
(4) Outdoor ice skating, roller skating, swimming pool									P	C	C	
(5) Outdoor playing fields	C	C	C	C	C					P	P	
(6) Outdoor – all others	C								C	P	P	
(7) Riding academies and stables	C											
(8) Recreation facilities owned or operated by the Town or other government organization with supporting accessory uses, whether publically or privately owned or operated, such as sports shops, snack shops, and restaurants, but in no event shall privately owned or operated												P

supporting accessory uses occupy more than 10% of the gross floor area of the facility.												
J. INDUSTRIAL USES												
(1) Auction house or yard									C	P		
(2) Commercial cleaning/laundry operations, including dry cleaner								C	C	P		
(3) Commercial trash removal companies without trash storage or trash transfer operations										C		
(4) Concrete products production									C	C		
(5) Custom crafts (such as ceramics, furniture making and stained glass production)								P	P	P		
(6) General machine shops									P	P		
(7) Light trade and technical uses								C	P	P		
(8) Primary manufacturing, assembly, finishing or fabrication									C	C		
(9) Secondary manufacturing, assembly, finishing or fabrication								C	P	P		
(10) Meat processing plant										C		
(11) Publishing plant									P	P		
(12) Refining or initial processing of basic raw materials										C		
(13) Soil amendments packaging and processing such as peat moss, top soil and composted manure; but excluding raw manure or chemical fertilizers										C		
(14) Warehousing and distribution									P	P		
(15) Wholesale establishments (including accessory offices)									P	P		
K. SCHOOLS												
(1) Elementary and secondary education school	P	P	P	P	P	P	P	P	C			
(2) Postsecondary colleges, universities and technical schools									P	P	P	
(3) Private business, trade and vocational school									P	P	P	
(4) Schools of special instruction									P			
L. RELIGIOUS INSTITUTIONS												
	P	P	P	P	P	P	P	P	P	P	P	P
M. HOSPITALS												
									P	P	P	
N. CLUBS AND LODGES, not including gun clubs												
									P	P	P	
O. TEMPORARY USES, permitted in accordance with Article X of this Chapter												

(1) Circuses, carnivals, other special events	T							T	T	T	T
(2) Contractor's office/temporary construction uses	T	T	T	T	T	T	T	T	T	T	T
(3) Temporary real estate sales office	T	T	T	T	T	T	T				
P. STORAGE											
(1) Contractors with outdoor storage									P	P	
(2) All other outdoor storage									C	C	
(3) Self-storage, mini-storage								C	P	P	
Q. OTHER USES											
(1) Ambulance service	C	C	C	C	C	C	C	C	C	P	P
(2) Cemetery	C		C								
(3) Day care center, adult or child		C	C	C	C				P		
(4) Facilities owned or operated by government organizations other than Town	C	C	C	C	C	C	C	C	C	C	C
(5) Facilities owned or operated by Town	P	P	P	P	P	P	P	P	P	P	P
(6) Funeral homes and mortuaries									P		
(7) Heliports/helistops											C
(8) Home occupations	H	H	H	H	H	H	H				
(9) Overnight campground and travel trailer parking	C								C		
(10) Recycling facilities, large											C
(11) Refuse collection facilities											C
(12) Waste-related uses, trash transfer station											C
(13) Zoos, arboretum, botanical gardens	P								C		
R. TELECOMMUNICATIONS FACILITIES AND SATELLITE DISH ANTENNAS											
(1) Cellular communications facilities	C								C	C	C
(2) Freestanding tower	C								C	C	C
(3) Radio and television transmission towers	C									C	C
(4) Other facilities	C	C	C	C	C	C	C	C	C	C	C
S. COMMUNITY SERVICES											
(1) Events center									P		
(2) Assembly hall or exhibition facilities	C								P	P	P
(3) Cultural facilities	C								P	P	P
T. TRANSPORTATION FACILITIES											
(1) Passenger terminal									P		
(2) Private automobile parking lots or parking garages as a principal use									C	C	C

(3) Public automobile park'n ride (commuter) lots									C	P	P	
U. UTILITIES												
(1) Overhead electric transmission lines and distribution feeder lines over 110 kV	C	C	C	C	C	C	C	C	C	C	C	C
(2) Public utilities, major	C										P	P
(3) Public utilities, minor	P	P	P	P	P	P	P	P	P	P	P	P

(Ord. 446 §11.06.201, 2001; Ord. 466 §2, 2002; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 570 §17, 2007; Ord. 583 §1, 2008; Ord. 584 §1, 2008)

Sec. 16-5-430. Lot and building requirements.

Lot and building requirements for the zoning districts are set out in the following table:

Requirement	Zone Districts											
	A	RE	R1	R-2	R-3	MH-1	MH-2	C	I-1	I-2	P	
A. MINIMUM ZONE LOT REQUIREMENTS												
(1) Minimum lot area (square feet)	217,800	21,780	7,500	8,000	6,000	4,000	4,000	NA	NA	NA	NA	
(2) Minimum lot area per residential unit (square feet)				4,000	3,000							
(3) Minimum lot width at front setback for interior lots (feet)	300	100	70	50	50	40	40	NA	NA	NA	NA	
(4) Minimum lot width at front setback for corner lots (feet)	300	110	80	60	60	50	50	NA	NA	NA	NA	
(5) Minimum unobstructed open space (percent of lot area)	90	50	40	30	25	25	25	20	20	20	20	
(6) Maximum floor area ratio as a percentage								30	30	30	30	
B. MINIMUM FLOOR AREA PER DWELLING (sf)		2,000	800	800	600							
C. MINIMUM RESIDENTIAL DWELLING BUILDING FOOTPRINT (sf)		1,500										
D. MINIMUM PRINCIPAL BUILDING SETBACKS (feet)												

(1) Front (or side adjacent to a street or alley)	50	35	20	20	25	20	20	15	50	50	15
(2) Rear	50	35	20	20	20	10	10	15	10	10	15
(3) Side (not adjacent to a street or alley)	50	35	5	5	20	5	5	10	10	10	15
E. MINIMUM DETACHED GARAGE SETBACKS (feet). Note that pursuant to UBS Section 16-5-40(j) – 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.											
(1) Front (or side adjacent to a street or alley)	50	35	20	20	25	20	20	NA	NA	NA	NA
(2) Rear	20	20	20	20	20	20	20	NA	NA	NA	NA
(3) Rear (not adjacent to a street or alley)	50	20	5	5	20	5	5	NA	NA	NA	NA
(4) Side (not adjacent to a street or alley)	50	20	5	5	20	5	5	NA	NA	NA	NA
F. MINIMUM ACCESSORY BUILDING/STRUCTURE SETBACKS (feet). Note that pursuant to UBS Section 16-5-40(j) – 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.											
(1) Front (or side adjacent to a street)	50	35	20	20	25	20	20	15	50	50	30
(2) Rear	20	10	5	5	5	5	5	5	5	5	5
(3) Side (not adjacent to a street)	10	10	5	5	5	5	5	5	5	5	5
G. MAXIMUM HEIGHT OF STRUCTURES (feet)											
(1) Principal building	45	35	35	35	35	20	20	50	30	60	50
(2) Detached garage	35	18	18	18	18	15	15	NA	NA	NA	NA
(3) Accessory structure	18	12	12	12	12	12	12	12	12	12	12

(Ord. 446 §11.06.202, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 570 §18, 2007)

ARTICLE VI

Sexually Oriented Businesses

Division 1 General Provisions

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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.301, 2002)

Sec. 16-6-20. Definitions.

Words and phrases used in this Article shall have the following meanings ascribed to them:

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 premises 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.302, 2002)

Sec. 16-6-30. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.303, 2002)

Sec. 16-6-40. Location and design of sexually oriented businesses.

(a) Sexually oriented businesses shall be located only within the Central Business District (CBD), General Commercial District (C), Light Industrial District (I-1), Heavy Industrial District (I-2), 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 16-6-210 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 16-6-60.

(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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.304, 2002)

Sec. 16-6-50. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.305, 2002)

Sec. 16-6-60. 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 16-6-230 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.317, 2002)

Sec. 16-6-70. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.318, 2002)

Sec. 16-6-80. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.319, 2002)

Sec. 16-6-90. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.320, 2002)

Sec. 16-6-100. 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.

(Ord. 467 §1, 2002; Ord. 479, §2-11.06.321, 2002)

Sec. 16-6-110. 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 16-6-230.

(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. Restrooms 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 16-6-230.

(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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.322, 2002)

Sec. 16-6-120. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.323, 2002)

Sec. 16-6-130. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.324, 2002; Ord. 526 §1, 2005)

Sec. 16-6-140. Inspection.

(a) An applicant, licensee or manager shall permit representatives of the Town, , any law enforcement agency, the County Health Department and the 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.325, 2002; Ord. 526 §1, 2005)

Division 2
License Regulations

Sec. 16-6-210. License required.

(a) No sexually oriented business license shall be issued for any sexually oriented business located within any zoned district or area of the Town other than the Central Business District (CBD), General Commercial District (C), Light Industrial District (I-1), Heavy Industrial District (I-2), or a Planned Development District (PD) that provides for industrial or commercial land uses.

(b) 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.

(c) 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.306, 2002)

Sec. 16-6-220. License fees.

(a) The annual fee for a sexually oriented business license shall be set forth in the Town of Bennett Schedule of Fees.

(b) The annual manager's license fee shall be set forth in the Town of Bennett Schedule of Fees.

(c) An applicant for a sexually oriented business license shall pay a nonrefundable application fee in an amount set forth in the Town of Bennett Schedule of Fees at the time of filing an application. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.307, 2002)

Sec. 16-6-230. 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 Paragraphs (1) or (2) above have been convicted of a specified criminal act as set forth in Subparagraph 16-6-260(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 Paragraphs (1) 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 Paragraphs (1) 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 Paragraphs (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 16-6-110, 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.308, 2002; Ord. 526 §1, 2005)

Sec. 16-6-240. Duty to supplement application.

(a) Applicants for a sexually oriented business license under Section 16-6-230 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.309, 2002)

Sec. 16-6-250. Investigation of application.

(a) 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. 16-6-260. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.311, 2002; Ord. 526 §1, 2005)

Sec. 16-6-270. 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 16-6-230, 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.312, 2002)

Sec. 16-6-280. 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 16-6-120; or

(6) Transferred a sexually oriented business license contrary to the provisions of Section 16-6-310. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.326, 2002)

Sec. 16-6-290. 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 16-6-280 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 Subsection 16-6-260(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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.327, 2002)

Sec. 16-6-300. 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 of Colorado 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.328, 2002; Ord. 541 §1, 2006)

Sec. 16-6-310. 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 16-6-230 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.313, 2002)

Sec. 16-6-320. 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 he or she still meets the requirements of Section 16-6-330. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.314, 2002)

Sec. 16-6-330. 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 16-6-230.

(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 Subsection 16-6-260(c)(1) i.

(b) 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 Subsection 16-6-260(c)(1)i. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.315, 2002)

Sec. 16-6-340. 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 16-6-330, 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.316, 2002)

Sec. 16-6-350. 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 16-6-120.

(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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.329, 2002)

Sec. 16-6-360. 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 16-6-350 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 16-6-260(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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.330, 2002)

Sec. 16-6-370. 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 of Colorado 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 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 manager's license fee shall be refunded. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.331, 2002; Ord. 541 §2, 2006)

Sec. 16-6-380. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.332, 2002)

Sec. 16-6-390. 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. (Ord. 467 §1, 2002; Ord. 479, §2-11.06.333, 2002)

ARTICLE VII

Planned Development Zone Districts

Sec. 16-7-10. Intent.

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 conventional land use regulations in order that the public health, safety, integrity and general welfare may be furthered in the era of increasing urbanization and growing demand for housing of all types and designs for the following purposes:

- (1) To provide for necessary commercial, recreational and educational facilities conveniently located to such housing;

(2) To provide for well-located, clean, safe and pleasant industrial sites involving minimum strain on transportation facilities;

(3) To ensure that the provisions of the Town zoning laws which direct the uniform treatment of dwelling type, bulk, density and open space within each zoning district will not be applied to the improvement of land other than lot-by-lot development in a manner which would distort the objectives of the zoning laws;

(4) To encourage innovations for superior designs in residential, commercial and industrial development and renewal so that the growing demands of the population may be met by greater variety in type, design and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings;

(5) To encourage a more efficient and innovative use of land and public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that the resulting economies may inure to the benefit of those who need homes;

(6) To lessen the burden of traffic on streets and highways;

(7) To encourage the building of "new towns" incorporating the best features of modern design;

(8) To conserve the value of the land;

(9) To provide a procedure which can relate the type, design and layout of residential, commercial and industrial development to the particular site, thereby encouraging preservation of the site's natural characteristics; and

(10) To encourage integrated planning in order to achieve the above purposes. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.010, 2002)

Sec. 16-7-20. General provisions.

(a) Planned developments provide for the opportunity for a mixed and multiple use district where both residential neighborhoods and nonresidential areas can be comprehensively planned and developed. All major categories of land use, including industrial, office, commercial, residential, public and open space, have the potential to be present in a PD.

(b) Where applicable, it is the intent of this Chapter that subdivision review under the subdivision regulations in Article XIV of this Chapter be coordinated with and carried out simultaneously with the review of a PD under this Article. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.020, 2002)

Sec. 16-7-30. Types of PD Districts.

(a) The following types of planned developments may be established:

(1) PD Zone District. A PD Zone District may be established by zoning land as a PD Zone District either through a rezoning process or by the initial zoning of land at the time of annexation.

Commercial, office, public, residential, agricultural, conservation and open space land uses may be permitted in a PD District to the extent expressly provided for on the approved Outline Development Plan (ODP). An ODP must be submitted at the time the PD zoning is requested. A Final Development Plan (FDP) must be submitted for that portion of the PD for which building or further development is being proposed. The requirements for an ODP and FDP are as set forth in this Chapter.

(2) PD Overlay District. A PD Overlay District may be established in an existing zoning district by overlaying a development plan over the applicable existing zoning district or districts. When a PD is established in this manner, only the principal permitted uses and permitted accessory uses of the underlying zoning district are permitted in the PD. When a PD is established using the overlay procedure, the development must follow the applicable review procedures for approval of an ODP and FDP. A zoning change is not required for an overlay, and the property retains its original zoning classification subject to the provisions of the approved PD for the property.

(b) The maximum permissible density within a PD Zone District shall be determined based upon the land uses proposed for the development and shall be based upon the density standards for types of uses as specified herein. The maximum permissible density within a PD Overlay District shall be the density permitted in the underlying zoning district as set forth in Article V of this Chapter for residential districts and for commercial and industrial 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 16-7-90 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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.030, 2002; Ord. 526 §1, 2005)

Sec. 16-7-40. Size of PD Districts; Prohibited Land Uses.

(a) There shall be no minimum size for a PD district

(b) The following uses are prohibited in the PD Zone District or a PD Overlay District unless specifically approved by the Board of Trustees:

- (1) Outdoor boat sales
- (2) Major truck stops
- (3) Outdoor trailer sales
- (4) Outdoor automobile sales (new and used cars)
- (5) Drive-in movie theatres
- (6) Animal rendering
- (7) Cattle feed lots

- (8) Storage of hazardous materials outside of a bunker or structure, or which is in violation of Colorado or federal standards, or which extends for more than 30 consecutive days (unless such storage is fully permitted and approved at the time of the ODP)
- (9) Incineration, except as an accessory use to manufacturing or processing
- (10) Outdoor storage of salvage materials or inoperable vehicles
- (11) Mobile homes and manufactured homes that do not meet the definition thereof in this Code

(Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.040, 2002)

Sec. 16-7-50. Outline Development Plan (ODP).

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 Zoning Administrator.

- (1) Outline Development Plan map. The ODP map shall be prepared on mylar sheets eighteen (18) inches by twenty-four (24) inches in size at a scale of 1" = 100', 1" = 60', 1" = 40' or 1" = 20' and contain the following information:
 - a. Title block, scale, north arrow and vicinity map.
 - b. Approval blocks for the Planning Commission and Board of Trustees.
 - c. A legal description of the property to be subdivided, with the total acreage of the area within the ODP
 - d. The name, address and phone number of the owner and/or developer and technical consultants responsible for the document.
 - e. The location and dimension of all existing and proposed streets, alleys and access easements with notes specifying general conditions of existing facilities. Existing and proposed points of ingress and egress shall be shown. Off-site intersections and driveway cuts for properties along streets that are on the perimeter of the ODP shall also be shown. The location of major existing and planned pedestrian and non-motorized circulation systems within and adjoining the ODP shall be shown.
 - f. Contiguous property land uses and subdivision names if applicable.
 - g. Existing and proposed buildings structures and features with notes specifying whether existing elements are to remain. This information includes all oil and gas facilities, as well as public and private utilities. The Zoning Administrator may require structures within 150' of the property line to be depicted on a case-by-case basis.
 - h. Existing and proposed utilities and easements.

i. The existing topographical character of the land at a contour interval no greater than five (5) feet or as shown on a USGS 7.5 minute series map for the area. Existing contours shall be shown in all directions from the external ODP boundary for a minimum distance of fifty (50) feet.

j. Environmentally significant areas including hazards such as floodplains, or natural features such as wetlands and wildlife migration routes, and any existing wooded areas composed of unique vegetation to remain after construction.

k. Designated sites of historic, archaeological or paleontological significance, identified by the State archaeologist or State Historical Society, which are on the proposed site of development.

l. Location of existing major drainage courses, with names if available.

m. Location of all open space areas and greenbelts. For residential uses in a mixed-use district, the location of any required park areas shall be shown.

(2) Outline Development Plan text. The ODP written textual statement shall contain the following information:

a. A statement of the development concept of the ODP and of how the ODP has been planned to take advantage of the PD regulations.

b. Existing and proposed land uses and zoning of the site and their gross acreage, in chart form to include: Existing and proposed land uses and zoning and densities (or floor area ratios in the case non-residential zoned properties) for the PD and adjacent properties. List the maximum total square footage and/or acreage of each proposed use.

c. Proposed site development criteria in chart form to include: permitted uses, unobstructed open space, setbacks, distances between structures, maximum building heights, unobstructed open space, maximum lot coverage of structures, parking ratios and any other criteria as appropriate.

d. If the application is a PD amendment, a chart comparing the criteria on the latest approved ODP with the criteria proposed by the amendment in accordance with section c above.

e. A general statement of the expected schedule of development and any proposed phasing.

f. A description of any agreements, conveyances, restrictions or covenants which will govern the use, maintenance and continued protection of the PD and any of its parks, open space, common areas or joint ownership areas. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.050, 2002)

g. A letter from all special districts intended to serve the property stating the property is already within such district or is within the district's service area. The Town may require inclusion into certain special districts before development processing can conclude.

(3) Technical Reports:

- a. Phase I drainage plan, per the direction of the Town Engineer. Any ODP that includes any area subject to the 100-year flood shall generally show that adequate drainage is provided in order to reduce the exposure of flood hazards to the property adjoining property and all public utilities including, sewer, gas, electrical and water.
- b. Phase I traffic study per the direction of the Town Engineer.

(4) Any other information that the Zoning Administrator determines to be necessary for the review of the ODP. The Zoning Administrator may waive any of the preceding items if they are determined to be unnecessary for the review of the ODP.

Sec. 16-7-60. Final Development Plan.

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 Zoning Administrator.

(1) FDP maps and drawings. The FDP maps and drawings shall be prepared on mylar sheets eighteen (18) inches by twenty-four (24) inches in size at a scale of 1" = 100', 1" = 60', 1" = 40' or 1" = 20' and contain the information specified in this Section:

- a. Site plan.

1. Title block, scale, north arrow and vicinity map.
2. The name, address and phone number of the owner and/or developer and technical consultants responsible for the document.
3. A legal description of the property to be subdivided, with the total acreage of the area within the FDP
4. Proposed land uses and their respective acreage within the PD, and contiguous property uses and subdivision names (and reception numbers if plats have been recorded).
5. Location, dimension and surfacing, if applicable, of all existing and proposed streets, points of ingress and egress with turning movements, rights-of-way, drives, parking areas, pedestrian ways, service areas, including trash disposal areas, outdoor storage areas and access easements. Trash disposal areas shall include adequate screening from adjacent properties with details to include construction materials that are compatible with the main building.
6. Location and size of all existing and proposed structures within the FDP and adjacent to its external boundary.
7. Location and dimension of lot lines, setback lines, parks, open space and other areas dedicated for public use, and a statement that specifies how any common open space shown in the FDP will be developed and maintained.
8. Location of proposed lighting, signs, advertising devices and mailboxes.

9. The number of parking spaces for each land use and the total square footage of internal landscaping within each parking area. Internal landscaping includes all landscaping within and including adjacent buffer and setback areas.

10. Location and screening of all utilities whether building or ground mounted. Typical screening details as appropriate.

11. Approval blocks for the Planning Commission and Board of Trustees.

b. Environmental site plan. The FDP environmental site plan shall contain the following:

1. Location of all existing and proposed structures within the FDP and adjacent to its external boundary.

2. Existing forested or uniquely vegetated areas to remain after development.

3. Location of any existing major wildlife habitat or migration routes.

4. The location of significant natural, environmental, historical, archaeological or paleontological features.

5. A delineation of the one-hundred-year floodplain and floodway.

6. Details regarding mitigation of any environmental impacts.

c. Landscape plan. A landscape plan showing spacing, sizes and specific types of landscaping materials shall be submitted in accordance with Article XII of Bennett's Municipal Code.

d. Proposed architectural elevations. Representative architectural elevations of all sides of proposed structures shall show building heights, colors and general textures of materials to be used on the exterior of the proposed buildings. Typical plans may be submitted for one-family, two-family and multiple dwellings.

e. Cross-sections. If the Zoning Administrator determines the development is uniquely located in close proximity to other buildings, residential areas or below the existing grade of surrounding areas, cross sections of the subject property and adjoining properties shall be submitted. The location of the cross sections, the distance the cross sections need to be from the external property boundary and the information to be shown on the cross sections will be determined by the Zoning Administrator. The cross sections shall show all outdoor storage areas and buildings. The vertical scale shall not exceed four times the horizontal scale. .

f. Utility plans. Utility plans shall be submitted for all major utilities and drainage facilities showing necessary easements, including but not limited to water, sanitary sewer, storm sewer, gas, telephone and electrical.

g. Lighting Plan. A lighting plan in accordance with Article X, 16-10-520 of Bennett's Municipal Code

h. Signage Program. A description of all signage to be used, indicating shape, size, material, color, location and text in accordance with Article XI of Bennett's Municipal Code.

(2) FDP text. The FDP written textual statement shall contain the following information:

a. A statement of the development concept of the FDP and how the FDP has been planned to incorporate the goals and objectives of the ODP.

b. A land use comparison chart demonstrating how the FDP complies with the underlying ODP. The chart shall include existing and proposed land use, respective acreages of each land use area, residential densities or floor area ratios as applicable, maximum building heights, building setbacks, minimum or maximum lot coverage, acreage and percentage of open space building coverage and square footage, and providing the percentage of paved, open space and landscaped areas in relation to gross area of the FDP.

c. A statement of assessment and mitigation for the preservation or other special treatment of significant natural, environmental, historical, archaeological or paleontological features.

d. Copies of any agreements, conveyances, restrictions or covenants which will govern the use, maintenance and continued protection of the PD and any of its park, open space, common areas or joint ownership areas.

e. A letter from all special districts intended to serve the property stating the property is already within such district or is within the district's service area. The Town may require inclusion into certain special districts before development processing can conclude.

f. If the application is a PD amendment, a chart comparing the criteria on the latest approved FDP with the criteria proposed by the amendment in accordance with subsection b above.

