

**HOME RULE CHARTER
AND CODE
OF THE
TOWN OF JOHNSTOWN, COLORADO**

Published by

municode



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**OFFICIALS
of the
TOWN OF JOHNSTOWN**

Mayor

Mark Romanowski

Mayor Pro Tem

Gary Lebsack

Town Council

Damien Berg

Scott James

Troy Mellon

Jesse Molinar, Jr.

Aaron Townsend

Town Manager

Roy Lauricello

Town Clerk

Diana L. Seele

Town Attorney

Avi Rocklin

SUPPLEMENTATION

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

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

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

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

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

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

AMENDMENTS

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

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

The "Johnstown Municipal Code" is amended by the addition thereto of a new Section 2-121, which is to read as follows:

(Set out full section number, title and contents)

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

The "Johnstown Municipal Code" is amended by the addition of the following:

(Set out section title and contents)

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

Section 2-121 of the "Johnstown Municipal Code" is repealed in its entirety and readopted to read as follows:

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

or as follows:

Section 2-121 of the "Johnstown Municipal Code" is amended to read as follows:

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

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

Section 2-121 of the "Johnstown Municipal Code" is repealed in its entirety.

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JOHNSTOWN HOME RULE CHARTER

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PREFATORY SYNOPSIS

The following Charter document has been prepared by the nine elected members of the Town of Johnstown's Home Rule Charter Commission and is to be submitted to the Board of Trustees and to the registered electors of Johnstown for their approval. This document has been carefully prepared and drafted in conformity with Article 20 of the Colorado Constitution and the Municipal Home Rule Act of 1971, as amended. The Charter placed high priority on the right of the citizens of the Town of Johnstown to participate in their local government. The Charter holds the Town's elected and appointed officials to the highest ethical standards through existing and future ordinances. The Charter provides that:

- a. The current seven members of the Board of Trustees will become members of the Town Council.
- b. The Mayor will continue to be elected at large.
- c. At present, the six members of the Town Council will be elected at large.

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- d. The Charter provides for the establishment of wards/districts in the future based on the population of the Town.
- e. The Town Administrator will be appointed by the Town Council and will be the Chief Administrator of the Town.
- f. No current Town employee's job will be affected by this Charter.
- g. This Charter in no way changes existing Town ordinances.
- h. The Town Council may only take actions at regularly scheduled meetings that are open to the Public.
- i. No new taxes, tax increases, or tax changes may be made without voter approval.
- j. The Town has authority to collect its own taxes, thereby saving money and time in the acquisition of the Town's revenues.

The Commission members are aware that the home rule powers applicable to the Town and its citizens in no way supercede Federal and State Constitutions which govern all citizens of the United States and the State of Colorado. However, the Charter provisions grants its citizens full rights to participate in city government through power of initiative, referendum and recall as provided by the Constitution of the State of Colorado.

The desire of the members of the Commission is that this document will help enlighten all citizens of the Town of Johnstown on their rights under the Home Rule Charter and will encourage voters to participate in elections and voice their opinions on all matters of local government.

PREAMBLE

We the people of the Town of Johnstown, Colorado, have come together and have agreed that it is time we exercise our right of self rule to the extent that applicable Federal and State laws permit. We anticipate our future is one of growth and prosperity. As such, the time has come for all citizens to actively participate in matters of government that will affect the future. It is the responsibility of each and every one of us to have a diplomatic and respectful voice in elections, creation of laws governing our local government and financial matters regarding the operation of our local government.

ARTICLE 1 General Provisions

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[Section 1.2. Purpose of Charter.](#)

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[Section 1.7. Present Ordinances in Effect.](#)

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Section 1.1. Name and Boundaries.

The municipal corporation hereto existing as the Town of Johnstown, which is located in Weld County and Larimer County, State of Colorado, shall remain and continue as a body corporate and politic and under this Charter be known as the Town of Johnstown, with the same boundaries, unless changed in a manner