(3) Technical reports.

a. Traffic impact analysis. A traffic impact analysis shall be provided with the FDP, unless specifically waived by the Town Engineer. The traffic impact analysis study shall incorporate any assumptions identified in the regional transportation plan. Additionally, the study shall include projections of average daily incoming and outgoing trips generated by the project; including distribution and level of service. Trips generated by the project shall be assigned to the surrounding street network to a distance of at least one mile from the site. The study shall be in conformance with the Institute of Transportation Engineers Trip Generation Report and shall be signed by a Colorado registered professional engineer.

b. Soils report. A soils report shall be prepared and certified by a Professional Engineer or geologist, registered in the State of Colorado, who is knowledgeable in soils identification, classification, and use. The report shall locate and classify the dominant soil types within or affecting the proposed development. The report shall indicate the degree of compatibility of the

existing soils within the proposed development with regard to such engineering considerations as topography, drainage, bearing capacity and erosion potential. The report shall include a prognosis of the effects of the proposed development upon the existing site in this regard and shall include specific recommendations for additional exploration, testing, mapping or study as may be necessary to insure adequate protection from potentially hazardous or undesirable soils or geological conditions on the development site

c. Final drainage study. A final drainage study shall be prepared in conformance with the Town of Bennett Design Criteria and Construction Specifications Manual or other codes and criteria set forth by the Town. The study shall conform to any Town approved regional or sub-regional drainage study that incorporates the development area. The study shall describe storm drainage design for all of the land involved in the development and areas outside the development boundary that are impacted by the project. Any plans for erosion control and "Best Management Practices" shall meet current Town standards

d. Final utility plans, per direction of the Town Engineer.

(4) Any other information that the Zoning Administrator determines to be necessary for the review of the FDP. The Zoning Administrator may waive any of the preceding items if they are determined to be unnecessary for the review of the FDP.

Sec. 16-7-70. Conditions and standards for approval.

(a) 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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.080, 2002)

(b) 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 180-day deadline to submit final documents, the Board of Trustees may grant a single extension not to exceed an additional 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.

(c) 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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.060, 2002)

Sec. 16-7-80. Amendments to Outline Development Plan.

(a) 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 maximum density, floor area ratio or height;
- (4) Decrease the amount of required off-street parking; or
- (5) Reduce the minimum yards required at the boundary of the site.

(b) Any administrative approvals granted under this Section shall be transmitted to the Planning Commission and the Board of Trustees for their information by written memorandum from the Zoning Administrator. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3, 2002)

Sec. 16-7-90. Amendments to Final Development Plan.

(a) Except as provided below, no changes may be made in the approved FDP except upon application and approval by the Board of Trustees under the same procedures and requirements as specified for the initial submittal of a 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; or location, siting and height 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 ten percent (10%) 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 or decrease landscaping or sidewalks by more than ten percent (10%).

(b) Any changes which are approved shall constitute an amendment to the FDP.

(c) Any administrative amendments authorized by the Zoning Administrator shall be transmitted to the Planning Commission and Board of Trustees for their information by written communication from the Zoning Administrator. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.100, 2002)

Sec. 16-7-100. Recording of amendments.

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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.07.110, 2002)

Sec. 16-7-110. Temporary structures.

The Zoning Administrator may approve temporary structures for an FDP to be present on-site for a period of up to twenty-four (24) months. The structure must be removed at the end of the approval period and the site returned to the approved FDP requirements. In no event shall any property owner acquire a vested right to maintain such temporary structure beyond the twenty-four-month period provided in this Section. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.070.120, 2002)

Sec. 16-7-120. Control of development.

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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.070.130, 2002)

Sec. 16-7-130. Variances.

Notwithstanding any other provision of this Chapter, the Board of Adjustment has the power to hear and decide, grant or deny applications for variances on individual lots from the provisions of an approved planned development, except for use variances. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 466 §3-11.070.140, 2002)

ARTICLE VIII

RESERVED

ARTICLE IX

Design Guidelines

*Division 1
General Provisions*

Sec. 16-9-10. Intent.

The intent of this Article is to provide design guidelines that will aid in preserving and enhancing the overall community image as future development and redevelopment occurs. These guidelines are established to guide and direct future development in a way that preserves and reinforces the Town's

small-town character. Guidelines are intended for use by administrative officials of the Town and by Town boards and commissions, and may be a basis for approval or denial of building and land use applications. This Article is intended to supplement and not to replace planning or engineering design standards elsewhere in Town ordinances and policies. (Ord. 446 §11.09.10, 2001; Ord. 467 §1, 2002)

Sec. 16-9-20. Design review.

(a) The guidelines outlined below are to be used as a design aid by applicants proposing construction and development in the Town. The guidelines will be used by Town staff, the Planning Commission and the Board of Trustees in evaluating development proposals, including building permits, subdivisions and PD plans. Proposed projects must be consistent with these guidelines.

(b) In the event of conflicts between these guidelines and any applicable, more restrictive zoning, subdivision or other code requirements, those more restrictive regulations shall apply unless specific variances are granted. It is understood that some degree of flexibility is desired to allow applicants to meet unforeseen situations. If the applicant can demonstrate that alternative design solutions are more consistent with the intent of these guidelines and with the positive characteristics of the project's immediate area than the guidelines, the Town may deviate from certain of these design guidelines. It is understood that flexibility is desired to allow applicants to meet unforeseen or unique situations. Deviations from these design guidelines for individual projects do not set precedents for other projects. (Ord. 446 §11.09.011, 2001; Ord. 467 §1, 2002)

Sec. 16-9-30. Site considerations.

(a) Grading should minimize disturbance of natural topography and existing trees.

(b) Site design should take off-site impacts into consideration, including preservation of views, solar access, visual impact from major streets and gathering places, interconnection of utility and transportation links, and alternative transportation modes.

(c) 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.

(d) 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 and approved by the Town Engineer. (Ord. 446 §11.09.012, 2001; Ord. 467 §1, 2002)

*Division 2
Residential Site Design*

Sec. 16-9-210. Single-family residences.

(a) Buildings shall be oriented to have the main entry oriented toward the street.

(b) Overhead garage doors that load from local streets shall be set back from the front facade of the house.

(c) Entry walks from the street to the main entry of the dwelling are encouraged. (Ord. 446 §11.09.021, 2001; Ord. 467 §1, 2002)

Sec. 16-9-220. Multi-family residences.

(a) Residential buildings shall orient their main entry facades towards the street for building units that are adjacent to the street. Buildings should have varied setbacks, staggered elevations and detailing of facades to provide visual relief in the mass of the buildings.

(b) Site layout should minimize the amount of parking visible from the street.

(c) Trash enclosures and utility pedestals shall be fully screened through landscaping or screening walls. Screening walls shall use materials compatible with the building structure and be designed to be visually harmonious with the overall building architecture. (Ord. 446 §11.09.022, 2001; Ord. 467 §1, 2002)

Sec. 16-9-230. Garage and carport structures.

(a) Garage and carport structures shall be designed to be visually compatible with the architecture of the dwelling units. Garages incorporated as part of the dwelling structure are preferred.

(b) Garages must be set back from the drive aisle, street or alley so that a driveway length of twenty (20) feet can be achieved when there is a direct access into the garage.

(c) A recreational vehicle, trailer or boat may only be parked on a lot behind the front line of the house or, in the case of a corner lot, behind the front 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. A recreational vehicle used as daily transportation may be parked overnight in recognized driveways. (Ord. 446 §11.09.023, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

*Division 3
Architecture*

Sec. 16-9-310. Residential architecture.

The architecture of the Town is an important part of the overall image of the community. Elements of buildings such as style, scale, mass, form and materials all play important roles in defining the overall image of the community. The Town has a long heritage of architectural styles that can be traced to a variety of influences. Originally an agricultural community, the qualities of the historic parts of the Town provide a varied architectural heritage that is historically significant and also considered desirable as a model for future development. The following guidelines are intended to guide new developments in a way that does not replicate the old but is still sensitive to the past. (Ord. 446 §11.09.030, 2001; Ord. 467 §1, 2002)

Sec. 16-9-320. Objectives.

In order to preserve and enhance the character of the Town, all project designs should be compatible with their surroundings. Generally, a more conservative or traditional approach should be

given to architectural styles rather than trendy features and forms. Scale, form, setbacks and materials should be in keeping with the surrounding developed character. (Ord. 446 §11.09.031, 2001; Ord. 467 §1, 2002)

Sec. 16-9-330. Character, scale and form.

A variety of architectural styles exist within the Town. It is the intent of these guidelines that the character of traditional styles be reflected in new construction. A more contemporary extrapolation of traditional styles is desired.

(1) Proposed new buildings should be in scale with adjacent developed properties.

(2) Building forms should be harmonious with the forms found in the historic section of the Town. The principal elements to be considered include:

a. Roofs. Pitched roofs (6:12 or greater) are generally more appropriate.

b. Walls. Wall mass should be proportionate to the visual weight it must "carry" and convey a sense of structure. Wall planes should be varied.

c. Openings. Well-placed openings can lend a sense of continuity and rhythm to a design. The surface areas of walls and openings should be relatively equal. Excessive variety in sizes and shapes of openings combined with irregular placement will result in a weak design.

d. Eaves. All pitched roofs shall have eaves extending beyond the supporting walls.

(3) Materials should blend with the materials found in the historic area of the Town.

a. Exterior finish materials should include brick, tile, stone, wood lap siding, decorative shingles and stucco.

b. Design should contain at least two (2) basic building materials (in addition to glass). The use of a single material with no details or depth, or over-detailing with too many materials, will detract from the design.

c. The use of bright accent colors should be limited to trim and distinct architectural features. Within a single development, a variety of exterior colors should be used to avoid monotony.

d. Roofing materials may be wood, asphalt shingles, clay tiles, concrete tiles or other materials that contain a warm texture and color. Metal roofing tiles, standing seam metal roofs or shingles with bright, highly reflective artificial appearance are discouraged. (Ord. 446 §11.09.032, 2001; Ord. 467 §1, 2002)

Sec. 16-9-340. Porches and verandas.

Porches are encouraged as part of any new residential structure in both single-family and multi-family projects.

(1) Porches should typically have a roof supported by freestanding columns, with columns resting on a knee wall or connected with a railing.

(2) Columns and balustrades should be designed to be in keeping with the architecture. Railings should generally be constructed of wood.

(3) Glazing should be transparent with traditional wood framing. Occasional stained glass or other accent types of glass are acceptable on a limited basis. (Ord. 446 §11.09.033, 2001; Ord. 467 §1, 2002)

*Division 4
Miscellaneous Guidelines*

Sec. 16-9-410. Neighborhood design.

Residential neighborhoods should be designed to be incorporated into the rest of the community.

(1) Housing in neighborhoods should be planned for architectural diversity, avoiding monotonous and repetitive production housing.

(2) Housing should be of varied architectural styles and should reflect traditional design elements, including front porches, recessed or rear-loaded garages, varied building materials and articulated building elevations.

(3) Neighborhood open space should abut adjoining streets and not be hidden from public view.

(4) Every neighborhood shall have convenient parks and public spaces that encourage neighborhood activities. All homes within the Town should be within a quarter-mile walking distance of a public park or open space.

(5) Neighborhoods should have a variety of housing types, styles, densities and lot sizes.

(6) Rear elevations of residential buildings that are visible from public streets should be designed to avoid large, flat, unbroken planes.

(7) Neighborhoods should be designed to eliminate through lots abutting public streets.

(8) Neighborhood streets should be designed according to their function, anticipated traffic and parking needs. The following shall be considered in designing neighborhood streets:

a. Alleys and rear-loaded garages are encouraged to reduce direct driveway access onto streets, to provide for more continuity in streetscapes and to allow for rear yard trash pickup.

b. All neighborhood streets shall be open for public use, not restricted access.

c. Street layout should be in a grid or a modified grid pattern, unless precluded by topography, restricted intersection spacing or other design constraint.

(9) Neighborhoods should be designed to encourage pedestrian and bicycle circulation.

a. Trails, bicycle lanes or other means should provide internal circulation and connection to public facilities and community-wide trail systems.

b. Sidewalks along local residential streets should be detached, with a variety of street trees planted between the curb and the sidewalk.

(10) In instances in which a proposed residential subdivision is expected to border a railroad right-of-way, highway or arterial street, the design of the subdivision shall include effective noise-reduction measures, such as a landscaped buffer area, lots with greater than normal setbacks, fencing or a buffering parallel street. (Ord. 446 §1-11.09.040, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-9-420. Commercial and industrial area design.

Commercial areas should include landscaping and attention to architectural detail, and should be designed to encourage access by modes of transportation other than cars and trucks.

(1) Commercial strips precluding convenient pedestrian access to surrounding residential areas or adjacent commercial uses shall not be permitted.

(2) Buildings on commercial sites should be located close to adjoining streets, providing direct pedestrian access from sidewalks along those streets. The view from adjoining streets should not be primarily parking lots. (Ord. 446 §11.09.050, 2001; Ord. 467 §1, 2002)

Sec. 16-9-430. Street grid layout.

(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 should 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. (Ord. 446 §11.09.060, 2001; Ord. 467 §1, 2002)

Sec. 16-9-440. Design standards for subdivisions.

All proposed subdivision plats and PD plans shall be required to comply with the design standards contained herein, which shall be applied by the Town and its representatives and by the Planning Commission in evaluating a proposed plat and/or PD plan. (Ord. 446 §11.09.090, 2001; Ord. 467 §1, 2002)

Sec. 16-9-450. Conformity with the Comprehensive Plan.

A proposed subdivision plat and site plan shall also 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. (Ord. 446 §11.09.091, 2001; Ord. 467 §1, 2002)

ARTICLE X

Supplemental Regulations

*Division 1
Nonconforming Regulations*

Sec. 16-10-10. Nonconforming uses and structures.

A nonconforming use may be continued and a nonconforming structure may continue to be occupied or used as restricted by this Article. (Ord. 446 §11.10.010, 2001; Ord. 467 §1, 2002)

Sec. 16-10-20. Change of use.

A nonconforming use may not be changed to any other nonconforming use. (Ord. 446 §11.10.011, 2001; Ord. 467 §1, 2002)

Sec. 16-10-30. Abandonment of use.

If a nonconforming use ceases to be carried out on a regular basis for a period of at least six (6) months, the building or tract of land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use. (Ord. 446 §11.10.012, 2001; Ord. 467 §1, 2002)

Sec. 16-10-40. Restoration.

A nonconforming structure or a building containing a nonconforming use which has been damaged by fire or other causes may be restored to its original condition, 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. (Ord. 446 §11.10.013, 2001; Ord. 467 §1, 2002)

Sec. 16-10-50. Enlargement of a building containing a nonconforming use.

A nonconforming structure or building containing a nonconforming use may not be expanded except in compliance with current standards. (Ord. 446 §11.10.014, 2001; Ord. 467 §1, 2002)

Sec. 16-10-60. Alteration of a nonconforming building.

A nonconforming building may be structurally altered internally or repaired in any way permitted by this Chapter. Any building declared unsafe by the Building Inspector that contains a nonconforming use may be strengthened or restored to a safe condition. (Ord. 446 §11.10.015, 2001; Ord. 467 §1, 2002)

*Division 2
Temporary Uses*

Sec. 16-10-210. Temporary uses.

Temporary uses are land uses that may only be permitted for a limited period of time. Permitted temporary uses are listed in the Land Use Table in Section 16-5-420. (Ord. 446 §11.10.140, 2001; Ord. 467 §1, 2002)

Sec. 16-10-220. Temporary use approval process.

(a) 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.

(b) 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.

(c) 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 Code. 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.

(Ord. 446 §11.10.141, 2001; Ord. 467 §1, 2002; Ord. 570 §19, 2007)

Sec. 16-10-230. Application content.

An application for temporary use must be submitted to the Zoning Administrator. The application shall contain:

- (1) A site plan showing the location of the temporary use and patterns of pedestrian and vehicular traffic.
- (2) A statement of how any adverse impacts on adjacent property will be minimized.
- (3) A description of exterior materials to be used in the structure, including color and fire rating.

(4) A cash deposit, surety bond or letter of credit, adequate to cover any removal of structures and cleaning of the site, in an amount equal to one hundred twenty-five percent (125%) of the estimated removal and cleaning costs.

(5) Name and address of applicant.

(6) Name and address of property owner, if different from the applicant, and a statement in writing authorizing the applicant to use the property as shown in the application.

(7) The application fee. (8) Any other information necessary to review the impact of the proposed use.

The applicant shall obtain all required permits prior to moving the temporary facilities onto the site. (Ord. 446 §11.10.142, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

*Division 3
Conditional Uses*

Sec. 16-10-310. Purpose.

This Division 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. Certain uses, as specified in the zoning district regulations in Article V and VI, are conditional uses, which may be allowed subject to the provisions set forth in this Section. (Ord. 446 §11.10.151, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 551 §1, 2006)

Sec. 16-10-320. Application requirements.

(a)

(b) The application shall include the development application form, tax statement and appropriate fees as required. The applicant 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 Section 16-10-340 below, as applicable.

(4) 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. (Ord. 446 §11.10.152, 2001; Ord. 467 §1, 2002; Ord. 551 §1, 2006; Ord. 583 §2, 2008; Ord. 584 §2, 2008)

Sec. 16-10-330. Processing procedures.

(a) A conditional use application shall be reviewed by both the Planning Commission and Board of Trustees.(b) The Planning Commission and the Board of Trustees shall each provide notice and hold a public hearing on the conditional use application in accordance with 16-2-130. (Ord. 446 §11.10.153, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 551 §1, 2006)

Sec. 16-10-340. Approval criteria and conditions.

(a) 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?

(b) 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. (Ord. 446 §11.10.154, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 551 §1, 2006)

Sec. 16-10-350. Permitting and control of conditional use.

(a) An approved conditional use shall not be conducted until a written conditional use permit and all other 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.

(b) 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.

(c) 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.

(d) 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 Division.

(e) 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. (Ord. 446 §11.10.155, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005; Ord. 551 § 1, 2006; Ord. 583 §3, 2008; Ord. 584 §3, 2008)

*Division 4
Miscellaneous Regulations*

Sec. 16-10-410. Yard regulations.

Cornices, eaves or similar architectural features may extend into a required setback not more than two (2) feet. (Ord. 446 §11.10.020, 2001; Ord. 467 §1, 2002)

Sec. 16-10-420. Group home regulations.

(a) Group homes may be approved as conditional uses in all residential districts subject to the requirements set forth below. Before any group home is approved, the Planning Commission shall first conduct a hearing as proscribed in this Article for the purpose of approving, denying or approving with conditions the application for a group home. If the application is approved, the Planning Commission shall establish the type of group home permitted and the number of residents allowed in such a group home. In conducting the hearing, the Planning Commission 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. (Ord. 446 §11.10.030, 2001; Ord. 467 §1, 2002; Ord. 526 §1, 2005)

Sec. 16-10-430. Manufactured homes.

The following standards apply to manufactured homes that are located on individually owned lots:

(1) The manufactured home shall be no less than twenty-four (24) feet wide and thirty-six (36) feet in length.

(2) The manufactured home shall be installed on a permanent, engineered foundation.

(3) The manufactured home shall have a brick, wood or cosmetically equivalent exterior siding and a pitched roof with not less than a 6:12 pitch.

(4) The manufactured home shall be certified by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §401 et seq., as amended.

(5) All special building code provisions adopted by the Town, such as snow load, roof, wind shear and energy conservation factors, shall apply to manufactured homes.

(6) All provisions of Article IX of this Chapter shall apply to manufactured homes. (Ord. 446 §11.10.040, 2001; Ord. 467 §1, 2002)

Sec. 16-10-440. Mobile home parks.

Rental parks in which mobile homes or manufactured homes are located on rented sites 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 at least 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. (Ord. 446 §11.10.050, 2001; Ord. 467 §1, 2002)

Sec. 16-10-450. Cellular and wireless communications facilities.

(a) Cellular or similar low-power (less than one thousand [1,000] watts transmission) telecommunications facilities are allowed as a conditional use in the zone districts as shown in the Land Use Table in Section 16-5-420, provided that the height of the antennae does not exceed the maximum building height limit of the zone district in which it is located.

(b) The Zoning Administrator may approve the installation of telecommunications antennae which exceed the maximum height allowed in the zone district by not more than twenty percent (20%). Such approval may be granted provided that the applicant has demonstrated graphically or through data certified by an engineer competent in structural design that the additional height is required to:

(1) Elevate the antennae above an adjacent obstacle which interferes with transmission and reception.

(2) Maximize the site's efficiency, thus mitigating the need for one (1) or more additional sites, or the need for a higher facility at another location.

(c) A Site Plan shall be required for all parcels upon which telecommunications facilities are proposed to be installed. In addition to all applicable zone district standards, the following standards for all telecommunications facilities shall apply:

(1) Approval of an site plan shall be granted only upon confirmation by the Building Inspector that the design and engineering of the tower, mounting frame or monopole mast meets the applicable provisions of the Town's building codes. The required drawings and specifications for the structures and footings shall be approved by and bear the seal of a registered engineer competent in structural design.

(2) Telecommunications facilities shall not occupy more than one thousand (1,000) square feet of the total land area of the site on which they are located.

(3) Telecommunications sites shall be visually screened from adjacent residential uses and public rights-of-way. The exterior finish and color of telecommunication facilities shall be compatible with adjacent development. Specific requirements for screening, landscaping and/or exterior building finish shall be determined on a site-by-site basis considering view preservation and the proximity of the site to residential properties and public rights-of-way. It is not the intent of this Paragraph to require the total screening of monopole masts.

(4) Ancillary utility structures and equipment buildings shall meet the required minimum building setbacks. Towers or monopole masts shall meet the required minimum building setbacks.

(d) 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. (Ord. 446 §11.10.070, 2001; Ord. 467 §1, 2002)

Sec. 16-10-460. Utility installations.

Utility installations which occupy more than one thousand (1,000) square feet are permitted with conditions in all zone districts, including telephone exchange, water reservoir, gas regulator stations, electric substations, utility pumping stations and water wells, provided that the conditional use is approved and that the following conditions are met:

- (1) The location of such a facility will not create a negative impact on existing or proposed adjacent development.
- (2) The facility is screened from general public view and from adjacent residential uses.
- (3) Performance standards found in Section 16-10-510 of this Article shall be met. (Ord. 446 §11.10.080, 2001; Ord. 467 §1, 2002)

Sec. 16-10-470. Fences, hedges and walls.

- (a) Fences, hedges, 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.

(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 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) Fences, walls and hedges in residential zone districts shall meet the following standards:

(1) No barbed wire, sharp-pointed or electrically charged fence shall be permitted.

(2) Height limits and construction type:

a. Front yards:

1. Maximum height: four (4) feet.

2. Construction: At least fifty percent (50%) of the surface shall be open. Chain link is not allowed.

b. Side and rear yards:

1. Maximum height: six (6) feet.

2. Construction: May be one hundred percent (100%) solid.

(c) Fences, walls and hedges in agricultural, commercial and industrial zone districts shall meet the following standards:

(1) Maximum height: eight (8) feet.

(2) Barbed wire or electrical fences shall be permitted only in industrial and agricultural zone districts. (Ord. 446 §11.10.090, 2001; Ord. 467 §1, 2002)

Sec. 16-10-480. Accessory buildings and uses.

The following accessory buildings and uses are allowed:

(1) Off-street parking areas.

(2) Off-street loading areas.

(3) Fences and walls.

(4) Private greenhouses.

- (5) Private swimming pools, hot tubs and spas.
- (6) Interior storage of merchandise in nonresidential districts.
- (7) Private garages.
- (8) Satellite dishes.
- (9) Storage sheds for the private use of the occupants of the lot. (Ord. 446 §11.10.100, 2001; Ord. 467 §1, 2002)

Sec. 16-10-490. Home occupations.

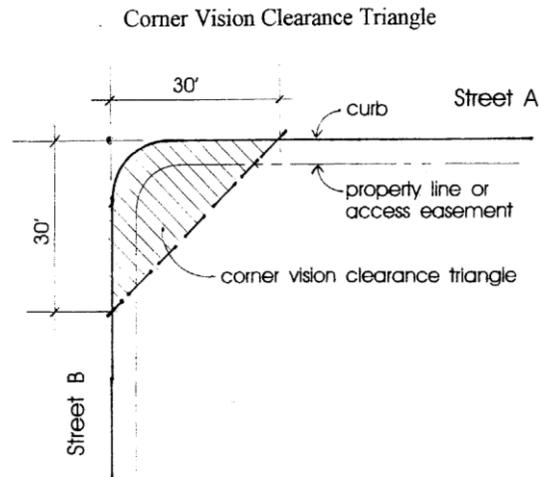
Home occupations shall meet the following standards:

- (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 Code. (Ord. 446 §11.10.110, 2001; Ord. 467 §1, 2002)

Sec. 16-10-500. 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 thirty (30) feet back from the point of intersection of the extended curb lines.



(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. (Ord. 446 §11.10.160, 2001; Ord. 467 §1, 2002)

Sec. 16-10-510. Performance standards for uses in all zoning districts.

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 Section 16-10-520 of the Code.
- (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. (Ord. 446 §11.10.200, 2001; Ord. 467 §1, 2002)

Sec. 16-10-520. Lighting Standards.

(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 excepted herein. The following uses shall conform to the requirements of this Section:

(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 Section and shall submit a lighting plan in accordance with Section 16-10-520(g).

(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 Section; provided, however, that compliance with the requirements of this Section 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 Section shall be met prior to a final inspection for any building permit.

(3) New lighting. All exterior lighting and interior lighting from buildings or structures that affect the outdoor environment installed after the effective date of the ordinance codified in this Section shall conform to the lighting standards set forth in this Section.

(4) Existing lighting systems. All existing lighting systems legally installed and operative before the effective date of the ordinance codified in this Section shall be considered legal nonconforming lighting. 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 Section.

(5) Property owners and occupants are also encouraged to reduce the wattage of the lamp or choose a softer light source like a compact fluorescent or a frosted, translucent bulb.

(6) Exemptions. The standards of this Section 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 15 watt incandescent or one hundred lumens and is not used from 12:00 a.m. to dusk.

b. Holiday Lights: Holiday lights on residential and non-residential properties if the lights remain lit for no more than 90 days within one twelve (12) month period.

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.

(7) Responsibility for compliance. Property owners, lessees, and renters shall be jointly and severally responsible for complying with the light standards set forth in this Section.

(c) Prohibited Lighting. Search, blinking, pulsating, flashing, changing intensity, strobe, beacon, and laser lights are all prohibited from use.

(d) Design Standards. For all lighting subject to these standards, no person shall install or maintain any lighting that fails to meet the requirements of this Section. Lighting shall meet the following design standards:

(1) Lighting Zones: Pursuant to Section 16-10-520(k), 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 k.1.

(2) Shielding Requirements: The illumination from an exterior lamp that emits more than 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 definition for fully shielding and full cut-off as defined herein.

(3) Side Shields: Any exterior light fixture located within fifteen feet of a property line of a residential zoning district or an existing residential use or within ten feet of a public right-of-way shall provide side shields on the side(s) facing the property line, residential use, or public right-of-way, as applicable.

(4) Light Source Requirements: All exterior light fixtures should utilize one 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 16-10-520(e).

(5) Light from Buildings: The illuminance levels at building entrances and windows may exceed the maximum allowed (see Table k.1 for details) by 100% of the site lighting to a distance of 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 Chapter 16, Article XI of this Code, all signs shall comply with the following lighting standards:

a. Internally Illuminated Signs:

- i. Luminous intensity shall be limited to a maximum of 600 candelas per meter squared (NITS) for the entire sign 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 80 lumens per square foot of sign face.

(7) Canopy Lighting: Lighting fixtures mounted on canopies 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 upward aimed and shielded spotlight light fixture which shall not exceed 40 watt metal halide or its equivalent. Flag pole lighting is exempt from the curfew limitations set forth in Section 16-10-520(j).

(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 16-10-520(e).

(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 no illuminance escapes the façade. Building facades may be illuminated with a maximum 40 watt lamp.

(11) Recreational Facilities: The maximum initial horizontal illumination for recreational facilities shall be the lesser of 50 f.c. or the IESNA standards for the specific recreational facility. Lighting for parking lots and pedestrian areas shall be a maximum of 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 k.1. The term recreational facility, for the purposes of this subsection, is an area or structure designated for active recreation, whether publicly or privately owned, including, but not limited to, baseball diamonds, soccer and football fields, golf courses, tennis courts, and swimming pools.

(12) Single Family Detached (SFD) Development:

a. Unless the total fixture wattage is 60 watts or less, full cut-off fixtures must be utilized for exterior lighting in SFD development 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 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 60 watt incandescent bulb.

b. The curfew requirements set forth in Section 16-10-520(j) do not apply to SFD development.

(13) Right-of-Way Lighting: Lighting located within the public right-of-way shall comply with the definition of full cut-off as defined herein.

(e) Exceptions. The Zoning Administrator is authorized to grant exceptions to this Section in accordance with the following standards:

(1) Exceptions: The Zoning Administrator may grant an exception from the provisions of this Section if he or she finds:

a. 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 Section;

b. The proposed exception shall at no time allow proposed light levels to exceed the maximum lumen limits of this Section; and

c. The proposed exception does not conflict with the overall intent of this Section to eliminate glare, light pollution and light trespass.

(2) Temporary Lighting Exemption: The Zoning Administrator may grant an exemption from the requirements of this Section for temporary structures as defined by Section 16-7-130 of the Code if the Zoning Administrator finds that the proposed lighting for such temporary structure is designed in such a manner as to minimize light trespass and glare as defined herein.

(3) Equivalent Material: The Zoning Administrator may approve any alternative design, material or method provided it provides an approximate equivalent method of satisfying these standards and complies with IESNA recommendations.

(4) Conditions. In granting any exception pursuant to this Section 16-10-520(e), the Zoning Administrator may impose reasonable conditions to further the purpose of this Section.

(f) 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 16-12-100 in order eliminate conflicts between lighting fixtures and mature landscaping.

(g) Submittal Process. When a lighting plan is required as part of a Outlined Development Plan or Final Development Plan, an applicant shall comply with submittal requirements for those plans as set forth in the Code. 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 Section 16-10-520(h). If the Zoning Administrator determines the proposed lighting plan does not comply with this Section, the plan shall not be approved, and the building permit shall not be issued.

(h) Submittal Requirements. A lighting plan submittal shall include the following except that the Zoning Administrator may waive submittal requirements he or she determines to be inapplicable to the particular applicant:

(1) A site plan showing:

a. The location of all buildings and building heights, parking, and pedestrian areas on the lot or parcel;

b. The location and description including mature height of existing and proposed trees;

c. The location and height above grade of all light fixtures including building mounted fixtures; and

c. The type, lumen rating and wattage of each lamp source;

(2) A copy of the manufacturer's catalog information sheet and IESNA photometric distribution type, including any shielding information such as house side shields, and internal and exterior shields;

(3) Control descriptions including type of controls (timer, motion sensor, time clock, etc.); the light fixtures to be controlled by each type; the range of the motion actuation trigger and control schedule; and how lights shall be controlled during post-curfew hours;

(4) Aiming angles and diagrams for recreational facilities' light fixtures; and

(5) When light poles are proposed, a photometric plan showing the initial horizontal luminance on a ten feet by ten feet minimum grid across the entire site and

a minimum of ten feet beyond the lot or parcel property line. The grid shall also indicate maximum to minimum uniformities for each specific use area such as parking and circulation areas, pedestrian areas, and other common public areas.

(i) 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.

(j) Hours of Operation/Curfew. All non-residential 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 hour after the close of the facility, whichever is later, and remain extinguished until dawn, or one 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 Section.

(2) Post-curfew: Post-curfew light levels necessary for security shall comply with the standards set forth in Table k.1. Motion sensors may be used for lighting fixtures not needed for constant security lighting.

(k) Lighting Zones. The two (2) 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) The following table (Table k.1.) specifies the zoning districts within, and applicable to, the two Lighting Zones:

**Table k.1.
Lighting Zone Criteria**

	Lighting Zone 1	Lighting Zone 2
	Agricultural (A), Single-Family Residential (R1), Two-Family Residential (R2), Multi-Family	Commercial (C), Industrial (I-1, I-2) and applicable PD's

	Residential (R3) and Mobile Home Districts (MH1 & 2), Public (P) and all applicable residential PD's	
Maximum Initial Horizontal 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 2 poles and pedestrian circulation lighting shall be reduced to security levels*.	Entry lights may be left on. Parking lots with more than 2 poles and pedestrian circulation lighting shall be reduced to security levels*.
Maximum Allowable Pole Height (includes base and luminaire)	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 or more of the following techniques: (a) 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, payphone, or employee entrance.

Sec. 16-10-530. 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 5-feet in vertical depth at its deepest point measured from the existing ground surface, which include all of the following: a) less than 50 cubic yards of earth material; b) the removal of less than 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. 16-10-540. 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. It 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 35-feet in vertical height unless totally screened.

(4) All access roads longer than 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 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 200-feet from the property line.

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

(10) Mining, processing, or transporting operations shall be within the time limits of 6:00 AM to 6:00 PM, 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 days per calendar year.

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

(13) All reclaimed slopes shall not exceed 3H:1V. 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. 16-10-560. 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 16-10-530 with the exception that there is no depth limitation and the finished grades will be the same as the standards specified by the State of Colorado for reservoirs. Any reservoir design and construction must be approved by the Town Engineer.

ARTICLE XI

Sign Regulations

*Division 1
Sign Permits*

Sec. 16-11-10. Authority and purpose.

Pursuant to authority found in state law, the sign permit regulations in this Article are adopted for the purpose of promoting the health, safety, morals and general welfare of the Town. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.010, 2003)

Sec. 16-11-20. Permit required.

(a) Prior to the erection or installation of any sign allowed by Division 3 of this Article, including temporary signs, but not including exempt signs under Section 16-11-230, a sign permit shall be obtained pursuant to this Article. It shall be unlawful to erect or install any sign without having first obtained a permit pursuant to this Article.

(b) Sign permits shall also be required for sign programs specified in an approved Final Development Plan for centers, regional centers or large-scale single users, such program to include signs as allowed by Section 16-11-250 of this Code or as may be approved in a Final Development Plan. It shall be unlawful to erect or install any sign authorized under a Final Development Plan sign program without having first obtained a permit pursuant to this Article. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.020, 2003)

Sec. 16-11-30. Application filing.

An application for a sign permit shall be filed with the Zoning Administrator. The Zoning Administrator shall review the application for completeness in accordance with information required on the sign permit application form as set forth in this Chapter. The application shall be deemed complete when a completed application form is received, all sketches and other written information required for such application have been received, and all required fees have been paid. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.030, 2003)

Sec. 16-11-40. Zoning Administrator review and action.

The Zoning Administrator shall review the sign permit application in light of the approval criteria of Section 16-11-50. Based on the results of the review, the Zoning Administrator shall take final action on the sign permit application and either approve, approve with conditions or deny such application. The Zoning Administrator shall act upon a request for a sign permit within five (5) days of submittal of a complete application. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.040, 2003)

Sec. 16-11-50. Approval criteria.

A sign permit application shall comply with the following criteria:

(1) The proposed sign complies with the applicable standards set forth in this Chapter or as approved in a Final Development Plan and the building code of the Town. In cases where there is a conflict between Section 16-11-250 of this Chapter and the Final Development Plan, the Final Development Plan shall control.

(2) If the standards set forth in this Article conflict with those set forth in any other portion of this Chapter (including but not limited to the sign standards set forth in Section 16-6-60 for sexually oriented businesses), the more restrictive standards shall control and apply. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.050, 2003)

Sec. 16-11-60. Effect of approval; lapse.

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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.060, 2003)

*Division 2
Revocable Permits*

Sec. 16-11-110. Permit required.

A revocable permit shall be required whenever a person seeks to erect a sign on public property or within a public right-of-way. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.070, 2003)

Sec. 16-11-120. Application filing.

An application for a revocable permit shall be filed with the Zoning Administrator. The Zoning Administrator shall review the application for completeness in accordance with information required on the revocable permit application form as set forth in this Chapter. The application shall be deemed complete when the completed application form is received, all sketches and other written information required for such application have been received, and all required fees have been paid. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.080, 2003)

Sec. 16-11-130. Zoning Administrator review and action.

(a) The Zoning Administrator shall review each proposed revocable permit application in light of the approval criteria stated below and shall distribute the application to the Town Engineer for review and approval and, as deemed necessary, shall distribute the application for review by other Town staff.

(b) Based on the results of those reviews, the Zoning Administrator shall take action to approve, approve with conditions or deny the revocable permit application in light of the approval criteria. The Zoning Administrator shall complete the review and take action within five (5) days of receipt of a complete application.

Sec. 16-11-140. Approval criteria.

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 structure complies with all applicable use, development and design standards set forth in this Chapter.

(3) The proposed structure shall not interfere with street intersection visibility or in any other way adversely affect the public health, safety or welfare.

(4) The proposed structure 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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.110, 2003)

Division 3
Sign Standards

Sec. 16-11-210. Authority, purpose and relation to other laws.

The sign standards set forth in this Article are intended to and shall apply to all standard zoning districts established in Article V of this Chapter and to all Planned Development Zone and Overlay Districts within the Town. If these standards conflict with those set forth elsewhere in this Chapter, the more restrictive standards shall control and apply. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.210, 2003; Ord. 526 §1, 2005)

Sec. 16-11-220. Intent.

The intent of these standards is to coordinate the type, placement and physical dimensions of signs within the standard zoning districts and PD Zone Districts within the Town. It is also the intent of these regulations to:

- (1) Recognize the commercial communication requirements of all sectors of the business community;
- (2) Encourage the innovative use of design;
- (3) Promote both renovation and proper maintenance;
- (4) Allow for special circumstances;
- (5) Guarantee equal treatment through accurate recordkeeping and uniform enforcement;
- (6) Encourage signs that are attractive and compatible with the adjacent property;
- (7) Encourage signs that will preserve and enhance property values within the community;
- (8) Provide for the public's safety;
- (9) Preserve the environmental character of the community and prevent overload of visual stimuli; and
- (10) Promote safe visual perception of signs from a moving vehicle. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.220, 2003; Ord. 564 §1, 2007)

Sec. 16-11-230. Signs allowed without a permit.

Generally, the following types of signs are allowed in all standard zoning districts and PD Zone Districts as long as they meet the requirements of this Section and do not require the issuance of a building permit. All signs not listed in this Section require a permit pursuant to Division 1 of this Article.

(1) Official flags. Up to three (3) official flags of any government, governmental agency or nonprofit agency, 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, unless otherwise approved as part of a final development plan;

c. The vertical dimension of the flag is no more than one-fifth (1/5) of the height of the flagpole (i.e., if the height of the flagpole is twenty [20] feet, the vertical dimension of the flag cannot exceed four [4] feet);

d. The size of the flag does not exceed twenty (20) square feet; and

e. The location of the flagpole is set back a distance from a property line that is at least equal to its height.

(2) Other flags. One (1) flag in addition to permitted official 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, unless otherwise approved as part of a final development plan;

c. The vertical dimension of the flag is no more than one-fifth (1/5) of the height of the flagpole (i.e., if the height of the flagpole is twenty [20] feet, the vertical dimension of the flag cannot exceed four [4] feet);

d. The size of the flag does not exceed twenty (20) square feet; and

e. The location of the flagpole is set back a distance from a property line that is at least equal to its height.

(3) Large special event banners. Up to two (2) large special event banners may be suspended from the sides of a building housing a permitted community services use (events center, assembly hall or cultural facility), provided that:

- 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; and
- c. The maximum size of any such banner shall be two hundred (200) square feet.

(4) Small special event and other small special banners. In commercial areas and in the vicinity of Town Hall or public park areas, in connection with ongoing seasonal public events such as the Harvest Festival or a similar event, any number of small banners may be suspended from light poles, utility poles or building-mounted fixtures, provided that:

- a. Each such banner shall relate to a public event or shall identify a specific neighborhood located within the Town;
- b. When related to one-time or special events, each such banner shall be removed no later than one (1) week after the event to which it relates ends;
- c. No more than two (2) such banners may be suspended from any one (1) pole or fixture;
- d. The maximum size of any such banner shall be six (6) square feet; and
- e. In its discretion, the Town may require that a revocable permit be obtained for the placement of such banners on public property or within public rights-of-way.

(5) Public signs. Signs erected by any governmental agency, including but not limited to federal, state, county and Town governments, school and recreation districts.

(6) Public warning signs. Any number of protective, warning or traffic signs erected by a governmental agency.

(7) Interior signs. Any number of signs that are located within any structure and are not visible from adjacent properties or from the public streets.

(8) Historical signs. Any number of historical commemorative plaques, memorials or tables that are:

- a. Built into a building or mounted flat against the wall of a building, that contain the name of that building, the date of erection and use of the building; or
- b. Erected in any particular locations designated by the Town as having historical significance.

(9) Real estate signs. One (1) freestanding or wall-mounted sign per street frontage that advertises the sale, rental or lease of the property on which the sign is located. In commercial

zoning districts, this sign shall not be larger than thirty-two (32) square feet in total area, freestanding sign maximum height of six (6) feet and wall-mounted sign maximum height one (1) foot below roofline, no lighting. In residential zone districts, this sign shall not exceed six (6) square feet in total area, freestanding sign maximum height of four (4) feet and wall-mounted sign maximum height eight (8) feet, no lighting. Traffic visibility requirements shall be met in all cases.

(10) Address and building identification signs. Signs that include a letter, number, word or address used to identify a particular parcel of land, individual building or buildings located in a business, industrial or residential building complex or center, for purposes of information and not for advertising, and including an individual house address sign, provided that such signs:

- a. Are attached to the building identified;
- b. Are limited to two (2) per building;
- c. Are not more than five (5) square feet in total area for each sign; and
- d. May be illuminated.

(11) Permanent window signs. Permanent window signs may occupy up to ten percent (10%) of the total window area of each establishment in commercial zoning districts. Such signs may be illuminated only during the times the establishment is in operation.

(12) Temporary window signs. Temporary window signs may occupy up to seventy percent (70%) of the total window area in the commercial zoning districts for no more than two (2) periods of not more than four (4) consecutive days each (a total of eight [8] days) in any calendar month.

(13) Temporary wall signs. The following types of temporary wall signs may be erected in any zoning district for no more than two (2) periods of not more than four (4) consecutive days each (a total of eight [8] days) in any calendar month, subject to the following conditions:

- a. No more than one (1) temporary wall sign is allowed.
- b. Each sign shall be mounted on a wall of the building in which the business, organization or individual to which the sign refers is located.
- c. Each sign shall have a maximum area of forty (40) square feet.
- d. No sign listed as a prohibited sign in Section 16-11-300 shall be permitted, even on a temporary basis.
- e. FAA-licensed hot air balloons and air-filled facsimiles and other special advertising devices that meet the definition of *sign* in this Code are allowed, provided that:
 1. The device may not be used for more than two (2) periods of not more than four (4) consecutive days each (a total of eight [8] days) in any calendar month; and
 2. All other requirements of this Chapter are met.

(14) Temporary freestanding sidewalk signs. In commercial zoning districts, temporary freestanding signs shall be permitted to be placed on the sidewalks in front of commercial and retail uses, provided that:

- a. The maximum of each side of each such sign shall be six (6) square feet.
- b. No such freestanding sidewalk sign shall be placed within twenty-five (25) feet of another temporary freestanding sidewalk sign.
- c. Each such sign shall be maintained in good condition and repair, so that it does not create a hazard to pedestrians or their clothing or luggage.
- d. No such sign shall be anchored to or cause damage to the sidewalk surface or other elements of the public right-of-way. Each such sign may be placed on the sidewalk only during the business hours of the business to which it relates and only on the sidewalk fronting such business. Such sign shall not impede pedestrian movement and must be removed immediately upon the request of any Town official who determines that it is in violation of this Code or unsafe.
- e. In its discretion, the Town may require that a revocable permit be obtained for the placement of such signs.

(15) Election/campaign signs. Any number of election/campaign signs that are located on private property, provided that:

- a. The size and location of those signs do not create a hazard for automobile or pedestrian traffic or a public nuisance; and
- b. All such signs are removed within one (1) week after the election to which they relate.

(16) Temporary garage sale signs in residential areas. In residential zoning districts, two (2) signs per residential dwelling unit for no more than four (4) periods of not more than five (5) days each in any calendar year, that are located on private property, 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. The date of posting of the sign shall be stated on the sign face; and
- c. All such signs are removed by the end of the fifth day of posting. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.230, 2003; Ord. 526 §1, 2005; Ord. 564 §2, 2007)

Sec. 16-11-240. Sign schedule.

The number, types and sizes of signs set forth in the sign schedule are allowed in a standard zoning district or PD zoning district for the permitted uses indicated in the following table, unless otherwise approved in a final development plan. Each sign shall also comply with the exceptions and additional criteria listed in Section 16-11-250 (unless otherwise approved in a Final Development Plan) and with the structural requirements set forth in the Uniform Building Code.

**Table 16-1
Sign Schedule**

A. Agriculture, Open Space, Conservation and Community Separator:

Bed & Breakfast

- 1 Wall-mounted sign parallel or perpendicular to the building wall or freestanding sign with min. 10-ft. setback; max. area 2 sq. ft., max. height 8 ft., no backlighting permitted.

Conditional Use Sign

- 1 Wall-mounted sign or freestanding sign with min. 10-ft. setback; max. area 20 sq. ft., max. height 6 ft., lighting permitted.

Home Occupation Sign

- 1 Wall sign; max. area 1 sq. ft., max. height on building 8 ft., no lighting.

B. Residential: Single-Family Land Use:

Bed & Breakfast

- 1 Wall-mounted sign parallel or perpendicular to the building wall or freestanding sign with min. 10-ft. setback; max. area 2 sq. ft., max. height 8 ft., no backlighting permitted.

Church Sign

- 1 Freestanding sign with min. 10-ft. setback; may have changeable copy related to church operations only; max. area 32 sq. ft., max. height 6 ft., lighting permitted.
- 1 Wall sign; max. area 30 sq. ft. plus 1 sq. ft. per lineal foot of building frontage (not to exceed 100 sq. ft.); max. height 1 ft. below roofline, lighting permitted.

Conditional Use Sign

- 1 Wall-mounted sign or freestanding sign with min. 10-ft. setback; max. area 32 sq. ft., max. height 6 ft., lighting permitted.

Home Occupation Sign

- 1 Wall sign; max. area 1 sq. ft., max. height on building 8 ft., no lighting.

C. Residential: Multi-Family:

Bed & Breakfast

- 1 Wall-mounted sign parallel or perpendicular to the building wall or freestanding sign with min. 10-ft. setback; max. area 2 sq. ft., max. height 8 ft., no backlighting permitted.

Church Sign

- 1 Freestanding sign with min. 10-ft. setback; may have changeable copy related to church operations only; max. area 32 sq. ft., max. height 6 ft., lighting permitted.
- 1 Wall sign; max. area 30 sq. ft. plus 1 sq. ft. per lineal foot of building frontage (not to exceed 100 sq. ft.); max. height 1 ft. below roofline, lighting permitted.

Conditional Use Sign

- 1 Wall-mounted sign or freestanding sign with min. 10-ft. setback; max area 32 sq. ft., max. height 6 ft., lighting permitted.

Informational Sign (relating to principal permitted use)

- 2 Freestanding signs with min. 10-ft. setback or wall sign; max. area 5 sq. ft., max. relating to a principal height 6 ft., lighting permitted.

Home Occupation Sign

- 1 Wall sign; max. area 1 sq. ft., max. height on building 8 ft., no lighting.

Identification Sign (rest homes, hospitals and multi-family housing or complexes)

- 1 Freestanding sign with min. 25-ft- setback; max. area 40 sq. ft., max. height 8 ft., lighting permitted.

OR

- 1 Wall sign; max. area 40 sq. ft., max. height 25 ft., lighting permitted.

D. Commercial and Office:

Office

- 1 Building identification wall sign: max. area 60 sq. ft., max height 25 ft., lighting permitted;

OR

- 1 Building identification wall sign for buildings greater than 50,000 sq. ft. in gross floor area: max. area 80 sq. ft., max. height 25 ft., lighting permitted;

OR

- 1 Building identification wall sign for buildings over 35 ft. in height; max area 100 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public;

OR

- 1 Freestanding tenant panel sign located within 5 ft. of building (or wall sign) listing tenants located within a building; max. area 3 sq. ft. per tenant (up to a max. of 30 sq. ft.), max. height 10 ft., lighting permitted; and

- 1 Additional sign if building is not located in an office center, which can be either freestanding sign with min. setback of 10 ft.; max. area 32 sq. ft., max. height 6 ft., lighting permitted;

OR (if lot is 4 acres or less)

- 1 Freestanding sign with min. setback of 25 ft.; max. area 60 sq. ft.; max. height 12 ft., lighting permitted;

OR (if lot is more than 4 acres)

- 1 Freestanding sign with min. setback of 25 ft.; max. area 100 sq. ft., max. height 5 ft., lighting permitted;

- 1 Additional sign if building is located in an office center;

- 1 Freestanding establishment identification sign located within 15 feet of building; max. area 32 sq. ft., max. height 6 ft., lighting permitted; and

- 3 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

All Office Centers

- 1 Freestanding identification sign for hospitals, with min. 25-ft. setback (or wall sign); max. area 40 sq. ft., max. height 6 ft. (25 feet for wall sign), lighting permitted.

Office Center (0-2 Acres)

- 1 Freestanding sign with min. setback 10 ft.; max. area 32 sq. ft., max. height 6 ft., lighting permitted; and
- 2 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Office Center (between 2 - 8 acres)

- 2 Freestanding signs with min. 10-ft. setbacks, 1 per street frontage; max. area 50 sq. ft. per sign, max. height 12 ft., lighting permitted; and
- 3 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Office Center (between 8 – 18 acres)

- 1 Freestanding center directory sign with min. 25-ft. setback (or wall sign); max. area 20 sq. ft., max. height 8 ft., lighting permitted;
- 2 Freestanding signs with min. 25-ft. setbacks, 1 per street frontage; max. area 100 sq. ft. per sign, max. height 15 ft., lighting permitted; and
- 3 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Office Center (between 18 – 30 acres)

- 1 Freestanding center directory sign with min. 25-ft. setback (or wall sign); max. area 20 sq. ft., max. height 8 ft., lighting permitted;

- 1 Freestanding sign per street frontage, with min. 25-ft. setbacks, max. area 100 sq. ft. per sign, max. height 25 ft., lighting permitted; and
- 3 Freestanding informational signs with min. 10-ft setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Regional Center (larger than 30 acres)

Same requirements as for office centers between 18 and 30 acres;

OR

As approved in an overall final development plan.

E. Commercial and Office (along Colfax Avenue and Palmer Avenue):

Wall sign

- 1 Wall sign per building frontage; max. area 30 sq. ft. plus 1 sq. ft. per lineal foot of applicable building frontage (not to exceed 100 sq. ft.), max. height 25 ft., lighting permitted.

OR

- 1 Projecting wall sign (in lieu of 1 wall sign); max. area 25 sq. ft., max. height 25 ft., lighting permitted.

Under-Canopy Sign

- 1 Projecting sign located perpendicular to the front of the building; max. area 4 sq. ft., max. height 12 ft., lighting permitted.

Freestanding Sign

- 1 Additional sign if building is set back at least 10 ft. from the property line and is not located on a corner; and
- 1 Freestanding sign with a min. 10-ft setback; max. area 32 sq. ft., max. height 6 ft., lighting permitted.

Interior Store Sign

- 1 Additional sign for commercial building or shopping mall containing interior stores without external entrances; and
- 1 Exterior wall sign or cluster of wall signs at 1 location on the exterior of the building; max. area 6 sq. ft. per interior store.

F. Other Nonresidential Uses, including uses in a Mixed Use Area:

Commercial Building (Not located in a commercial center or a commercial building that is the only building in a commercial center)

- 1 Freestanding sign with min. setback of 10 ft.; max. area 32 sq. ft., max. height 6 ft., lighting permitted;
OR (if lot is 4 acres or less)
- 1 Freestanding sign with min. setback of 25 ft.; max. area 60 sq. ft., max. height 6 ft., lighting permitted;
OR (if lot is more than 4 acres)
- 1 Freestanding sign with min. setback of 25 ft.; max. area 100 sq. ft., max. height 5 ft., lighting permitted,
OR (if lot is more than 4 acres)
- 1 Freestanding sign located between 25 and 100 ft. of an interstate highway right-of-way, for a single user occupying more than 300,000 sq. ft. of gross floor area in a building located within 250 feet of an interstate highway; max. area 300 sq. ft., max. height 45 ft., lighting permitted; and
- 1 Wall sign per building frontage, except where the rear of the building would face onto or be adjacent to a residential zoning district boundary; max. area 30 sq. ft. plus 1 sq. ft. per lineal foot of applicable building frontage (not to exceed 100 sq. ft.), max. height 25 ft., lighting permitted;

OR

- 1 Projecting wall sign (in lieu of 1 wall sign), which may extend up to 5 ft. over a public right-of-way, but may not extend over a public street; max. area 25 sq. ft., max. height 25 ft., lighting permitted; and
- 1 Establishment identification wall sign per street frontage (maximum of 2) for establishments occupying more than 60,000 sq. ft. of gross leasable area; max. area 150 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public;

OR

- 1 Building identification wall sign for buildings over 35 ft. in height; max. area 100 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public;
- 1 Under-canopy projecting sign located perpendicular to the front of the building; max. area 4 sq. ft., max. height 12 ft., lighting permitted; and
- 3 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Note: As an alternative to the wall signs and informational signs otherwise available pursuant to the standards in this Section, a single user of a building containing at least one hundred fifty thousand (150,000) sq. ft. of gross leasable area may apply for approval of a final development plan setting for the permitted signs for such building.

Commercial Building (located in a Commercial Center, where the Commercial Center contains other use types)

- 1 Wall sign per building frontage, except where the rear of the building would face onto or be adjacent to a residential zoning district boundary; min. area 30 sq. ft. plus 1 sq. ft. per lineal foot of applicable building frontage (not to exceed 100 sq. ft.), max. height 25 ft., lighting permitted;
- OR
- 1 Projecting wall sign (in lieu of 1 wall sign), which may extend up to 5 ft. over a public right-of-way, but may not extend over a public street; max. area 25 sq. ft., max. height 25 ft., lighting permitted;
- OR
- 1 Building identification wall sign for buildings over 35 ft. in height; max area 100 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public;
 - 1 Establishment identification wall sign for per-street frontage (maximum of 2) for establishments occupying more than 60,000 sq. ft. of gross leasable area; max. area 150 sq. ft., max. height 1 ft. below roofline, lighting permitted; and
 - 1 Under-canopy projecting sign located perpendicular to the front of the building; max. area 4 sq. ft., max. height 12 ft., lighting permitted.

Commercial Building or Shopping Mall (containing interior establishments without external entrances)

- 1 Exterior wall sign per interior establishment; max. area 6 sq. ft. per 100 sq. ft. of gross floor area in the interior establishment (maximum 100 sq. ft.).

Office Building (not located in a Commercial Center or Office Building that is the only building in Commercial Center)

- 1 Freestanding establishment identification sign within 15 feet of building; max. area 32 sq. ft., max. height 6 ft., lighting permitted; and
 - 1 Building identification wall sign; max. area 40 sq. ft., max. height 25 ft., lighting permitted;
- OR
- 1 Building identification wall sign for buildings greater than 50,000 sq. ft. in gross floor area; max. area 80 sq. ft., max. height 25 ft., lighting permitted;
- OR
- 1 Building identification wall sign for buildings over 35 ft. in height; max. area 100 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public;
- OR
- 1 Freestanding tenant panel sign listing tenants located within a building; max. area 3 sq. ft. per tenant (up to a max. of 30 sq. ft.), max. setback 10 ft., max. height 10 ft., lighting permitted; and
 - 3 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Industrial Building

- 1 Freestanding establishment identification sign located within 10 ft. of building; in a center max. area 32 sq. ft., max. height 6 ft., lighting permitted; and
- 1 Wall sign per building frontage, except where the rear of the building would face onto or be adjacent to a residential zoning district boundary; min. area 30 sq. ft. plus 1 sq. ft. per lineal foot of applicable building frontage (not to exceed 100 sq. ft.), lighting permitted;

OR

- 1 Projecting wall sign (in lieu of 1 wall sign), which may extend up to 5 ft. over a public right-of-way, but may not extend over a public street; max. area 25 sq. ft., max. height 25 ft., lighting permitted;

OR

- 1 Building identification wall sign for buildings over 35 ft. in height; max. area 100 sq. ft., max. height 1 ft. below roofline, lighting permitted during hours when the primary building use is open to the public.

All Commercial Centers

- 1 Freestanding identification sign for rest homes, hospitals and multi-family housing complexes, with min. 25-ft. setback (or wall sign); max. area 40 sq. ft., max. height 6 ft. (25 ft. for wall sign), lighting permitted.

Commercial Center (0 – 2 acres)

- 1 Freestanding sign with min. setback 10 ft.; max. area 32 sq. ft., max. height 6 ft., lighting permitted; and
- 1 Freestanding informational sign with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Commercial Center (2 – 8 acres)

- 1 Freestanding center directory sign with min. 25-ft. setback (or wall sign); max. 20 sq. ft., max. height 8 ft., lighting permitted;
- 3 Freestanding signs with min. 10-ft. setbacks, 1 per street frontage; max. area 60 sq. ft. per sign; max. height 12 ft., lighting permitted; and
- 4 Freestanding informational signs with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Commercial Center (8 – 18 acres)

- 1 Freestanding center directory sign with min. 25-ft. setback (or wall sign); max. 20 sq. ft., max. height 8 ft., lighting permitted;
- 2 Freestanding signs with min. 25-ft. setbacks, 1 per street frontage; max. area 100 sq. ft. per sign, max. height 15 ft., lighting permitted; and
- 3 Freestanding informational sign with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Commercial Center (18 – 30 acres)

- 1 Freestanding center directory sign with min. 25-ft. setback (or wall sign); max. 20 sq. ft., max. height 8 ft., lighting permitted;
- 1 Freestanding sign per street frontage, with min. 25-ft. setbacks, max. area 100 sq. ft. per sign; max. height 25 ft.; lighting permitted; and
- 3 Freestanding informational sign with min. 10-ft. setback (or wall sign); max. area 5 sq. ft., max. height 6 ft., lighting permitted.

Commercial Center (larger than 30 acres)

Same requirements as for Commercial Centers between 18.1 and 30 acres or as approved in a Final Development Plan.

- G. Residential Subdivisions: Each residential subdivision may have: (i) one freestanding permanent subdivision identification sign; or (ii) more than one permanent subdivision identification sign incorporated into entryways or fences. Such signs:

1. Shall include only the name of the subdivision or development;
2. Shall be located at the principal street entrance to the subdivision;
3. Shall not be located within 3 ft. of a sidewalk or curb;
4. Shall have a maximum combined sign area of 40 sq. ft.;
5. Shall have a maximum height of 6 ft.;
6. Shall be constructed of masonry or other substantial materials;
7. May be lighted; and

8. Shall be covered by adequate provisions to maintain the sign provided by subdivision covenants and homeowners' association documents.

(Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.240, 2003; Ord. 564 §3, 2007)

Sec. 16-11-250. Exceptions and additional criteria.

All signs permitted pursuant to Section 16-11-240 in all standard zoning districts and PD Zone Districts shall meet the following additional requirements (the applicant shall bear the burden of demonstrating that a requirement is not applicable or that the sign is within a stated exception to such requirement):

- (1) No sign attached to a building shall project above the top of the building.
- (2) No flags or banners shall be displayed from poles or standards placed on the roof of a building or structure.
- (3) The rear service entrance to any business establishment may have one (1) sign no more than two (2) square feet in area stating only the name of the business and address.
- (4) No freestanding sign shall be located closer than ten (10) feet to a front property line.
- (5) Freestanding signs located within one hundred feet (100) of any residential zoned property shall not exceed six (6) feet in height.
- (6) All freestanding signs must meet the corner visibility requirements set forth in this Chapter.
- (7) Signs may only be constructed in a public right-of-way with the approval of the Town Engineer and pursuant to the procedures for a revocable permit set forth in Division 2 of this Article. Any sign located within a public right-of-way 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.
- (8) Signs on awnings and canopies (including gasoline service station canopies) may be used as a portion of the wall signage area allowed in the sign schedule on any building in commercial zoning districts. The area of the awning or canopy sign shall be included in the total signage area allowed for these types of wall signs and may not exceed the total square footage allowed for wall signage per building frontage. Awnings and canopies may be backlit. Where gasoline service station canopies are involved:
 - a. The permitted sign area shall be measured by applying the sign schedule ratio to the length of the canopy frontage, rather than the primary structure frontage; and
 - b. No more than one (1) wall sign, whether located on the primary structure or canopy, shall face in any given direction (i.e., there shall not be a wall sign and a canopy sign facing the same direction).

(9) 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 wall signage and shall be subject to the limitations on wall signage area in the sign schedule.

(10) Signs may be placed on motorized vehicles, provided that:

- a. Each sign must be permanently painted or affixed to the vehicle;
- b. 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
- c. No sign shall project more than one (1) foot above the roofline of the vehicle to which it is attached. When not in use, the vehicle 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.

(11) A super graphic or mural may be located on the same building face as a wall sign, provided that they are graphically incorporated into each other. No super graphic or wall mural shall occupy more than ten percent (10%) of any wall or roof surface or any accessory structure.

(12) Special signs, such as the following, may be approved pursuant to Division 1 of this Article:

- a. Super graphics or murals occupying more than ten percent (10%) of a wall or roof surface or an accessory building;
- b. Architectural sculpture;
- c. Nostalgic or period signs (such as barber poles); and
- d. Special district and historic district signs. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.250, 2003; Ord. 526 §1, 2005; Ord. 564 §4, 2007)

Sec. 16-11-260. Informational signs.

Signs that give specific instructions to the public using a building or facility are permitted, provided that such signs:

- (1) Have letters that do not exceed four (4) inches in height;
- (2) Do not exceed five (5) square feet in area;
- (3) Display only instructional information pertaining to the use of the site (such as "Enter," "Exit," "Warning," "Self Service," "Drive-Thru," "One-Way," etc.); and

(4) Do not contain any word, symbol or image identifying the owner, tenant or user of the building or facility. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.260, 2003)

Sec. 16-11-270. Changeable copy signs.

The following types of signs permitted under Section 16-11-240 are permitted to have changeable copy (without first obtaining a new sign permit) under the following conditions (signs not listed in this Section must obtain a new sign permit before copy is changed):

(1) No more than thirty-three percent (33%) of any building identification sign or center identification sign permitted by the sign schedule may have changeable copy.

(2) One (1) changeable copy theater or movie marquee sign identifying current productions and movies may be incorporated into, or may be substituted for, one (1) building identification sign and one (1) center identification sign permitted by the sign schedule. The area of any marquee sign including any changeable copy shall be included in calculating the total area of the sign it is incorporated into or replaces and shall not increase the permitted sign area of any such sign.

(3) Any portion of a church sign permitted by the sign schedule may have changeable copy.

(4) One (1) changeable copy gasoline price sign listing only the types and prices of gasoline may be incorporated into each freestanding or wall sign permitted by the sign schedule (maximum one [1] per street frontage). The area of changeable copy shall not exceed eight (8) square feet on any sign, and the area of changeable copy shall not be included in calculating the total area of a sign it is incorporated into.

(5) Two (2) changeable copy menu board signs are permitted for each drive-through restaurant, in addition to those signs listed in the sign schedule. Menu board signs may be freestanding or wall-mounted; one (1) sign shall be no more than thirty (30) square feet in area, while the second menu board shall be no more than sixteen (16) square feet in area. All menu boards shall have a maximum height of seven (7) feet and shall be readable only to traffic on the adjacent drive-through lane.

(6) One (1) changeable copy menu board wall sign indicating daily menu changes is permitted for each nondrive-through restaurant. Menu board signs shall be no more than three (3) square feet in area and must be placed no more than ten (10) feet from the front entrance of the restaurant.

(7) No changeable copy sign or portion of a sign may have changeable copy that is nailed, pinned, glued, taped or otherwise attached by obviously temporary means.

(8) No changeable copy sign or portion of a sign may be constructed using face or screen materials such as expanded metal or other types of mesh, any type of corrugated plastic such as Filon, V3 or Styrene or other types of materials that are commonly used for "portable" or "homemade" signs, unless the use of such materials for sign construction is expressly permitted under a uniform code or ordinance adopted by the Town.

(9) A sign shall be in violation of this Chapter if any part of the changeable copy portion of it or the track-type system or other method of attachment:

- a. Is absent from the sign;
- b. Deteriorates so that it is no longer consistent with the style or materials used in the permanent portion of the sign; or
- c. Is altered in such a way that it no longer conforms to the approved plans and specifications. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.270, 2003; 526 §1, 2005)

Sec. 16-11-280. Temporary signs.

The following types of temporary signs shall be allowed under the following conditions:

(1) Temporary residential tract sign. Each residential subdivision may have one (1) freestanding temporary tract sign for each type of housing unit to be built (e.g., single-family, townhouse and condominium), provided that each sign:

- a. Is located at a major entrance to the subdivision;
- b. Has a maximum area of no more than one hundred (100) square feet;
- c. Has a maximum height of twelve (12) feet;
- d. Is located at least twenty-five (25) feet from the public right-of-way; and
- e. Is not lighted.

Such signs may remain in place as long as active initial sales of the type of housing shown on the sign are occurring.

(2) Temporary freestanding on-site residential informational sign. Each builder of over twenty (20) residential units in a subdivision or development may have one (1) temporary informational sign for each type of residential unit that it is building in the subdivision or development (such as single-family, townhouse or condominium), provided that such sign:

- a. Only includes text directing visitors to the construction or sales site;
- b. Has a maximum area of fifteen (15) square feet;
- c. Has a maximum height of ten (10) feet; and
- d. Is not lighted.

Such signs may remain in place as long as active initial sales of the type of housing shown on the sign are occurring.

(3) Temporary nonresidential tract sign. Each subdivided lot in the commercial or industrial zoning districts 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;
- c. Is located at least twenty-five (25) feet from the public right-of-way; and
- d. Is not lighted.

Such signs may remain in place until the first certificate of occupancy is issued for a building on the tract or lot.

(4) Model home signs. Each builder within a subdivision or development may have the following types of model home signs under the following conditions, and each such sign may remain until the single-family model home is sold to a private buyer for use:

a. Each builder may have one (1) freestanding or wall sign within each group of attached or detached single-family model homes that it constructs, provided that each such sign:

1. Is located on a model home lot;
2. Has a maximum area of forty (40) square feet;
3. Has a maximum height of six (6) feet;
4. Has a minimum setback of ten (10) feet; and
5. Is not lighted.

b. Each attached or detached single-family model home may have one (1) freestanding or wall sign, provided that each such sign:

1. Is located on the same lot as the model home;
2. Has a maximum area of five (5) square feet;
3. Has a maximum height of six (6) feet; and
4. Is not lighted.

c. Each builder may have one (1) freestanding or wall sign at the entrance to each multi-family building it constructs, provided that each such sign:

1. Is located on the same lot as the multi-family building;
2. Has a maximum area of five (5) square feet;
3. Has a maximum height of six (6) feet; and
4. Is not lighted.

d. Each subdivision may have a temporary model home flag, provided that:

1. Each flagpole is located within two hundred (200) feet of an entrance to the subdivision on a model home lot containing a model home or a temporary sales office;
2. No flag has a maximum area of more than fifteen (15) square feet;
3. The total area of all flags is no more than ninety (90) square feet; and
4. No flagpole has a maximum height of more than twenty (20) feet.

All such signs must comply with the site distance requirements and other applicable siting and design criteria of this Article. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.280, 2003)

(5) Temporary signs on commercial buildings. Temporary signs, including but not limited to banners promoting special events, shall be permitted on commercial buildings in accordance with Division 1 of this Article and this Section.

a. General requirements:

1. One (1) temporary sign per business may be posted on the building frontage;
2. Each sign shall be mounted on the front elevation of the building in which the business or organization to which the sign refers is located;
3. Each sign shall have a maximum area of one hundred (100) square feet; and
4. No temporary sign shall be displayed for more than seven (7) consecutive days or more than a total of fourteen (14) days per quarter.

b. Grand openings. In addition to the temporary sign permitted above, the following will be permitted for a period of time not to exceed fourteen (14) days from the first day of business:

1. Two (2) temporary signs per business indicating the premises are now open for business may be posted on any elevation of the building, with a maximum area of fifty (50) square feet each, maximum height one (1) foot below roofline, no lighting; and
2. Stationary balloons and other stationary promotional inflatables.

c. Prohibited signs. No sign listed as a prohibited sign in Section 16-11-300 shall be permitted, even on a temporary basis.

d. Permits. Each 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. (Ord. 564 §5, 2007)

Sec. 16-11-290. Portable signs.

One (1) freestanding portable sign shall be allowed to each business in commercial zoning districts, under the following conditions:

(1) No more than two (2) signs shall be displayed outside of any single building at one (1) time, regardless of the number of businesses in the building.

(2) Each such sign shall be located:

a. Within ten (10) feet of the entrance of the business related to the sign (and in no case in front of another business unrelated to the sign);

b. So that a minimum three-foot unobstructed walkway is maintained at all times on any sidewalk where the sign is located;

c. So that both sides of the sign are not visible from the same direction; and

d. So that it does not obstruct traffic visibility or any official traffic control device.

Such signs are permitted on 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 until a revocable permit to occupy such space has been obtained pursuant to Division 2 of this Article.

(3) Each such sign shall be constructed:

a. With a maximum area of eight (8) square feet per side;

b. With a maximum height of four (4) feet;

c. Of plywood or other substantially rigid materials; and

d. Without wheels or a frame allowing it to be pulled as a trailer.

(4) All changeable copy shall meet the requirements of Section 16-11-270; all nonchangeable copy shall be painted or affixed by other means to be a permanent part of the sign; and no part of the sign shall include fluorescent or Day-Glo colors.

(5) All signs shall be maintained to avoid:

a. Faded or discolored backgrounds or copy;

b. Broken, loose or ill-fitting pieces; and

c. Jagged edges or other conditions that could be a hazard to pedestrians.

The Town shall have the right to remove any portable sign at any time that it is not maintained or constitutes a hazard to public health or safety.

(6) If this Section is repealed or amended, no portable signs permitted above shall be allowed to continue as a nonconforming use, and all portable signs not meeting the requirements of this Code after such repeal or amendment shall be removed immediately. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.290, 2003; 526 §1, 2005)

Sec. 16-11-295. Lighted Signs.

All lighted signs shall comply with the lighting standards set forth in Section 16-10-520 of the Code.

Sec. 16-11-300. Prohibited signs.

The following types of signs are prohibited in all zoning districts:

(1) Any sign which is not allowed under Sections 16-11-230, 16-11-240, 16-11-250, 16-11-280 or 16-11-290 above.

(2) Any sign which is misleading or fraudulent.

(3) Any sign erected on or over any public right-of-way or public property, unless such sign is explicitly allowed by this Chapter and a revocable permit for the sign has been obtained pursuant to Division 2 of this Article.

(4) Any moving sign, other than a sign explicitly permitted by this Chapter, which:

a. Has any part revolving at more than eight (8) revolutions per minute by any means, including fluttering or rotating; or

b. Has any part set in motion by movement of the atmosphere.

(5) Any sign displaying flashing or intermittent lights or lights of varying intensity, except those portions of a sign indicating time and temperature or electronic changeable copy signs with intermittent lights due to the change of copy.

(6) Any sign with direct or indirect lighting that causes direct glare into or upon any lot or tract with a residential use that is adjacent to the lot or tract where the sign is located.

(7) Any sign that is an imitation of an official government protective or warning sign, including signs using the words "Stop" or "Danger" to imply a need or requirement to stop or a caution for the existence of danger, and including signs that are copies of or which are likely to be confused with any official government protective or warning sign.

(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 not permanently affixed to a permanent, rigid structure, unless explicitly authorized by this Chapter.

(10) Any sign that violates any provision of any state law relative to outside advertising.

(11) Any temporary signs attached to utility poles or stakes, unless explicitly authorized by this Chapter.

(12) Any off-site sign (billboard sign) not explicitly permitted by Section 16-11-250.

(13) Bus bench advertising signs.

(14) Any sign which is inconsistent with any intergovernmental land use agreement the Town may have with other governments. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.300, 2003; 526 §1, 2005)

Sec. 16-11-310. Sign measurement, removal and alteration.

(a) Sign measurement.

(1) The area of any sign contained within a can, cabinet or frame shall be determined by calculating the total area of the sign including the can, cabinet or frame.

(2) The area of any sign displaying individual letters on a background (facade, wall, divisional wall awning or canopy) shall be measured by encompassing all the letters in a rectangle or square. Except for awning, canopy and permanent subdivision identification signs, three (3) capital letters and three (3) lowercase extensions may be exempted from being included in the area of measurement. Capital letters and lowercase extensions may not exceed twice the height of lowercase letters.

(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.

(4) Freestanding and projecting signs shall be measured by the area of one (1) face of the sign.

(5) 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.

(b) Sign removal or repair. In addition to any other remedies available under this Chapter, the Town may issue a written notice to owners of the following types of signs or supporting structures; or, if the owner is unknown, then to the owners of the property on which the following types of signs or supporting structures are located, of the need to remove or repair them:

(1) Any sign that does not meet the requirements set forth in this Chapter and does not qualify as a nonconforming use or structure.

(2) Any sign for which a permanent or temporary permit has expired.

(3) Any sign that is in disrepair or unsafe and deemed hazardous by the Town.

(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, except for alterations to changeable copy allowed pursuant to Section 16-11-270, shall require a new permit pursuant to Division 1 of this Article before the sign may be altered. Alterations shall include, without limitation:

- a. Changing the copy of the sign except as allowed pursuant to Section 16-11-270;
- b. Changing the size of the sign;
- c. Changing the shape of the sign;
- d. Changing the material of which the sign is constructed;
- e. Changing or adding lighting to the sign;
- f. Changing the location of the sign; or
- g. 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 only and replaced on the same support, without obtaining a new permit. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.310, 2003)

Sec. 16-11-320. 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 (d) 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) Applications for a minor sign modification shall be submitted to the Zoning Administrator. The Zoning Administrator shall review the application for completeness. The application shall be deemed complete when the completed application form is received, when all sketches and other written information required for such application have been received, and all required fees have been paid.

(c) Zoning Administrator review and action. The Zoning Administrator shall review each proposed minor modification application in light of the approval criteria of Subsection (d) below and, as deemed necessary, distribute the application to other staff. Based on the results of those reviews, the Zoning Administrator shall take final action on the minor modification application and either approve, approve with conditions or deny such application. The Zoning Administrator shall act upon a request for a minor modification within sixty (60) days of submittal of a complete application.

(d) 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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.320, 2003)

Sec. 16-11-330. Maintenance and upkeep of signs.

All signs, both currently existing and constructed in the future, and all parts and components thereof, shall be maintained in a safe condition; and the owner or lessee of any sign shall take all reasonable actions to ensure that any sign is properly maintained. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.330, 2003)

Sec. 16-11-340. Nonconforming signs.

Whenever one (1) of the following conditions occurs or exists, a sign which is nonconforming to the regulations of this Article 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 16-11-310;

(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. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.340, 2003)

Sec. 16-11-350. Enforcement.

It shall be unlawful to erect, construct, install maintain, repair or use any sign or structure in violation of any provision of this Article. Any person who violates any provision of this Article shall be punished as set forth in Section 1-4-20 of this Code. Each day during any portion of which any violation of any provision of this Article is committed, continued or permitted by any such person shall be a separate offense. This Section shall not be construed to limit any other enforcement rights of the Town provided for in this Code. (Ord. 446 §1, 2001; Ord. 467 §1, 2002; Ord. 490 §1-11.11.350, 2003; 526 §1, 2005)

ARTICLE XII

Landscaping Regulations

Sec. 16-12-10. Purpose.

It is the purpose and intent of this Article to:

- (1) Improve the general appearance of the Town and enhance its aesthetic appeal;
- (2) Improve the quality of life in the Town by encouraging a high quality of design for development;
- (3) Ensure adequate buffering between adjacent different land uses;
- (4) Conserve energy and water resources by encouraging the use of Xeriscaping;
- (5) Create tree-lined streets with deciduous canopies; and
- (6) Ensure the long-term health of functional and attractive landscaping by encouraging the proper maintenance thereof. (Ord. 446 §11.12.010, 2001; Ord. 467 §1, 2002)

Sec. 16-12-20. Authorization.

The Zoning Administrator shall have the authority to specify which criteria of this Article shall apply to each Site Plan application for all land uses except individual single-family residential lots. (Ord. 446 §11.12.020, 2001; Ord. 467 §1, 2002)

Sec. 16-12-30. Applicability.

- (a) A landscape plan prepared in conformance with this Article shall be submitted for:
 - (1) All multiple-family, business and industrial development proposed within the Town requiring approval of a site plan prior to the issuance of a building permit.
 - (2) The parking areas, unobstructed open space and common open space on all Final Development Plans required under the PD Zone District.

(b) A landscaping plan submitted with a Final Development Plan must comply with the landscaping requirements of this Article. 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 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. (Ord. 446 §11.12.030, 2001; Ord. 467 §1, 2002)

Sec. 16-12-40. Procedure.

(a) The Zoning Administrator shall review the proposed landscape plan as a component of the Site Plan or Final Development Plan. Approval or disapproval of the landscape plan shall be based on its conformance with the stated intent of this Article.

(b) A final landscape plan, including all required modifications and all necessary signatures, shall be filed in the office of the Town Clerk. Two (2) reproducible Mylar copies of the approved plan shall be provided to the Town Clerk for filing, along with any required filing fee, prior to issuance of a building permit. (Ord. 446 §11.12.040, 2001; Ord. 467 §1, 2002)

Sec. 16-12-50. Submittal requirements.

(a) Proposed landscape plans shall be submitted on one (1) or more sheets of paper twenty-four (24) inches by thirty-six (36) inches in size and shall generally include:

(1) Graphic and written scale not smaller than 1" = 20'.

(2) Topographic contours and spot elevations necessary to adequately identify areas needing erosion protection, and berms, slopes and walls which provide screening.

(3) The location, size, material and finish of all existing and proposed structures on the site, including buildings, fences and walls.

(4) The location of all corner vision clearance triangles, as defined in Article X.

(5) The location, quantity, type and size of all existing and proposed plants. The canopy width or coverage area shown for plants shall reflect their estimated size upon maturity. Existing plants or other landscaping which are proposed for removal or relocation shall also be indicated.

(6) A table of land area calculations in square feet which shall include the total site area, the unobstructed open space, parking, living landscaped areas and nonliving landscaped areas.

(7) Description of the proposed erosion control program.

(8) Detailed irrigation plan.

(9) The landscape plan shall include the name, address and telephone number of the person and/or firm who prepared the landscape design. A landscape plan shall be prepared by a landscape architect or designer.

(10) The following signature block shall be placed on the plan and signed by the owner or designated agent:

I, _____, owner, or designated agent thereof, shall complete the landscape improvements shown on this plan prior to ____ (date). Maintenance of the landscape improvements shall comply with Section 16-12-100 of the Bennett Municipal Code. It is hereby acknowledged that maintenance of the landscape improvements is not personal to the developer, but runs with the land and shall be the responsibility of all future owners.

Signature of Owner or Agent

(b) For all developments containing more than one (1) phase, a phasing plan including a time schedule for installation of each landscape phase shall be submitted for all phases.

(c) Developments with seeded areas shall provide an erosion control plan with irrigation provisions as required in the *Town of Bennett Storm Drainage Criteria Manual*. (Ord. 446 §11.12.050, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-12-60. 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. (Ord. 446 §11.12.051, 2001; Ord. 467 §1, 2002)

Sec. 16-12-70. Landscaping design criteria.

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

(1) 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 set 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 Article X of this Chapter, or due to traffic or pedestrian safety considerations.

(2) Use of nonliving materials: No artificial turf or plants shall be used. 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.

(3) 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 provided 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. 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.

(4) Corner vision clearance triangle: For safety and visibility purposes, a corner vision clearance triangle, as defined in Article X of this Chapter, shall be created and maintained.

(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) 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:

a. 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.

b. Trash receptacles: Trash receptacles and dumpsters shall be entirely screened from view and enclosed by a solid, gated wall at least six (6) feet in height. 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.

(7) 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 Article XV 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.

(8) 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. A financial guarantee is 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.

(9) Soil amendments. Before installing site landscape and irrigation, the soil must be amended with three (3) cubic yards composted organic material per one thousand (1,000) square feet, tilled at least six (6) inches into the top layer of soil. Where the soil is compacted from heavy equipment, the soil must be ripped to a depth of twelve (12) inches before applying soil amendments. Prior to amending soil, a soil test is required to be conducted in order to analyze the soil to determine other amendments necessary for healthy plant growth and drainage. (Ord. 446 §11.12.060, 2001; Ord. 467 §1, 2002)

Sec. 16-12-80. Plant selection.

Except for designated natural areas and wetlands, landscaping materials shall be placed or planted according to the provisions of this Article. 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: The quality and quantity of landscaping materials shall comply with the requirements of this Article.

(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) In order to conserve water, the use of Xeriscape methods and low-water-consumptive plants is encouraged.

(4) 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.

(5) 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.

(6) Recommended plant material. For a list of plant material and species recommended by the Town, please inquire with the Zoning Administrator. (Ord. 446 §11.12.070, 2001; Ord. 467 §1, 2002)

Sec. 16-12-90. 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. Upon completion, the owner or developer shall submit a letter certifying that the landscaping installation has been completed in compliance with the approved plans and that no substitutions have been made without receiving approval from the Zoning Administrator. (Ord. 446 §11.12.080, 2001; Ord. 467 §1, 2002)

Sec. 16-12-100. 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 eight inches (8) 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 16-2-20 regarding violations shall apply if it is found that adequate maintenance is not being performed according to this Section. (Ord. 446 §11.12.090, 2001; Ord. 467 §1, 2002)

Sec. 16-12-110. 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. (Ord. 446 §11.12.100, 2001; Ord. 467 §1, 2002)

ARTICLE XIII

Parking Regulations

Sec. 16-13-10. Intent.

Off-street parking requirements are intended to improve neighborhood appearance; to provide for customer convenience; to reduce the likelihood that residents, visitors, employees and customers will park vehicles on public streets in front of others' homes and businesses; to reduce traffic congestion; and to improve traffic safety by providing adequate parking provisions. (Ord. 446 §11.13.10, 2001; Ord. 467 §1, 2002)

Sec. 16-13-20. General requirements.

Unless otherwise provided, land uses are required to have off-street vehicle parking spaces in accordance with the standards of this Article. The number and type of spaces is determined by the use of the property. The following numbers of off-street parking spaces shall be provided with the construction of or addition to any building, or the implementation or expansion of the use of a site.

Off-Street Parking Requirements	
<i>Use</i>	<i>Parking Requirements</i>
Single-Family Residential	2.0 spaces per unit
Multi-Family Residential Units:	
Efficiency or 1-bedroom	1.5 spaces per unit
2 or more bedrooms	2.0 spaces per unit
Additional guest parking requirements for multiple-family residential buildings with 6 or more units	0.25 spaces for each unit
Assisted living housing for the elderly or for the handicapped	0.5 spaces per unit
Motel or hotel	1 space per unit, plus 2 spaces for the manager's unit. Semi-truck/trailer parking as approved by the Zoning Administrator
Nursing homes, rest homes	1 space per 4 beds, plus 1 space for every 2 employees on the largest work shift
Drive-in or fast food restaurant, or restaurant with no seating provided	1 space for every 2 seats or 1 space for every 100 square feet of floor area, whichever is greater, plus 1 space for every employee on the largest work shift. Vehicle stacking at drive-through lane as approved by the Zoning Administrator
Animal hospitals/veterinarian clinics	1 space for every 300 square feet of floor area
Hospitals	1 space for every 2 beds, plus 1 space for each employee on the largest work shift
Motor vehicle sales	1 space for every 500 square feet of building floor area, plus 1 space for every 6,000 square feet of outdoor vehicle display area
Motor vehicle service and repair	1 space for every 300 square feet of floor area
Business and professional offices	1 space for every 250 square feet of floor area
Medical, dental offices and clinics	1 space for every 200 square feet of floor area
Indoor restaurants and bars, without drive-through facilities	1 space for every 3 seats or 1 space for every 100 square feet of floor area, whichever is greater
Retail business, except furniture stores and appliance stores	1 space for every 200 square feet of floor area
Furniture stores, appliance stores	1 space for every 300 square feet of floor area
Wholesale business and warehouses	1 space for every 1,000 square feet of floor area or 1 space for every 2 employees, whichever is greater
Industrial uses (excluding offices) not mentioned specifically under another use in this section	1 space for every 500 square feet or 1 space for each employee, whichever is greater
Places of public assembly, such as churches, auditoriums, meeting rooms, theaters	1 space for every 3 seats in the principal place of assembly
Libraries	1 space for every 400 square feet of floor area
Preschool nurseries or child care centers, kindergarten and elementary schools and middle schools	2 spaces per classroom, plus 1 space per employee
High schools	15 spaces per classroom
Recreational facilities and health clubs	As approved by the Zoning Administrator

Note: When determining the number of parking spaces to be required, fractions of spaces shall be rounded to the nearest whole number, with five-tenths (.5) space being rounded up to one (1) space.

(Ord. 446 §11.13.20, 2001; Ord. 467 §1, 2002)

Sec. 16-13-30. Combination of uses.

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. (Ord. 446 §11.13.30, 2001; Ord. 467 §1, 2002)

Sec. 16-13-40. Uses not listed.

For specific uses not listed, the Zoning Administrator shall determine the appropriate number of parking spaces required, based upon the type of activity, intensity, number of employees and similarity to listed uses. (Ord. 446 §11.13.31, 2001; Ord. 467 §1, 2002)

Sec. 16-13-50. 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 Section 16-10-520 of the Code.

(e) 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.

(f) 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. (Ord. 446 §11.13.100, 2001; Ord. 467 §1, 2002)

Sec. 16-13-60. Minimum width of traffic aisles in parking lots.

The minimum width of traffic aisles in parking lots shall be as listed in the following table:

<i>Parking Stall Angle (degrees)</i>	<i>Direction of Traffic</i>	<i>Minimum Traffic Aisle and Driveway Width (feet)</i>
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

(Ord. 446 §11.13.110, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

ARTICLE XIV

Subdivision Regulations

Division 1 General Provisions

Sec. 16-14-10. Title.

This Article shall be known as the *Subdivision Regulations of the Town of Bennett*. (Ord. 446 §11.14.010, 2001; Ord. 467 §1, 2002)

Sec. 16-14-20. 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. (Ord. 446 §11.14.020, 2001; Ord. 467 §1, 2002)

Sec. 16-14-30. 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 successors.

(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, 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) The Town shall charge fees for reviewing plans and inspecting subdivisions as proscribed by ordinance and/or resolution. In addition, the Town may charge to the subdivider the actual cost of necessary consulting services incurred by the Town for reviewing plans and inspecting subdivisions.

(e) Subdivision review may be conducted concurrently with initial zoning upon annexation or with site plan review.

(f) Subdivision review shall be conducted concurrently with or following zoning review whenever a proposed subdivision necessitates a rezoning, conditional use permit or planned development.

(g) All materials submitted in subdivision applications are matters of public record and become the property of the Town.

(h) If the subdivider fails to submit the information requested by the Zoning Administrator, Planning Commission or Board of Trustees within ninety (90) days following any request, the application will be considered to be terminated.

(i) Any subdivider seeking a waiver from any of the requirements of this Article 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. (Ord. 446 §11.14.030, 2001; Ord. 467 §1, 2002)

Sec. 16-14-40. General responsibilities.

(a) Subdivider. The subdivider shall be responsible for:

(1) Preparing and submitting all plans, reports, studies and subdivision plats.

(2) The design, installation and construction warranty of all subdivision improvements, in full compliance with the development agreement, these regulations and other regulations and standards of the Town.

(3) Compliance with these regulations and specific performance of any obligations described in agreements with the Town.

(b) Town. The Town shall:

(1) Provide timely review and consideration of complete subdivision applications.

(2) Provide a reasonable means for public comment relevant to subdivision applications.

(3) Negotiate development agreements with which to enforce the terms of these regulations.

(c) Zoning Administrator. The Zoning Administrator shall be responsible for the overall administration of these regulations in a thorough and timely manner, including the following:

(1) Review of all sketch plans, subdivision plats, studies, reports and plans to identify any areas of inconsistency with any annexation or subdivision development agreement, this Chapter and the Town's design standards.

(2) Solicitation of comments from other appropriate parties.

(3) Presentation of subdivision applications, referral comments and analysis of conformance with the subdivision standards to the Planning Commission and Board of Trustees, and recommendation of either approval, approval with conditions or disapproval.

(4) Periodic monitoring of the installation and construction of all subdivision improvements.

(5) Recommendation to the Board of Trustees for acceptance of public improvements that have been installed and warranted in full compliance with any annexation agreement, the subdivision development agreement, this Chapter and the Town's design standards and specifications. (Ord. 446 §11.14.040, 2001; Ord. 467 §1, 2002)

Sec. 16-14-50. 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. (Ord. 446 §11.14.050, 2001; Ord. 467 §1, 2002)

Sec. 16-14-60. 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 the 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 Article.

(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 Article.

(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. (Ord. 446 §11.14.060, 2001; Ord. 467 §1, 2002)

Sec. 16-14-70. Classification of subdivisions.

All proposed subdivisions of land shall be classified as an administrative adjustment, a boundary line adjustment, or a major subdivision according to the following definitions:

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 adjustment means 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.

Major subdivision means all subdivisions not classified as boundary line adjustments or administrative adjustments.

*Division 2
Processing Procedure*

Sec. 16-14-210. Subdivision processing procedures.

The procedures contained in this Division shall be used to conduct the processing and review of subdivision applications. (Ord. 446 §11.14.080, 2001; Ord. 467 §1, 2002)

Sec. 16-14-220. 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 with the appropriate County Clerk and Recorder.

(d) The following materials are required to accompany an application for an administrative adjustment:

(1) Copies of the administrative adjustment plat. The number of copies required is determined by the Zoning Administrator. An administrative adjustment plat shall be prepared by a registered land surveyor or a registered engineer and shall contain all of the information required for a final plat.

(2) A check for the review fee.

(3) A completed land use application in a form approved by the Town.

(4) Title insurance covering the lots affected by the proposed adjustment.

(5) Any other information that the Zoning Administrator determines to be necessary to conduct a review of the application.

(e) The specific processing steps shall consist of:

(1) Upon receipt of a complete application package, the Zoning Administrator shall, within three (3) days, provide all necessary reviewing agencies with a copy of the plat and necessary supportive documents for their review and comment. The agencies shall be given twenty one (21) days from the date the plat is mailed to review it and to submit written review comments, if any, to the Zoning Administrator.

(2) Within five (5) days following the date that responses are due, the Zoning Administrator shall prepare written comments indicating any revisions that are necessary to bring the application into compliance with the Town's regulations. These comments will be forwarded to the applicant. If the applicant does not agree to the revisions requested by the Zoning Administrator, the application is terminated.

(3) The applicant will submit to the Zoning Administrator two (2) copies of a plat revised in accordance with the directions received from the staff. Once the staff determines that the plat is acceptable, the applicant will be directed to submit to the Town an identical copy on a photo Mylar for recording, along with the recording fee.

(4) The Zoning Administrator will obtain original signatures on the Mylar from the individuals representing the Town and appropriate County, and record the plat with the appropriate County Clerk and Recorder. The applicant shall provide the payment of the required recording fee. (Ord. 446 §11.14.081, 2001; Ord. 467 §1, 2002)

(f) Right to appeal. Within fifteen (15) days after the date of the Zoning Administrator's denial of an application for an administrative adjustment plat, 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

plat shall be scheduled for de novo review before the Board of Trustees pursuant to the public hearing procedures set forth in Section 2-130 of this Code. 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. 16-14-225. Boundary line adjustment review process.

(a) Purpose. 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) Approval required. 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) Application. The boundary line adjustment review process is commenced by filing with the Town an application including the following information:

- (1) The application and review fee set forth in Article XVIII of this Chapter;
- (2) Written consent to the proposed boundary line adjustment signed by the owners of all of the properties affected or by their duly authorized agents;
- (3) A vicinity map showing the general location of the affected properties;
- (4) An eleven-inch-by-seventeen-inch or larger scaled site plan drawing showing the existing and proposed boundary lines, dimensions and bearings of the properties to be affected by the adjustment; the locations, dimensions and setbacks for all existing and proposed improvements, structures, easements and utilities; and the current zoning of the properties;
- (5) The legal descriptions of the properties affected by the adjustment, describing such properties before and after the proposed adjustment, and a legal description of the area subject to the adjustment;
- (6) The proposed deeds or other instruments of conveyance to be used to effectuate the adjustment, together with legal descriptions;
- (7) A current title report in the form of a title commitment indicating the current ownership and the encumbrances, if any, on the affected properties. The report shall have been issued within three (3) months prior to submission of the application, and updated commitments shall be provided upon request;
- (8) A certificate of taxes due or other evidence demonstrating that there are no overdue taxes on the affected properties;
- (9) Certified mail return receipts and copies of the letters from the owners to the holders of any mortgages or deeds of trust upon the properties evidencing the fact that the owners have sent a

copy of the application to such holders and notified the holders of the requested boundary line adjustment; and

(10) Such other data and information the Zoning Administrator reasonably determines necessary to conduct a review of the application. The applicant shall promptly comply with any requests to provide additional or supplemental information. The deadline for action on an adjustment application shall be automatically extended to reflect the submittal date of any additional or supplemental information.

(d) Staff review. Upon receipt of a complete boundary line adjustment application, the Zoning Administrator shall review the request to determine whether it complies with the requirements of this Code. The application may be referred to other Town departments and to other appropriate agencies and persons, and referral comments and consultation regarding the application may be received from such departments, agencies and persons. The applicant shall be provided with copies of any written referral comments.

(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 Code 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 2-130 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 Sections 16-2-110 and 16-2-120 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 the planned 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. (Ord. 592 §3, 2009)

Sec. 16-14-230. Major subdivision review process.

All subdivisions that do not fit within the definition of administrative 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. (Ord. 446 §11.14.083, 2001; Ord. 467 §1, 2002; Ord. 548 §2, 2006)

Sec. 16-14-240. 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 Section 16-14-310 of this Article.

b. Within thirty (30) days of receipt of a complete sketch plan application, the Zoning Administrator shall schedule a meeting between the subdivider and the Planning Commission to review the sketch plan and to 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. Within thirty (30) days after the Planning Commission review of the sketch plan, the Town staff shall send written comments from the Planning Commission to the subdivider.

d. 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 IV of this Chapter 16 or state statute. After the sketch plan review, the applicant may submit an application for a final plat. (Ord. 446 §11.14.084, 2001; Ord. 467 §1, 2002)

(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 Code 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. 16-14-250. 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 Section 16-14-320 of this Article.

b. Within thirty (30) days of receipt of a complete final plat application, the Zoning Administrator shall schedule a hearing with the Planning Commission to review the final plat.

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 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 have been met.

Division 3
Submittal Requirements

Sec. 16-14-310. Sketch plan submittal requirements.

A sketch plan application shall consist of the following:

(1) A sketch plan drawing submitted on sheets of paper eighteen (18) inches by twenty-four (24) inches in size at a scale of 1" = 100', 1" = 60', 1" = 40' or 1" = 20' and containing the following information:

a. The proposed name of the subdivision, which must be different than the name of any other subdivision in the County.

b. A clear and accurate legal description of the exterior boundary of the subdivision, along with the total acreage of the area within the subdivision.

c. The boundary line of the subdivision drawn in a heavy solid line.

d. The names, addresses and telephone numbers of the surface owners of all property to be subdivided, the subdivider and the subdivider's engineer, surveyor and/or land planner.

e. The date of preparation of the sketch plan, a scale in written and graphic form and a north point.

f. A vicinity map depicting the location of the subdivision, including references to section lines, adjacent streets and subdivisions.

- g. The existing land use and zoning and proposed land use and zoning within the subdivision, and the land use and zoning on contiguous properties, including a table providing the following information for each proposed land use area: total acreage; proposed density or floor area ratio; proposed number of dwelling units; and approximate size of proposed residential lots.
 - h. The location of all natural drainage courses or watercourses, any geologic hazard areas, and other significant natural features within and adjacent to the subdivision.
 - i. The boundaries of any areas within the subdivision subject to one-hundred-year floods.
 - j. The approximate location, size and shape of proposed lots, blocks, streets and public areas.
 - k. Existing and proposed easements and rights-of-way on or adjacent to the property.
 - l. Existing and proposed streets on or adjacent to the property (show and label street name).
 - m. General locations of existing utilities on or adjacent to the property.
 - n. Trails - show how the development will tie into the regional trails network.
 - o. Note indicating how the ten (10) percent parkland and eight (8) percent school land dedication will be met (per Section 16-14-520).p. Existing and proposed topographic contours at ten-foot intervals and a preliminary drainage report, unless specifically waived by the Town Engineer.
 - q. A preliminary soils report, unless specifically waived by the Town Engineer.
 - r. A preliminary traffic impact analysis, unless specifically waived by the Town Engineer.
 - s. Preliminary utility plans, unless specifically waived by the Town Engineer.
- (2) A check for the sketch plan review fee, if required.
 - (3) Completed application and other forms as directed by the Zoning Administrator.
 - (4) A cover letter describing the intent of the proposed subdivision.
 - (5) Any other information that the Zoning Administrator determines to be necessary for the review of the proposal.

(Ord. 446 §11.14.091, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-14-320. Final plat submittal requirements.

The final plat application shall consist of the following:

(a) Forms and fees. The application shall include appropriate forms and fees as directed by the Zoning Administrator.

(b) Title commitment. A title commitment dated no more than thirty (30) days from the date of final plat application submittal. The title to all public lands, rights-of-ways and easements dedicated by the plat shall be free and clear of all monetary liens and encumbrances (such as mortgages, deeds of trusts, mechanic liens, etc.) If required by the Town, the plat shall contain consents by such interest holders, in the form required by the Town. Subject to the approval of the Town Attorney, a title insurance policy shall be provided upon recording insuring the Town's title to all public lands dedicated to it to be free and clear of all liens and encumbrances.

(c) Final plat map. The final plat map shall be prepared on mylar sheets eighteen (18) inches by twenty-four (24) inches in size at a scale of 1" = 100', 1" = 60', 1" = 40' or 1" = 20' and contain the following information:

(1) Title block, scale, north arrow, and vicinity map..

(2) Identification of and address for present ownership and developer if different from owner.

(3) A legal description of the property to be subdivided, with the total acreage of the area within the subdivision.

(4) Name, address and telephone number of the licensed surveyor, licensed engineer or other technical consultants involved with the plat.

(5) The location and dimensions of all existing streets, alleys, easements, rights-of-way and watercourses within and adjacent to the subdivision and names of all such streets.

(6) The names of all adjoining subdivisions with dotted lines of abutting lots. If the adjoining land is unplatted, it should be shown as such.

(7) Approximate existing and proposed locations and sizes of all easements, including but not limited to easements for water, reuse water, sanitary sewer, drainage, natural gas, telephone and electrical facilities. An identification of the streets, alleys, easements, parks and other public places and facilities as shown on the plat and a dedication thereof to the public use, or a cross-reference to any previously recorded dedication. The plat shall show the widths and names of existing and proposed abutting streets and widths of alleys.

(8) A logical identification system for all lots, blocks and names of streets.

(9) Designation of any area subject to flooding and adequate easements for flood control.

(10) All dimensions, both linear and angular, are to be determined by an accurate control survey in the field, which must balance and close within a limit of one in five thousand. No plat showing plus or minus dimensions will be approved.

(11) Accurate dimensions for all lines, angles and curves used to describe boundaries, parcels, streets, alleys, easements, areas to be reserved for public use and other important features. This

shall include the exact location of all required monuments. These dimensions shall include the description of point(s) and the distance between point(s).

- (12) The angle of departure of adjoining property, street, alley and other boundary lines.
- (13) Bearings on all exterior boundary and street centerline control; and angles between all lot lines. In the instance of a lot line intersecting the arc of a curve at an angle of other than ninety (90) degrees, an angle shall be given from the lot line to the long chord of the arc involved.
- (14) All curve data including the following:
 - a. Delta.
 - b. Radius.
 - c. Length of curve.
 - d. Chord length.
 - e. Cord bearing.
- (15) A statement by the land surveyor explaining how bearings were determined. Magnetic bearings are not acceptable.
- (16) A description of all monuments, both found and set, which mark the boundaries of the parcel, including a description of two (2) or more recorded monuments on record with the State Board of Registration for Professional Engineers and Land Surveyors, used in conducting the survey. Only one (1) tie will be required for parcels containing two (2) acres or less.
- (17) A monumented and recorded bench mark (Town datum), as provided by the Town, within five hundred (500) feet of the boundary of the platted area.
- (18) When it is necessary to re-establish, restore and rehabilitate a public land survey monument in order to comply with the requirements of the above, the surveyor shall furnish a copy of the official survey monument record with the plat.
- (19) A statement and signature by the land surveyor that the survey was performed by him or her under his or her direct responsibility.
- (20) Town approval block, in a format approved by the Zoning Administrator.
- (21) Acceptance block for the County Clerk and Recorder.
- (22) Ownership and dedication statement, in a format approved by the Zoning Administrator.
- (23) Notary certificate (in conjunction with owner's signatures), in a format approved by the Zoning Administrator.

(d) Technical studies. The following technical studies and drawing shall be submitted with the final plat, as determined by the Town Engineer:

(1) Traffic impact analysis. A final traffic impact analysis shall be provided with a final plat, unless specifically waived by the Town Engineer. The traffic impact analysis study shall incorporate any assumptions identified in the regional transportation plan. Additionally, the study shall include projections of average daily incoming and outgoing trips generated by the project; including distribution and level of service. Trips generated by the project shall be assigned to the surrounding street network to a distance of at least one mile from the site. The study shall be in conformance with the Institute of Transportation Engineers Trip Generation Report and shall be signed by a Colorado registered professional engineer.

(2) Soils report. A final soils report shall be prepared and certified by a Professional Engineer or geologist, registered in the State of Colorado, who is knowledgeable in soils identification, classification, and use. The report shall locate and classify the dominant soil types within or affecting the proposed development. The report shall indicate the degree of compatibility of the existing soils within the proposed development with regard to such engineering considerations as topography, drainage, bearing capacity and erosion potential. The report shall include a prognosis of the effects of the proposed development upon the existing site in this regard and shall include specific recommendations for additional exploration, testing, mapping or study as may be necessary to insure adequate protection from potentially hazardous or undesirable soils or geological conditions on the development site

(3) Final drainage study. A final drainage study shall be prepared in conformance with the Town of Bennett Design Criteria and Construction Specifications Manual or other codes and criteria set forth by the Town. The study shall conform to any Town approved regional or sub-regional drainage study that incorporates the development area. The study shall describe storm drainage design for all of the land involved in the development and areas outside the development boundary that are impacted by the project. The requirement for the drainage study shall be waived or the scope reduced, if such a study was prepared for a final plat of which the development is consistent with or a part of, and the previously prepared study provides adequate information to evaluate the drainage impacts and measures necessary to mitigate such impacts. Any plans for erosion control and "Best Management Practices" shall meet current Town standards

(4) Final Utility plans. In addition to plans for water and sanitary sewer utilities, the subdivider shall submit evidence in accordance with Section 31-23-214, C.R.S., that provision has been made for facility sites, easements, and rights of access for electrical and natural gas utility service sufficient to ensure reliable and adequate electric or, if applicable, natural gas service. Submission of a letter of agreement between the subdivider and utility serving the site shall be deemed sufficient to establish that adequate provision for electric or, if applicable, natural gas service to the proposed subdivision has been made.

(e) Development agreement. A development agreement shall be submitted in accordance with Division 4 of this Article.

(f) Special warranty deed. A special warranty deed or such other instruments as the Town may require, to convey and transfer to the Town, at no cost to the Town and free and clear of all liens, encumbrances and assessments, all water rights and rights to appropriation of said water rights as are

necessary to satisfy the raw water dedication requirements of the Town. The amount of raw water required shall be determined by reference to Article XVI of this Chapter, except as may be expressly provided in an annexation agreement or other agreement executed prior to the time of platting. No subdivision plat shall receive final approval until all requirements of this Section and this Chapter have been satisfied. (Ord. 446 §11.14.093, 2001; Ord. 467 §1, 2002; Ord. 492, §3, 2003; 526 §1, 2005; Ord. 548 §6, 2006)

(g) Other special documents. Depending on the circumstances of the proposed subdivision and its intended development, the following additional documents may be required by the Zoning Administrator, Planning Commission or Board of Trustees prior to approval of the final plat:

- (1) State Highway Utility Permit (from Colorado Department of Transportation).
- (2) State Highway Access Permit (from Colorado Department of Transportation).
- (3) Construction Dewatering Permit (from Colorado Department of Public Health and Environment).
- (4) 404 Permit (from Army Corps of Engineers).
- (5) Air Pollution Emission Notice (APEN) (from Colorado Department of Public Health and Environment).
- (6) Work in Ditch Right-of-Way Permit (from individual ditch companies).
- (7) Rare Species Occurrence Survey (from U.S. Fish and Wildlife Service).
- (8) General Warranty Deed - This deed conveys to the Town all public lands other than streets shown on the plat or, in lieu of a deed, a check in an amount to be determined by the Town.
- (9) Protective Covenants, *Homeowners Association (HOA) Documents, Articles of Incorporation for HOA, and Architectural Design Guidelines* finalized and in a form for recording. If there are open space areas to remain in private ownership within the subdivision, the HOA documents must have in place a mechanism which will assure maintenance will be funded in perpetuity.
- (10) FEMA approved applications (i.e., Conditional Letter of Map Revisions [CLOMR] or Letter of Map Revisions [LOMR]).

(h) Any additional information as may be required by the Zoning Administrator the Planning Commission or Board of Trustees.

Division 4
Improvements on Land

Sec. 16-14-410. Required public improvements.

(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 subdivision 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 subdivision 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) Unless otherwise specified in the subdivision development agreement, each phase of a subdivision must be served by all required improvements.

(g) 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.

(h) 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 subdivision 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. (Ord. 446 §11.14.100, 2001; Ord. 467 §1, 2002)

Sec. 16-14-420. Subdivision development agreement.

(a) The subdivision 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.

(b) 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.

(c) The subdivision 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.

(d) Once approved, the subdivision development agreement shall be signed by the subdivider, the property owner (if other than the subdivider) and the Mayor. (Ord. 446 §11.14.110, 2001; Ord. 467 §1, 2002)

Sec. 16-14-430. Public improvement guarantees.

(a) Prior to the approval by the Board of Trustees of the subdivision 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 subdivision 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 subdivision 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 subdivision 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 subdivision development agreement, the escrow agent shall release any remaining escrowed funds to the Town.

(3) A surety bond in a form acceptable to the Town Attorney issued by a corporate surety authorized to do business in the State.

(4) 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. (Ord. 446 §11.14.120, 2001; Ord. 467 §1, 2002)

Sec. 16-14-440. Acceptance and warranty of improvements.

(a) Following the construction and installation of all public improvements specified in the subdivision 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 subdivision 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 subdivision 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. (Ord. 446 §11.14.130, 2001; Ord. 467 §1, 2002)

Sec. 16-14-450. Maintenance of public improvements.

The subdivider shall be required to maintain all required public improvements described in the subdivision 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. (Ord. 446 §11.14.140, 2001; Ord. 467 §1, 2002)

Sec. 16-14-460. 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 subdivision 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. (Ord. 446 §11.14.150, 2001; Ord. 467 §1, 2002)

Sec. 16-14-470. 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 subdivision 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. (Ord. 446 §11.14.160, 2001; Ord. 467 §1, 2002)

*Division 5
Land Dedications*

Sec. 16-14-510. General provisions.

(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. (Ord. 446 §11.14.170, 2001; Ord. 467 §1, 2002)

Sec. 16-14-520. Dedication requirements for parks, schools and other public purposes.

(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. (Ord. 446 §11.14.171, 2001; Ord. 467 §1, 2002)

Sec. 16-14-530. 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. (Ord. 446 §11.14.172, 2001; Ord. 467 §1, 2002)

Sec. 16-14-540. Land dedication credit for the development of 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. (Ord. 446 §11.14.173, 2001; Ord. 467 §1, 2002)

Sec. 16-14-550. Commencement and completion of parks and recreation improvements.

The development of all parks and recreation improvements must be commenced prior to issuance of a building permit for the second one-third ($\frac{1}{3}$) 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 ($\frac{1}{3}$) 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. (Ord. 446 §11.14.174, 2001; Ord. 467 §1, 2002)

Sec. 16-14-560. Acceptance of land dedication 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 subdivision 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. (Ord. 446 §11.14.175, 2001; Ord. 467 §1, 2002)

ARTICLE XV

Public Improvements

Sec. 16-15-10. 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. (Ord. 446 §11.15.010, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-20. 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. (Ord. 446 §11.15.020, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-30. 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. (Ord. 446 §11.15.030, 2001; Ord. 467 §1, 2002)

Sec. 16-15-40. 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 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 subdivision 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 16-15-50 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. (Ord. 446 §11.15.040, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-50. 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. (Ord. 446 §11.15.041, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-60. 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. (Ord. 446 §11.15.042, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-70. 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 subdivision 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. (Ord. 446 §11.15.050, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-80. 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. (Ord. 446 §11.15.060, 2001; Ord. 467 §1, 2002; 526 §1, 2005; Ord. 555 §9, 2006)

Sec. 16-15-90. 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. (Ord. 446 §11.15.070, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-15-100. 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. (Ord. 446 §11.15.080, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

ARTICLE XVI

Water Rights Dedication Requirements

*Division 1
General Provisions*

Sec. 16-16-10. Title.

This Article shall be known and may be cited as the *Town of Bennett Water Rights Dedication Requirements*. (Ord. 492, §1-11.16.010, 2003)

Sec. 16-16-20. Intent and purpose.

(a) It is the intent and purpose of this Article to further the goals of sound water management by requiring the dedication of adequate and reliable water rights prior to any commitment by the Town to extend or supply treated water service to new customers, and to thereby assure an adequate and stable supply of water for the Town service area; to ensure the financial stability of the Town water utility; and to promote the general health and welfare of the public.

(b) This Chapter provides supplemental requirements for annexation pursuant to the Municipal Annexation Act of 1965, as amended, Section 31-12-101 et seq., C.R.S., and is not to be construed as altering, modifying, eliminating or replacing any requirements set forth in that Act, in this Code or in any other ordinances, resolutions, rules, regulations or requirements of the Town.(c) It is not the intent of this Article to extend water service outside the boundaries of the Town when such extension would be inconsistent with the Comprehensive Plan or when the extension of such service would render the Town incapable of meeting any of its present or future obligations within the Town boundaries. (Ord. 492, §1-11.16.020, 2003)

Sec. 16-16-30. Definitions.

For purposes of this Article, the following words and phrases shall have the meanings set forth below unless otherwise specifically provided or unless clearly required by the context:

Annexation means the act of attaching, adding, joining or uniting a parcel of land to the Town.

Appurtenant means belonging to, accessory or incident to, adjunct, appended or annexed to.

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.

Dedication means the total divestiture of property, without consideration, for use by the public, and acceptance for such use by the Board of Trustees.

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-nontributary groundwater, the proposed dedication shall include approved replacement plans by the Groundwater Commission as necessary to allow the ability to pump the not-nontributary groundwater included with the proposed dedication.

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

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-nontributary 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. (Ord. 492, §1-11.16.030, 2003; 526 §1, 2005)

Sec. 16-16-40. 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. (Ord. 492, §1-11.16.040, 2003)

Sec. 16-16-50. 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. (Ord. 492, §1-11.16.050, 2003)

Sec. 16-16-60. 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. (Ord. 492, §1-11.16.060, 2003)

Sec. 16-16-70. Safety clause.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provisions or applications, and to this end the provisions or applications of this Article are declared to be severable. (Ord. 492, §1-11.16.070, 2003)

Division 2
Dedication Requirements

Sec. 16-16-210. Approvals conditioned upon dedication of water rights.

(a) It shall be a condition precedent to annexation that the applicant dedicate to the Town all water and water rights appurtenant to or associated with the property to be annexed, as further set forth in Subsection 16-3-60(b) of this Chapter.

(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 16-16-50 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 Article have been satisfied.

(c) It is the intent of this Article that no annexation, 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. (Ord. 492, §1-11.16.080, 2003)

Sec. 16-16-220. Amounts of water to be dedicated.

In addition to the dedication of water rights required at the time of annexation, as provided in Section 16-3-60 of this Chapter, 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 16-16-270.

(3) Industrial. Industrial demands and required dedications shall be evaluated on a case-by-case basis at the time of the proposed industrial annexation or industrial use. It shall be a condition precedent to such industrial annexation 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. (Ord. 492, §1-11.16.090, 2003)

Sec. 16-16-230. 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 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. (Ord. 492, §1-11.16.100, 2003; 526 §1, 2005)

Sec. 16-16-240. 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 16-16-220, 16-16-230 and 16-16-270 and crediting the previously dedicated amount of water rights. (Ord. 492, §1-11.16.110, 2003)

Sec. 16-16-250. 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. (Ord. 492, §1-11.16.120, 2003)

Sec. 16-16-260. 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. (Ord. 492, §1-11.16.130, 2003)

Sec. 16-16-270. 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 16-16-220, 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. (Ord. 492, §1-11.16.140, 2003)

Sec. 16-16-280. 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. (Ord. 492, §1-11.16.150, 2003; 526 §1, 2005)

*Division 3
Procedure*

Sec. 16-16-310. Application submission and contents.

All applications for annexation, subdivision, resubdivision, nonresidential building permit, change of use or extension of municipal water service shall be submitted to the Zoning Administrator. Any such application shall comply with the requirements of this Code. The application shall be accompanied with a summary of the water rights appurtenant to the property to be served by Town services. At a minimum, the water rights summary must contain the information requested in this Article and Chapter. Every proposed dedication of not-nontributary water rights shall include approved replacement plans by the Groundwater Commission as necessary to allow the ability to pump the not-nontributary groundwater included with the dedication. (Ord. 492, §1-11.16.160, 2003)

Sec. 16-16-320. Number of acres; acre-feet of water.

The Town staff shall determine the number of gross acres which are described in the application and the number of acre-feet of water required to be dedicated by the applicant. (Ord. 492, §1-11.16.170, 2003)

Sec. 16-16-330. Preliminary determination regarding water rights.

The Town staff shall also make a preliminary determination concerning whether the water rights proposed for dedication can be transferred into the Town's municipal water system and constitute a sufficient legal supply to satisfy the requirements of this Article. (Ord. 492, §1-11.16.180, 2003)

Sec. 16-16-340. Submission to Board of Trustees.

The application, along with the Town staff's determinations and recommendations, shall then be submitted to the Board of Trustees for consideration. (Ord. 492, §1-11.16.190, 2003)

Sec. 16-16-350. Board of Trustees action.

After evaluating the application and considering the determinations and recommendations provided by the Town staff, the Board of Trustees shall accept, accept in part, accept on condition or reject the water rights offered for dedication. The Board of Trustees shall also have the option of requesting additional information from the applicant prior to a formal resolution of the matter. (Ord. 492, §1-11.16.200, 2003)

Sec. 16-16-360. 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. (Ord. 492, §1-11.16.210, 2003)

Sec. 16-16-370. 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. (Ord. 492, §1-11.16.220, 2003; 526 §1, 2005)

Division 4

Option to Purchase and Right of First Refusal

Sec. 16-16-410. 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 application for 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. (Ord. 492, §1-11.16.230, 2003)

Sec. 16-16-420. 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. (Ord. 492, §1-11.16.240, 2003)

Sec. 16-16-430. 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. (Ord. 492, §1-11.16.250, 2003)

*Division 5
Required Information*

Sec. 16-16-510. Water rights generally.

The following information shall be provided for all water rights which are proposed to be dedicated to the Town:

(1) A complete water rights questionnaire in the form required by this Chapter.

(2) The percentage of undivided interest of the water right proposed to be dedicated; and if less than one hundred percent (100%), the names of all other owners of undivided interests in the water right.

(3) The name and address of the owners of the water right proposed for dedication.

(4) Copies of the documents through which the owners received title to the water right proposed for dedication, including deeds and a copy of any order, decree or judgment which may affect the title of the water right since the owners received title.

(5) If the water right is decreed for irrigation use, the legal description of the lands historically irrigated, the name and address of the present owners of the lands so irrigated, the total number of years the subject water right was used on the irrigated acreage, the types and approximate acreages of crops historically raised on the irrigated acreage, and the names and addresses of all known previous owners or lessees of the land historically irrigated. (Ord. 492, §1-11.16.260, 2003)

Sec. 16-16-520. Water rights appurtenant to subject land.

The following information shall be provided for all water rights which are appurtenant to the land which is the subject of the application:

(1) The name of the water right involved, the number of shares in a mutual ditch or reservoir company evidencing the right, if applicable, and/or the percentage of undivided interest of the water right proposed to be dedicated.

(2) The Colorado Groundwater Commission determination respecting any groundwater subject to its jurisdiction, together with any related filings, orders, reports, analyses or other information pertaining thereto.

(3) A copy of the documents by which the owner received title to the water right and a copy of any legal decree or judgment which affects the title of such water right since the owner received title.

(4) The legal description and total number of acres of land historically irrigated with the appurtenant water right, the total number of years the subject water right was used on the irrigated acreage, the types and approximate acreages of crops historically raised on the irrigated acreage, and the names and addresses of all known previous owners or lessees of the land historically irrigated. (Ord. 492, §1-11.16.270, 2003)

ARTICLE XVII

Rezoning

Sec. 16-17-10. Town policy for rezoning.

The Board of Trustees has determined that the Official 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. (Ord. 446 §1-11.17.010, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-17-20. Initiation of rezoning.

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

(b) 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.

(c) 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. (Ord. 446 §1-11.17.020, 2001; Ord. 467 §1, 2002)

Sec. 16-17-30. Application submittal requirements.

An application for rezoning shall include copies of the following items:

- (1) The name, address and phone number of the applicant on a completed application form supplied by the Town.
- (2) A legal description of the land affected.
- (3) The filing fee as determined by the Town.
- (4) A description of the proposed change and a narrative describing the reasons for the proposed change.
- (5) A deed, or other proof of ownership acceptable to the Town Attorney, covering all of the land affected by the rezoning.
- (6) A list of all property owners (names and addresses) within three hundred (300) feet of the subject property, disregarding any intervening public right-of-way. The source of such a list shall be the records of the appropriate County Assessor.
- (7) Evidence that the property can be served by public sewer and water services. Such evidence shall be in the form of a written commitment by the appropriate provider stating that such service will be available to the property.
- (8) A vicinity map showing the location of the property at an appropriate scale.
- (9) Any other information deemed appropriate by the Zoning Administrator for complete review of the application. Such information may include, but is not limited to, a certified boundary survey and/or a site plan. (Ord. 446 §1-11.17.030, 2001; Ord. 467 §1, 2002)

Sec. 16-17-40. Rezoning procedure.

- (a) The applicant shall submit the application to the Zoning Administrator.
- (b) Once the Zoning Administrator has determined that the application is complete, the Zoning Administrator will distribute the application materials and request review and comment from Town staff, affected agencies, surrounding jurisdictions and interested parties. The referral groups shall be given a period of twenty-one (21) days to respond in writing.
- (c) Upon the conclusion of the referral period, the Town staff shall prepare a written analysis of its findings and recommendations regarding the application, along with any other comments received, and forward the report to the Planning Commission. The report shall be made available to the applicant and the general public at least six (6) days prior to any scheduled hearing.
- (d) The Zoning Administrator shall schedule public hearings.
- (e) The Planning Commission shall conduct a public hearing. At least fifteen (15) days prior to the hearing:
 - (1) The applicant shall post the subject property, in a format as approved by the Town.

(2) The Town shall mail notice to the owners of real property within three hundred (300) feet of the property lines subject to the application. The applicant shall reimburse the Town for the cost of mailing.

(f) At the end of the public hearing or within thirty (30) days following the hearing, the Planning Commission shall make a recommendation for the Board of Trustees to approve, approve with conditions or deny the application. The Planning Commission has the option of continuing the hearing to a later date for additional testimony, if necessary.

(g) After receiving the recommendation from the Planning Commission, the Board of Trustees shall hold a public hearing regarding the application. At least fifteen (15) days prior to the public hearing:

(1) The applicant shall post the subject property, in a format as approved by the Town.

(2) The Town shall publish a notice of the hearing in a newspaper of general circulation within the Town. The applicant shall reimburse the Town for the cost of mailing and publication.

(h) At the end of the public hearing or within thirty (30) days following the hearing, the Board of Trustees shall pass a resolution to approve, approve with conditions or deny the application. The Board of Trustees has the option of continuing the hearing to a later date for additional testimony, if necessary. The Board of Trustees' resolution shall include findings supporting its decision. (Ord. 446 §1-11.17.031, 2001; Ord. 467 §1, 2002; 526 §1, 2005)

Sec. 16-17-50. Limitation on rezoning requests.

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. (Ord. 446 §1-11.17.040, 2001; Ord. 467 §1, 2002)

ARTICLE XVIII

Land Development Review Fees

Sec. 16-18-10. Purpose.

The Board of Trustees has determined that the fiscal impact of annexation, subdivision and development should properly be borne by those parties who receive the benefits therefrom. Therefore, fees shall apply to all development applications submitted to the Town in order to compensate the Town for the cost of reviewing a proposed development, and for the continuing costs of providing service to and offsetting the impacts caused by a new development. (Ord. 446 §1-11.18.010, 2001; Ord. 467 §1, 2002)

Sec. 16-18-20. Application and review fees.

(a)

(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 the 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. (Ord. 446 §1-11.18.020, 2001; Ord. 465, §1, 2002; Ord. 467 §1, 2002; Ord. 570 §20, 2007; Ord. 592 §4, 2009)

Sec. 16-18-30. Additional expenses.

Any costs, including recording fees and attorney fees that are incurred by the Town in the review, processing and recording of any application, shall be the full responsibility of the applicant. (Ord. 446 §1-11.18.021, 2001; Ord. 467 §1, 2002)

Sec. 16-18-40. Reimbursement of costs and expenses incurred by Town.

(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) 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 Code. 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.

(c) 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. (Ord. 461 §1, 2002)

ARTICLE XIX

Development Impact Fees

*Division 1
General Provisions*

Sec. 16-19-10. Legislative findings.

The Board of Trustees finds that:

(1) The protection of the health, safety and general welfare of the citizens of the Town requires that the Town's parks, recreation and open space facilities, police facilities, public facilities, storm drainage facilities and transportation facilities be expanded and improved to accommodate continuing growth within the Town.

(2) New residential and nonresidential development imposes increasing demands upon the Town-wide parks, recreation and open space capital facilities; the Town's Police Department and related police capital facilities; the Town's public capital facilities; the Town's storm drainage system and related storm drainage capital facilities; and existing Town streets and the entire transportation system; and often overburdens such facilities and systems.

(3) The tax revenues currently generated from new development do not generate sufficient funds to provide the Town-wide parks, recreation and open space capital facilities, police capital facilities, public capital facilities, storm drainage capital facilities and streets and transportation system expansions necessary to serve the new development.

(4) New development is expected to continue and will place ever-increasing demands on the Town to provide such capital facilities to serve new development.

(5) All types of development that are not expressly exempt from the provisions of this Article will generate demand for Town-wide parks, recreation and open space capital facilities, police capital facilities, public capital facilities, storm drainage capital facilities and streets and transportation capital facilities.

(6) The Impact Fee Study, prepared by BBC, dated May 23, 2003, and the Capital Improvement Plan set forth a reasonable methodology and analysis for determining and quantifying the reasonable impacts of various types of proposed residential and nonresidential development on the Town's capital facilities and transportation system; quantified the reasonable impacts of proposed development on the capital facilities addressed therein; determined the costs necessary to meet the demands created by new development; and determined impact fees as set forth in this Article that are at a level no greater than necessary to defray such impacts of proposed new development on the Town's existing capital facilities. The Town hereby establishes as Town standards the assumptions and level of service standards referenced in the Impact Fee Study as part of its current plans for future expansions to the Town's capital facilities addressed in such study.

(7) The impact fees set forth in this Article are based on the Impact Fee Study and the Capital Improvement Plan, are intended to defray the projected impacts on the Town's parks, recreation and open space capital facilities, police capital facilities, public capital facilities, storm drainage capital facilities and Town streets and transportation system directly related to and caused by proposed development.

(8) All capital facilities and improvements financed with the impact fees set forth herein will benefit all development in the Town, and it is therefore appropriate to treat the entire Town as a single service area for purposes of calculating, collecting and spending the impact fees provided for in this Article.

(9) The impact fees set forth in this Article are based on the Impact Fee Study and do not and will not be used to remedy any deficiencies in capital facilities or improvements that exist without regard to the proposed development.

(10) This Article includes provisions to ensure that no individual landowner is required to provide any site specific dedication or improvement to meet the same need for capital facilities or improvements for which an impact fee is imposed.

(11) Except as described in Subsection 16-19-210(g) concerning optional independent fee calculation studies, each category of impact fee created by this Article is a standardized fee to be applied uniformly to a broad class of property, and is not a discretionary fee to be determined on a case-by-case basis.

(12) The replacement of the Town's current parks and recreation fee, general services impact fee and street improvement and oversizing fee with, respectively, the parks, recreation and open space impact fee, the public facilities impact fee and the transportation facilities impact fee set forth herein will enable the Town to impose a more proportionate share of the costs of required facilities improvements on the new development that create these new needs. (Ord. 491, §3-11.19.010, 2003; Ord. 526 §1, 2005)

Sec. 16-19-20. Authority, applicability and effective date.

(a) This Article is enacted pursuant to the Town's general police powers pursuant to the authority granted to the Town by Section 31-15-101 et seq., C.R.S., and pursuant to the authority granted to the Town by Section 29-20-101 et seq., C.R.S.

(b) The provisions of this Article shall apply to all of the territory within the limits of the Town.

(c) This Article is effective July 20, 2003, the effective date of the ordinance codified herein which adopted the provisions hereof.

(d) The provisions of this Article shall not apply to any development for which the applicant has submitted a complete application for a building permit prior to the effective date of this Article. (Ord. 491, §3-11.19.020, 2003)

Sec. 16-19-30. Intent.

(a) The intent of this Article is to comply with the provisions set forth in Section 29-20-101 et seq., C.R.S., and the provisions of this Article shall be interpreted, construed and enforced in accordance with the provisions set forth in Section 29-20-101 et seq., C.R.S.

(b) The intent of this Article is to ensure that new development bears a proportionate share of the cost of capital facilities and improvements, to ensure that such proportionate share does not exceed the cost of the capital facilities and improvements required to serve such new development and to ensure that the funds collected from new developments are used to construct capital facilities and improvements that benefit such new developments.

(c) It is further the intent of this Article that new development pay for its proportionate share of Town-wide parks, recreation and open space facilities, Town-wide Police Department facilities, public facilities, storm drainage facilities and major streets and related transportation facilities and improvements through the imposition of an impact fee for each of such categories of capital needs, which fees will be used to finance, defray or reimburse all or a portion of the costs incurred by the

Town to construct or acquire the capital facilities and improvements that will serve or benefit such new development.

(d) It is further the intent of this Article to collect from new development only that amount of money directly related to the impacts of new development and necessary to offset new demand for capital facilities and improvements generated by that new development.

(e) It is not the intent of this Article that the impact fees be used to remedy any deficiency in capital facilities or improvements existing on the effective date of this Article.

(f) It is not the intent of this Article that any monies collected from any impact fee deposited in an impact fee fund ever be commingled with monies from a different impact fee fund, or ever be used for capital facilities that are different from that for which the fee was paid. (Ord. 491, §3-11.19.030, 2003)

Sec. 16-19-40. Definitions.

For purposes of this Article, the following words and phrases shall have the meanings set forth below unless otherwise specifically provided or unless clearly required by the context:

Capital facility means any improvement or facility that:

- a. Is directly related to any service that the Town is authorized to provide;
- b. Has an estimated useful life of five (5) years or longer; and
- c. Is required by ordinance or general policy of the Town pursuant to a resolution or ordinance.

Complete application means an application for a building permit for which:

- a. All of the required information and submittal material, in the amount and dimensions required by all ordinances, regulations and codes, have been submitted to and received by the Zoning Administrator; and
- b. The Zoning Administrator in writing has certified the application as complete. The decision of the Zoning Administrator with respect to completeness and applicability of submittal requirements shall be final.

Impact Fee Study means the Impact Fee Study, prepared by BBC, dated May 23, 2003, and the Capital Improvement Plan.

Independent fee calculation study means a study prepared by an applicant calculating the cost of expansions or improvements to one (1) or more of the Town's capital facilities required to serve the applicant's proposed development, that is performed on the same methodology, uses the same level of service standards, units, unit costs, staffing, building sizes, improvements and construction costs stated in the Impact Fee Study and Capital Improvement Plan and is performed in compliance with any criteria for such studies established by this Article or by the Town.

Land development means any construction, reconstruction, expansion or conversion of a building, structure or use, or any change in the use of any land, building or structure, which creates additional demand for public services.

Major street system means that system of major streets and improvements identified in the Capital Improvement Plan prepared by the consultants.

Parks, recreation and open space facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction and park, recreation and open space equipment purchases associated with new or expanded parks, recreation and open space capital facilities or equipment that expand the capacity of the Town's parks, recreation and open space system and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including neighborhood parks and related improvements. The costs of parks, recreation and open space improvements shall include any financing costs associated with such improvements.

Parks, recreation and open space impact fee means the parks, recreation and open space impact fee established by this Article.

Parks, Recreation and Open Space Impact Fee Fund means the Parks, Recreation and Open Space Impact Fee Fund established by this Article.

Police facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction and off-site construction associated with a new police station and related capital facilities that expand the capacity of the Town's police department and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or improvements to meet the same need for police capital facilities for which the police facilities impact fee is imposed. The costs of the new police station shall include any financing costs associated with such improvements.

Police facilities impact fee means the police facilities impact fee established by this Article.

Police Facilities Impact Fee Fund means the Police Facilities Impact Fee Fund established by this Article.

Public facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction, off-site construction and public capital facility purchases associated with new or expanded public facilities, including but not limited to, additional municipal office space, municipal office space parking, public works building and storage space and other municipal capital facilities that expand the capacity of the Town's public facilities and that have an average useful life of at least five (5) years, but not including maintenance, operations or improvements that do not expand capacity, and not including site specific dedications or improvements to meet the same need for public capital facilities for which the public facilities impact fee is imposed. The costs of public facilities and improvements shall include any financing costs associated therewith.

Public facilities impact fee means the public facilities impact fee established by this Article.

Public Facilities Impact Fee Fund means the Public Facilities Impact Fee Fund established by this Article.

Site-related or site specific improvements include, without limitation:

a. With respect to the parks, recreation and open space fee set forth herein, all neighborhood and local parks, recreation facilities and equipment, and open spaces located within the boundaries of the proposed development and designed and intended to provide neighborhood and local parks and recreation facilities and equipment and open space facilities only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide connections from existing parks, recreation and open space facilities to only the applicant's development;

b. With respect to the police facilities, public facilities and storm drainage impact fees set forth herein, respectively, all police facilities, public facilities and storm drainage facilities located within the boundaries of the proposed development and designed and intended to provide such facilities only within the boundaries of the proposed development, or located outside the boundaries of the development and designed and intended to provide such facilities to only the applicant's development; and

c. With respect to the transportation facilities impact fee, all access streets adjacent to the proposed development or leading only to the proposed development; all roads and driveways within the development; all acceleration, deceleration, right- or left-turn lanes leading to any streets and driveways within the development; and all traffic control devices and signals for streets and driveways within the development.

Storm drainage facilities and improvements means planning, land acquisition, engineering design, construction inspection, on-site construction and off-site construction associated with a regional storm drainage detention facility and related capital facilities that expand the capacity of the Town's storm drainage system or provide regional storm drainage for the Town and that have an average useful life of at least five (5) years, but does not include maintenance, operations or improvements that do not expand capacity, and does not include site specific dedications or improvements to meet the same need for storm drainage facilities for which the storm drainage impact fee is imposed. The costs of the regional storm drainage detention facility shall include any financing costs associated with such improvements.

Storm drainage impact fee means the storm drainage impact fee established by this Article.

Storm Drainage Impact Fee Fund means the Storm Drainage Impact Fee Fund established by this Article.

Transportation facilities and improvements means those capital improvements needed to construct and expand arterial and collector streets, excluding local street portions of such streets, and I-70/State Highway 79 interchange improvements. *Transportation facilities and improvements* shall include, without limitation, right-of-way acquisition, planning, land acquisition, engineering design, construction inspection, on-site construction and off-site construction associated with new or expanded streets, traffic control devices and signals; medians and median landscaping, curbs, gutters and other drainage structures that expand the capacity of the Town's major street system and

that have an average useful life of at least five (5) years; but does not include maintenance, operations or improvements that do not expand capacity, and does not include site specific dedications or street improvements to meet the same need for transportation facilities and improvements for which the transportation facilities impact fee is imposed. The costs of the new transportation facilities and improvements shall include any financing costs associated with such improvements.

Transportation facilities impact fee means the transportation facilities impact fee established by this Article.

Transportation Facilities Impact Fee Fund means the Transportation Facilities Impact Fee Fund established by this Article. (Ord. 491, §3-11.19.040, 2003; 526 §1, 2005)

*Division 2
Regulation of Impact Fees*

Sec. 16-19-210. Imposition and computation of impact fees.

(a) There is hereby established in Section 16-19-230 a Parks, Recreation and Open Space Impact Fee, a Police Facilities Impact Fee, a Public Facilities Impact Fee, a Storm Drainage Impact Fee and a Transportation Facilities Impact Fee which shall be imposed in the amounts and in accordance with the provisions of this Article.

(b) Each such fee shall be required as a condition of approval of all development in the Town for which a building permit is required and payable in full prior to the issuance of any certificate of occupancy for a residential or nonresidential structure. Except for such fee as may be calculated, paid and accepted pursuant to an independent fee calculation study, the amount of each fee shall be as follows:

(1) Parks, Recreation and Open Space Impact Fee:

Residential:	
Single-family detached, single-family attached, multi-family and mobile home	\$361.00 per unit

(2) Police Facilities Impact Fee:

Residential:	
Single-family detached, single-family attached, multi-family and mobile home	\$248.00 per unit
Nonresidential:	
Retail, commercial, office and institutional buildings, industrial and warehouse buildings	\$0.13 per square foot

(3) Public Facilities Impact Fee:

Residential:	
Single-family detached, single-family attached, multi-family and mobile home	\$1,190.00 per unit
Nonresidential:	
Retail, commercial, office and institutional buildings, industrial and warehouse buildings	\$0.68 per square foot

(4) Storm Drainage Impact Fee:

Residential:	
Single-family detached, single-family attached, multi-family and mobile home	\$512.00 per acre
Nonresidential:	
Retail, commercial, office and institutional buildings, industrial and warehouse buildings	\$512.00 per acre

The storm drainage impact fee shall be assessed based upon the gross acreage of the property for which any land development is requested, rounded to the nearest one-tenth (0.1) acre.

(5) Transportation Facilities Impact Fee:

Residential:	
Single-family detached	\$4,618.00 per unit
Single-family attached, apartments, other multi-family and mobile homes	\$2,835.00 per unit
Nonresidential:	
Retail, commercial, office and institutional buildings, industrial and warehouse buildings	\$0.77 per square foot

(c) After the effective date of the original ordinance codified herein, no certificate of occupancy shall be issued until the impact fees described in this Article have been paid, unless the development for which the certificate of occupancy is sought is exempted by Section 16-19-250 or approved credits are used to cover the impact fee, as set forth in Section 16-19-270. The obligation to pay impact fees shall run with the land.

(d) The impact fees shall be in addition to any public land dedication and school site dedication requirements imposed by the Town codes and ordinances.

(e) An applicant required by this Article to pay an impact fee may choose to have the amount of such fee determined pursuant to either Subsection (f) or (g) below. Regardless of whether the applicant calculates the amount of the fee pursuant to Subsection (f) or (g), such fee shall be subject to the adjustment described in Section 16-19-270, if applicable.

(f) Unless an applicant requests that the Town determine the amount of such fee pursuant to Subsection (g) below, the Town shall determine the amount of the required impact fee pursuant to Subsection (b) above.

(1) If the applicant's development is of a type not listed in Subsection (b), the Town shall use the fee applicable to the most nearly comparable type of land use in Subsection (b).

(2) If the applicant's development includes a mix of those land uses listed in Subsection (b), the fee shall be determined by adding up the fees that would be payable for each use if it was a freestanding use pursuant to Subsection (b).

(3) If the applicant is applying for a permit to allow a change of use or the expansion or modification of an existing nonresidential building by more than one thousand (1,000) square feet,

the fee shall be based on the net positive increase in the fee for the new use or structure as compared to the impact fee, if any, that would have been due under this Article for the previous use or structure, whether or not such fee was actually paid. If necessary to determine such net increase for purposes of the transportation facilities impact fee, the Town shall be guided by the *ITE Trip Generation Manual*, 6th Edition, 1997, published by the Institute of Traffic Engineers, as amended. In the event that the proposed change of use, expansion, redevelopment or modification results in a net decrease in the fee for the new use or development as compared to the previous use or development, there shall be no refund of impact fees previously paid.

The provisions of Subparagraphs (1) through (3) above shall not apply to the parks, recreation and open space impact fee.

(g) Independent fee calculation studies.

(1) An applicant may request that the Town determine the amount of the required impact fee by reference to an independent fee calculation study for the applicant's development prepared at the applicant's cost by qualified professional engineers and economists and submitted to the Town Engineer. Any such study shall be based on the same methodology and the same levels of service standards, units, unit costs, staffing, building sizes, improvements and construction costs used in the Impact Fee Study for the capital facilities fee category at issue, and shall document the economic methodologies and assumptions used.

(2) The Town may hire professional engineers or other consultants to review any independent fee calculation study on behalf of the Town, and may charge the costs of such review to the applicant. Any independent fee calculation study submitted by an applicant may be accepted, rejected or accepted with modifications by the Town as the basis for calculating impact fees. The Town shall not be required to accept any such study or documentation the Town deems to be inaccurate or unreliable, and shall have the authority to request that the applicant submit additional or different documentation for consideration in connection with review of any study. If such study is accepted or accepted with modifications as a more accurate measure of the demand for capital facilities created by the applicant's proposed development than the applicable fee set forth in Subsection (b) above, the impact fee due under this Article may be calculated according to such study.

(3) With respect to any independent fee calculation for transportation facilities, such study shall set forth in detail all traffic engineering and economic methodologies and assumptions used in the study, including but not limited to, those forms of documentation listed in Subparagraphs a and b below, and must be acceptable to the Town pursuant to Paragraph (2) above.

a. Traffic engineering studies shall include documentation for trip generation rates, trip lengths and percentage of trips from the site that represent net additions to current trips from the site, the percentage of trips that are new trips as opposed to pass-by or divert-link trips and any other trip data for the proposed land use.

b. Economic studies shall include documentation of any special factors that the applicant believes will reduce the traffic volumes otherwise attributable to the proposed land use.

(Ord. 491, §3-11.19.050, 2003; Ord. 498, §1, 2003; 526 §1, 2005; Ord. 582 §2, 2008)

Sec. 16-19-220. Payment of impact fees.

(a) After the effective date of the original ordinance codified herein, all applicants shall pay the impact fees required by this Article to the Town prior to the issuance of any certificate of occupancy for a residential or nonresidential structure.

(b) All monies paid by an applicant pursuant to this Article shall be identified as a fee paid under the applicable fee category and shall be promptly deposited in the applicable impact fee fund described in Section 16-19-230 below. (Ord. 491, §3-11.19.060, 2003; Ord. 582 §3, 2008)

Sec. 16-19-230. Impact fee funds.

(a) There are hereby established the following funds for the purpose of ensuring that impact fees collected pursuant to this Article are designated for the accommodation of capital facilities impacts reasonably attributable to new development that paid the fee:

(1) A Parks, Recreation and Open Space Facilities Impact Fee Fund, into which shall be deposited all parks, recreation and open space impact fees;

(2) A Police Facilities Impact Fee Fund, into which shall be deposited all police facilities impact fees;

(3) A Public Facilities Impact Fee Fund, into which shall be deposited all public facilities impact fees;

(4) A Storm Drainage Impact Fee Fund, into which shall be deposited all storm drainage facilities impact fees; and

(5) A Transportation Facilities Impact Fee Fund, into which shall be deposited all transportation facilities impact fees.

(b) Each fund shall be an interest-bearing account which shall be accounted for separately from other funds. Any interest or other income earned on monies deposited in each such fund shall be credited to such fund.

(c) Each fund shall contain only those impact fees collected pursuant to this Article which are to be deposited in accordance with Subsection (a) above, and any interest which may accrue from time to time on such fund. (Ord. 491, §3-11.19.070, 2003)

Sec. 16-19-240. Use of impact fees.

(a) The monies in the Parks, Recreation and Open Space Facilities Impact Fee Fund shall be used only:

(1) To acquire land for, or to acquire, develop or construct, parks, recreation and open space facilities and improvements; or

(2) For refunds as described in Section 16-19-260, or any combination of the foregoing.

(b) The monies in the Police Facilities Impact Fee Fund shall be used only:

(1) To acquire land for, or to acquire, develop or construct, a police station and related police protection facilities and improvements; or

(2) For refunds as described in Section 16-19-260, or any combination of the foregoing.

(c) The monies in the Public Facilities Impact Fee Fund shall be used only:

(1) To acquire land for, or to acquire, develop or construct public facility improvements; or

(2) For refunds as described in Section 16-19-260, or any combination of the foregoing.

(d) The monies in the Storm Drainage Impact Fee Fund shall be used only:

(1) To acquire land for, or to acquire, develop or construct, a regional storm drainage detention facility and related storm drainage facilities and improvements; or

(2) For refunds as described in Section 16-19-260, or any combination of the foregoing.

(e) The monies in the Transportation Facilities Impact Fee Fund shall be used only:

(1) To acquire land for, or to acquire, develop or construct, transportation facilities and improvements; or

(2) For refunds as described in Section 16-19-260, or for any combination of the foregoing.

(f) No monies from the Impact Fee Funds shall be spent for periodic or routine maintenance, rehabilitation or replacement of any Town capital facilities.

(g) No monies from the Impact Fee Funds shall be spent to remedy deficiencies in capital facilities existing on the effective date of the ordinance codified herein. The expansion of an existing street or capital facility or improvement to provide additional capacity shall not be considered to be curing a deficiency in that improvement. (Ord. 491, §3-11.19.080, 2003)

Sec. 16-19-250. Exemptions from impact fees.

(a) Except where expressly stated for a particular impact fee, the following types of land development shall be exempted from payment of the impact fees imposed by this Article:

(1) Reconstruction, expansion, alteration or replacement of a residential unit existing on the effective date of the original ordinance codified herein, provided that the reconstructed, expanded, altered or replacement residential unit is within the same residential size category as the current residential unit and no additional residential units are created.

(2) Expansion or modification of a nonresidential building existing on the effective date of the original ordinance codified herein, provided that no more than one thousand (1,000) square feet of additional usable nonresidential space is created.

(3) Construction of an unoccupied, detached accessory structure related to a residential unit; provided, however, that with respect to the transportation facilities impact fee, this exemption may be applied to construction of any unoccupied, detached accessory structure only if such structure will not produce additional vehicle trips over and above those produced by the primary building or land use.

(4) The replacement of a destroyed or partially destroyed nonresidential building or structure with a new nonresidential building or structure of the same size as the original building or structure, and which replacement does not increase the amount of usable nonresidential space by more than one thousand (1,000) square feet over the original building or structure; provided, however, that this exemption may not be applied to the transportation facilities impact fee.

(5) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, where no additional vehicle trips will be produced over and above those produced by the original building or structure; provided, however, that this exemption may be applied only to the transportation facilities impact fee.

(6) The installation or replacement of a mobile home on a lot or a mobile home site when an impact fee for such lot or site has previously been paid pursuant to this Chapter or where a mobile home legally existed on such site on or prior to the effective date of the original ordinance codified herein.

(7) Any other type of development for which the applicant can demonstrate that the proposed land use and development will produce no greater demand for the capital facility for which the fee is imposed, or produce no more vehicle trips from such site over and above the trips from such site prior to the proposed development, or for which the applicant can show that an impact fee for such site has previously been paid in an amount that equals or exceeds the impact fee that would be required by this Article.

(8) Any development by the federal government, the State, Arapahoe or Adams County, school districts or the Town.

(b) Any such claim for exemption must be made no later than the time when the applicant applies for the first building permit for the proposed development that creates the obligation to pay the impact fee, and any claim for exemption not made at or before that time shall have been waived. The applicant shall bear the burden of demonstrating that a claimed exemption applies.

(c) The Zoning Administrator shall determine the validity of any claim for exemption pursuant to the criteria set forth in Subsection (a) above. (Ord. 491, §3-11.19.090, 2003; 526 §1, 2005)

Sec. 16-19-260. Refunds of impact fees paid.

(a) Fees deposited in each fund shall be appropriated and expended within ten (10) years from the date on which such fee was paid. Any fees not so appropriated or expended shall be refunded, upon

application to the Town, to the record owner of the property for which the impact fee was paid, together with interest calculated at the two-year treasury rate adjusted annually on the last business day of the year for each year from the date of collection to the date of refund; provided, however, that the Town shall retain an additional two (2%) percent of the fee to offset the cost of the refund.

(b) Any application for a refund under the provisions of this Article shall be required to be made to the Town Treasurer within six (6) months of the expiration of such ten-year period following the date of payment of such fee. If a refund is due hereunder, the amount of such refund shall be divided proportionately among all applicants for refunds who have filed applications during said six-month period; provided, however, that in no event shall the amount of any refund exceed the amount of the fee paid on behalf of the property for which the refund is sought, plus interest less costs as calculated above.

(c) After an impact fee has been paid pursuant to this Article, no refund of any part of such fee shall be made if the project for which the fee was paid is later demolished or destroyed or is altered, reconstructed or reconfigured so as to reduce the size of the project, the number of units in the project or the use of any building or structure. (Ord. 491, §3-11.19.100, 2003)

Sec. 16-19-270. Credit against impact fees.

(a) No applicant shall be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed. Therefore, after the effective date of the original ordinance codified herein, all land dedications and improvements for a capital need for which an impact fee is imposed, over and above those required by the Town in connection with a proposed development, shall result in a credit against the impact fee otherwise due for such development. However, no credit shall be awarded for:

(1) Any land dedications for or acquisition or construction of site-related or site-specific improvements;

(2) Any land dedications not accepted by the Town;

(3) Any acquisition or construction of facilities and improvements not approved in writing by the Town prior to commencement of the acquisition, development or construction; or

(4) Any dedication, construction or acquisition of a type of facilities or improvements not included in the calculation of the applicable capital facilities impact fee in the Impact Fee Study. No credit shall exceed the amount of the applicable impact fee due from the applicant or property owner; provided, however, that if the amount of the credit due from the dedication or construction of a capital facility or improvement is calculated to be greater than the amount of the fee due, nothing herein shall be construed as preventing the Town from entering into a reimbursement agreement with the applicant under other applicable provisions of this Code or Town ordinances, whereby said applicant may be reimbursed by subsequent property owners benefiting from the dedication or construction.

(b) In order to obtain a credit against facilities impact fees otherwise due, an applicant must submit a written offer to dedicate to the Town specific parcels of land over and above those regularly required by the Town or to acquire or construct specific facilities and improvements in accordance

with all applicable state or Town codes, ordinances and design and construction standards, and must specifically request a credit against the applicable impact fee. Such written request must be made on a form provided by the Town, must contain a statement under oath of the facts that qualify the applicant to receive a credit, must be accompanied by documents evidencing those facts and must be filed not later than the time when an applicant applies for the first building permit that includes the obligation to pay the impact fee against which the credit is requested. Failure by the applicant to follow the above procedures waives the claim for credit.

(c) The credit due to an applicant shall be calculated and documented as follows:

(1) Credit for qualifying land dedications shall, at the applicant's option, be valued at:

a. One hundred percent (100%) of the most recent estimated actual value for such land as shown in the records of the County Assessor; or

b. That fair market value established by an MAI or Colorado Certified General Real Estate Appraiser acceptable to the Town in an appraisal paid for by the applicant.

(2) In order to receive credit for qualifying acquisition or construction of capital facility improvements, the applicant shall submit completed engineering drawings, specifications and construction cost estimates to the Town. The Town shall determine the amount of credit due based on the information submitted or, if it determines that such information is inaccurate or unreliable, then on alternative engineering or construction costs acceptable to the Town.

(d) An approved credit shall become effective at the following times:

(1) An approved credit for land dedications shall become effective when the land has been conveyed to the Town in a form acceptable to the Town at no cost to the Town, and accepted by the Town. When such conditions have been met, the Town shall note that fact in its records. Upon written request from the applicant, the Town shall issue a letter stating the amount of credit available.

(2) An approved credit for the acquisition or construction of capital facilities and improvements shall generally become effective when:

a. All required construction has been completed and has been accepted by the Town;

b. A suitable maintenance and warranty bond has been received and approved by the Town; and

c. All design, construction, inspection, testing, bonding and acceptance procedures have been completed in compliance with all applicable Town and state procedures. However, an approved credit for the construction of capital facilities and improvements may become effective at an earlier date if the applicant posts security in the form of an irrevocable letter of credit or escrow agreement and the amount and terms of such security are accepted by the Town. At a minimum, such security must be in the amount of one hundred twenty-five percent (125%) of the approved credit or one hundred twenty-five percent (125%) of the amount determined to be adequate to allow the Town to construct the capital facilities and

improvements for which the credit was given, whichever is higher. When such conditions have been met, the Town shall note that fact in its records. Upon request of the applicant, the Town shall issue a letter stating the amount of credit available.

(e) An approved credit may be used to reduce the amount of impact fees due from any proposed development until the amount of the credit is exhausted. A credit may only be applied to the same category of impact fee for which the credit was obtained. Each time a request to use an approved credit is presented to the Town, the Town shall reduce the amount of the applicable impact fee otherwise due from the applicant and shall note in the Town records the amount of credit remaining, if any. Upon request of the applicant, the Town shall send the applicant a letter stating the number of credits available.

(f) An approved credit shall only be used to reduce the amount of the impact fee otherwise due under this Article and shall not be paid to the applicant in cash or as a credit against any other monies due from the applicant to the Town. If the credit has not been exhausted within ten (10) years of the date of issuance of the first building permit for which a fee was due and payable under the provisions of this Article, or within such other period as may be designated in writing by the Town, such credit shall lapse.

(g) Credits shall be transferable only with the same development and only for the same capital facility for which the credit is provided. Credit may be transferred subject to these conditions by a written instrument signed by the transferor and transferee, which instrument must be filed with and in a form acceptable to the Town. If there are outstanding obligations under a credit agreement, the Town may require that the transferor and the transferee execute an amendment to the credit agreement to assure performance of such obligations. (Ord. 491, §3-11.19.110, 2003)

Sec. 16-19-280. Appeals.

(a) Any property owner or applicant may appeal the following decisions to the Zoning Administrator pursuant to such administrative hearing process as may be established by the Zoning Administrator:

- (1) The applicability of an impact fee to the development;
- (2) The amount of an impact fee to be paid for the development;
- (3) The availability, amount or application of any credit; or
- (4) The amount of any refund, as determined by the Town.

(b) The burden of proof in any such hearing shall be on the applicant to demonstrate that the amount of the impact fee, credit or refund was not properly calculated by the Town. In the event of an appeal of the amount of the impact fee, the applicant shall, at his or her expense, prepare and submit to the Zoning Administrator an independent fee calculation study for the impact fee in question. The independent fee calculation study shall follow the methodologies used in the Impact Fee Study and the applicable provisions set forth in Subsection 16-19-210(g). The independent fee calculation study shall be conducted by a professional in impact fee analysis. The burden shall be on the applicant to provide to

the Zoning Administrator all relevant data, analysis and reports which would assist the Zoning Administrator in determining whether the impact fee should be adjusted.

(c) All appeals must state with specificity the reasons for the appeal and shall contain such data and documentation upon which the applicant seeks to rely. The Zoning Administrator, as applicable, shall notify the applicant of the hearing date on the application, which notice shall be given no less than fifteen (15) working days prior to the date of the hearing. At the hearing, the Zoning Administrator shall provide to the applicant and Town staff an opportunity to present testimony and evidence regarding the fee, credit or refund being appealed. The Zoning Administrator shall modify said amount only if there is substantial competent evidence in the record that the Town erred, based upon the methodologies contained in the Impact Fee Study or the Capital Improvement Plan. The decision of the Zoning Administrator shall be final.

(d) The Zoning Administrator is hereby authorized to delegate any of the functions or authorities in this Section to his or her designee. (Ord. 491, §3-11.19.120, 2003)

Sec. 16-19-290. Miscellaneous provisions.

(a) Interest earned on monies in each of the Impact Fee Funds shall be considered part of each such fund and shall be subject to the same restrictions on use applicable to the impact fees deposited in such Fund.

(b) Monies in each of the Impact Fee Funds shall be considered to be spent in the order collected, on a first-in/first-out basis.

(c) Nothing in this Article shall restrict the Town from requiring an applicant to construct improvements required to serve the applicant's project and otherwise permitted under applicable law, whether or not any such improvement is of a type for which a credit is available under Section 16-19-270.

(d) Any monies, including any accrued interest, not assigned to specific projects in any year and not expended pursuant to Section 16-19-240 shall be retained in the Impact Fee Fund until the next fiscal year.

(e) If an impact fee has been calculated and incurred based on a mistake or misrepresentation, it shall be recalculated. Any amount overpaid by an applicant shall be refunded by the Town to the applicant within thirty (30) days after the Town's acceptance of the recalculated amount or the date of a final decision in any appeal for the recalculation pursuant to Section 16-19-280, whichever is later, with interest at the rate of four percent (4%) per annum since the date of such overpayment. Any amount underpaid by the applicant shall be paid to the Town within thirty (30) days after the Town's acceptance of the recalculated amount or from the date of a final decision in any appeal of the recalculation pursuant to Section 16-19-280, whichever is later, with interest at the rate of four percent (4%) per annum since the date of such underpayment. In the case of an underpayment to the Town, the Town shall not issue any additional permits or approvals for the project for which the impact fee was previously paid until such underpayment is corrected.

(f) The Board of Trustees may agree to pay some or all of an impact fee imposed on a proposed development by this Article from other funds of the Town that are not restricted to other uses. Any

such decision to pay impact fees on behalf of an applicant shall be at the discretion of the Board of Trustees and shall be made pursuant to goals and objectives previously adopted by the Board of Trustees to promote any legally permitted purpose.

(g) The impact fees described in this Article and the administrative procedures of this Article shall be reviewed by the Board of Trustees at least once every five (5) years to ensure that:

(1) The demand and cost assumptions and other assumptions underlying such fees are still valid;

(2) The resulting fees do not exceed the actual costs of constructing capital facilities and improvements required to serve new development;

(3) The monies collected in the Impact Fee Funds have been and are expected to be spent for capital facilities and improvements; and

(4) Such capital facilities and improvements will benefit those developments for which the fees were paid. Failure to perform such review within such time shall not invalidate any portion of this Article or restrict the Town from collecting the fees described in this Article.

(h) Violation of this Article shall be subject to those remedies provided in this Code. Knowingly furnishing false information to any official of the Town charged with the administration of this Article on any matter relating to the administration of this Article, including without limitation the furnishing of false information regarding the expected size or use of a proposed development, shall be a violation of this Article.

(i) On January 1, 2004, and on January 1 of each year thereafter in which an impact fee is in effect, the amount of the impact fee per dwelling unit for residential development and the per-square-footage of gross floor area for nonresidential development shall be automatically adjusted to account for inflation increases in the cost of providing capital facilities, utilizing the most recent data from the Engineering News Record Construction Cost Index for the Denver metropolitan area. In lieu of this automatic annual adjustment, the Town may, at its option, determine the appropriate annual inflation factor. Moreover, nothing herein shall prevent the Town from electing to maintain a then-existing capital facilities impact fee or from electing to waive the inflation adjustment for any given fiscal year. Any such action to determine an inflation factor other than that set forth above shall be by Board of Trustees resolution.

(j) Authority is hereby granted for each of the Impact Fee Funds established hereby to borrow funds from and lend funds to each of the other Impact Fee Funds established hereby, to the extent permissible by law and in compliance with Section 29-1-801 et seq., C.R.S., and Section 29-20-101 et seq., C.R.S., and provided that all funds so borrowed or lent are repaid accordingly. (Ord. 491, §3-11.19.130, 2003)

ARTICLE XX

Special Districts

Sec. 16-20-10. 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 Article 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 Article 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 Article.

(c) The adoption of this Article is necessary, requisite and proper for the government and administration of local and municipal matters under the Town's authority. (Ord. 556 §1, 2006)

Sec. 16-20-20. Definitions.

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

Board means the Board of Directors of a District.

Debt means bonds or other obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy.

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.

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 to serve the inhabitants and taxpayers of a District as determined by a District's Board of Directors. (Ord. 556 §1, 2006)

Sec. 16-20-30. Reservation and construction.

The Town reserves all the powers and authority granted to municipalities by the Special District Act. The provisions of this Article shall be construed and applied to supplement the applicable provisions of the Special District Act. (Ord. 556 §1, 2006)

Sec. 16-20-40. Required annual report.

Not later than September 1 of each calendar year, each District shall file an annual report (the "annual report") with the Town Clerk, the requirements of which may be waived in whole or in part by the Town Board of Trustees, if such reporting requirements place an undue hardship on such District. The annual report shall reflect activity and financial events of the District through the preceding December 31 (the "report year"). The annual report shall include the following:

(1) A narrative summary of the progress of the District in implementing its service plan for the report year;

(2) Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year, including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year and the statement of operations (i.e., revenues and expenditures) for the report year;

(3) Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public improvements in the report year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the report year;

(4) Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year and the current mill levy of the District pledged to debt retirement in the report year;

(5) The District's budget for the calendar year in which the annual report is submitted;

(6) A summary of residential and commercial development in the District for the report year;

(7) A summary of all fees, charges and assessments imposed by the District as of January 1 of the report year;

(8) Certification of the Board that no action, event or condition enumerated in Section 16-20-60 below has occurred in the report year or certification that such event has occurred but that an amendment to the service plan that allows such event has been approved by the Town Board of Trustees; and

(9) The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board. (Ord. 556 §1, 2006)

Sec. 16-20-50. Review of annual report.

Annually, on a date established by resolution of the Town Board of Trustees, the Town Board of Trustees at a regular public meeting may review the annual reports received from each District. In the event the annual report is not timely received by the Town Clerk, notice of such default shall be given by certified mail, in accordance with Section 16-20-40 above, to the Board of such District, at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the Town Clerk shall empower the Town Board of Trustees to impose the sanctions authorized in Section 16-20-220 of this Article. The remedies provided for noncompliance with the filing of the annual report shall be supplementary to any remedy authorized by the Special District Act. (Ord. 556 §1, 2006)

Sec. 16-20-60. Material modification.

The occurrence of any of the following actions, events or conditions, subsequent to the date of approval of the service plan or most recent amendment thereto, shall constitute material modifications requiring a service plan amendment:

- (1) Default in the payment of principal or interest of any debt which:
 - a. Persists for a period of one hundred twenty (120) days or more;
 - b. The defaulted payment aggregates the greater of fifty thousand dollars (\$50,000.00) or ten percent (10%) of the outstanding principal balance of debt; and
 - c. The creditors have not agreed in writing with the District to forbear from pursuit of legal remedies.
- (2) The failure of the District to develop, cause to be developed or consent to the development by others of any Public Improvements proposed in its service plan when necessary to service approved development within the District.
- (3) Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances) projected in the financial portion of the service plan during the three-year period ending with the report year, where development revenue is defined as fees, exactions and charges imposed by the District on residential and commercial development, excluding taxes, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000.00).
- (4) The development of any public improvements in excess of one hundred thousand dollars (\$100,000.00) in cost, which is not either identified in the service plan or authorized by the Town in the course of a separate development approval, excluding bona fide cost projection miscalculations; and state or federally mandated improvements, particularly water or sanitation facilities.

(5) The occurrence of any event or condition which is defined under the service plan or intergovernmental agreement as necessitating a service plan amendment.

(6) The material default by the District under any intergovernmental agreement with the Town.

(7) Any proposed use of the powers set forth in Sections 32-1-1101(1)(f) and 32-1-1101(1.5), C.R.S., respecting division of the District.

(8) Any change in the stated purposes of the District or additions to the types of facilities, improvements or programs provided by the District;

(9) Any action or proposed action by the District which would interfere with or delay any planned or required dissolution of the District.

(10) Any of the events or conditions enumerated in Section 32-1-207(2), C.R.S. (Ord. 556 §1, 2006)

Sec. 16-20-70. Determination of applicability.

Should the District dispute that one (1) or more of the occurrences enumerated in Section 16-20-60 above is that a material modification, the District may request a hearing before the Town 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 Town 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 Article, unless waived by the Town Board of Trustees. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment. The Town 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 Town Board of Trustees shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the Town. (Ord. 556 §1, 2006)

Sec. 16-20-80. Service plan amendment.

(a) Except as otherwise provided in the approved service plan and except when the Town Board of Trustees has determined that no material modification has occurred pursuant to Section 16-20-70 above within ninety (90) days of the occurrence of an action, event or condition enumerated in Section 16-20-60 above, the Board shall forward an appropriate petition to the Town 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 Town 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 this Article for an initial service plan, except that the submittal requirements of this Section shall be substituted for those of Section 16-20-50 of this Article, and the application fee shall be two hundred fifty dollars (\$250.00). 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 of two hundred fifty (\$250.00) dollars 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. (Ord. 556 §1, 2006)

Sec. 16-20-90. Partial exemption.

If any District has not undertaken development of public improvements or issued any debt, it may apply to the Town Board of Trustees for an exemption from compliance with this Article for a period of time not to exceed two (2) years. The Town Board of Trustees may grant an exemption if the Board 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 Article, 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. (Ord. 556 §1, 2006)

Sec. 16-20-100. Required service plan amendments.

All service plan amendments and amendments to statement of purpose shall comply with this Article. (Ord. 556 §1, 2006)

Sec. 16-20-110. Review of financing.

A District shall not issue any debt that is not consistent with the service plan previously approved by the Town, without first submitting the proposed financing to the Town for review and comment. The submission shall include the dollar amount of the issue, the estimated interest rate and other financing costs, the type of revenues pledged to repayment, including amount of the mill levy pledged, and a description of the credit enhancements, together with any preliminary official statement or other prospectus for the debt. The submission shall be accompanied by a certification of the Board that the proposed debt is authorized by and in compliance with the service plan for the District. (Ord. 556 §1, 2006)

Sec. 16-20-120. Service plan consideration.

Sections 16-20-130 through 16-20-190 of this Article shall govern the processing, review and consideration of service plans for new Districts or service plan amendments for existing Districts. (Ord. 556 §1, 2006)

Sec. 16-20-130. Presubmittal meeting.

Petitioners shall initiate a service plan proposal by meeting with the Zoning Administrator to discuss the procedures and requirements for a service plan. The Zoning Administrator shall explain the administrative process and provide information to assist petitioners in the orderly processing of the proposed service plan. (Ord. 556 §1, 2006)

Sec. 16-20-140. Filing of proposed service plan.

(a) Petitioners shall file a proposed service plan and fifteen (15) additional copies with the Town Clerk. The proposed service plan shall substantially comply with the format of any model service plan which is maintained on file with the Town Clerk. The proposed service plan shall also include, as an exhibit, an intergovernmental agreement between the proposed District and the Town which shall substantially comply with the format of any intergovernmental agreement which is maintained on file with the Town Clerk.

(b) The application and processing fee for a service plan shall be seven thousand five hundred dollars (\$7,500.00), provided that, if the Town Board of Trustees determines that special review of the service plan or amendment is required, the Town Board of Trustees may impose an additional fee to reimburse the Town for reasonable direct costs related to such special review. The Town Board of Trustees may waive all or any portion of the application and processing fee for smaller Districts initiated by the Town's existing residents or businesses. The Town will reimburse any portion of the application and processing fee that is not expended by the Town.

(c) A copy of the proposed petition to be filed with the district court must be included with the proposed service plan filed with the Town. (Ord. 556 §1, 2006)

Sec. 16-20-150. Service plan contents.

The proposed service plan shall include the following:

- (1) The information required under Section 32-1-202(2), C.R.S.
- (2) A map of the proposed District boundaries with a legal description, or lot and block description.
- (3) An itemization of any costs which petitioners expect to be assumed by the Town for the construction of public improvements.
- (4) Proof of ownership for all properties within the District.
- (5) A copy of any and all proposed, contractual and/or operations documents which would affect or be executed by the proposed District, including the form of any intergovernmental agreement between the District and the Town.
- (6) A capital plan including the following:
 - a. A description of the type of public improvements to be developed by the District;
 - b. An estimate of the cost of the public improvements; and
 - c. A pro forma capital expenditure plan correlating expenditures with development.
- (7) A financial plan prepared by a financial advisor and/or accountant, including the following:
 - a. The total amount of debt planned for the five-year period commencing with the formation of the District;
 - b. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based, for at least a ten-year period from the date of the District formation;
 - c. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts, and any expenses related to the organization and initial operation of the District;
 - d. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources;
 - e. The amount of any reserve fund and the expected level of annual debt service coverage which will be maintained for any financing;
 - f. The total authorized debt for the District;
 - g. The provisions regarding any credit enhancement, if any, for the proposed financing, including but not limited to letters of credit and insurance; and

- h. A list and written explanation of potential risks of the financing.
- (8) A map or maps showing the location(s) of the public improvements identified in the capital plan.
- (9) The intergovernmental agreement required by Subsection 16-20-140(a) above.
- (10) Such other information contained in the model service plan or as may reasonably be deemed necessary or appropriate by the Town. (Ord. 556 §1, 2006)

Sec. 16-20-160. Administrative review.

The Town shall have ninety (90) days from the date the service plan is filed to complete its preliminary review. Once a review has been completed, a comprehensive analysis shall be made in written report form to the Town Board of Trustees. The report shall evaluate the service plan and incorporate comments of the Town staff. The report shall set forth the recommendations made in accordance with the review criteria contained in Section 16-20-180 below. (Ord. 556 §1, 2006)

Sec. 16-20-170. Public hearing.

Upon completion of the administrative report, the Town shall schedule a public hearing at a regular Town Board of Trustees meeting. Public notice shall be accomplished in accordance with the requirements of Section 32-1-204, C.R.S. (Ord. 556 §1, 2006)

Sec. 16-20-180. Hearing and determination.

(a) The hearing held by the Town Board of Trustees shall be open to the public. Any testimony or evidence which, in the discretion of the Town 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 Town 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;
- (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;
- (5) Whether adequate service is not or will not be available to the area through the Town or other existing quasi-municipal corporations, including existing Districts, within a reasonable time and on a comparable basis;

(6) Whether the facility and service standards of the proposed District are compatible with the facility and service standards of the Town;

(7) Whether the proposal is in substantial compliance with the Town's Master Plan;

(8) Whether the proposal is in substantial compliance with the county, regional or state long-range water quality management plans for the area;

(9) Whether the creation of the District will be in the best interests of the area proposed to be served;

(10) Whether the creation of the District will be in the best interests of the residents or future residents of the area proposed to be served;

(11) Whether the proposed service plan is in substantial compliance with this Article; and

(12) Whether the creation of the District will foster urban development that is remote from or incapable of being integrated with existing urban areas, or place a burden on the Town or adjacent jurisdictions to provide urban services to residents of the proposed District. (Ord. 556 §1, 2006)

Sec. 16-20-190. Written determination.

Within twenty (20) days after the public hearing, the Town Board of Trustees shall adopt a resolution regarding the proposed service plan or amendment. 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 reason(s) 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 Town Board of Trustees shall adopt a resolution of approval. (Ord. 556 §1, 2006)

Sec. 16-20-200. Appeal.

The Town Board of Trustees resolution shall document the Town Board of Trustees' final determination for the purpose of any appeal to the district court. (Ord. 556 §1, 2006)

Sec. 16-20-210. 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. (Ord. 556 §1, 2006)

Sec. 16-20-220. Sanctions.

Should any District fail to comply with any applicable provision of this Article, the Town 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 Article. (Ord. 556 §1, 2006

Section 2. The Land Development Regulations for the Town of Bennett, as originally adopted by Ordinance No. 467 and thereafter amended from time to time, are hereby repealed in their entirety.

Section 3. If any portion of this ordinance is held to be invalid for any reason, such decisions shall not affect the validity of the remaining portions of this ordinance. The Board of Trustees hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

Section 4. The repeal or modification of any portion of the Municipal Code of the Town of Bennett by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED, BY TITLE ONLY, THIS 22nd DAY OF FEBRUARY, 2011.

Sue F. Horn, Mayor

ATTEST:

Lynette F. White, Town Clerk

I, Lynette F. White, being the Town Clerk for the Town of Bennett, Colorado, hereby certify that I have personal knowledge of all the facts set forth in this certificate, and that this Ordinance was published, by title only, on the 4th day of March, 2011, which was subsequent to its adoption, in the Eastern Colorado News, which is a newspaper of general circulation in the Town of Bennett, Colorado, all in accordance with C.R.S. Section 31-16-101 et seq.

2/17/2010 11:16 AM[mac] S:\Bennett\Ordinances\Chapter 16 adoption 2011.ord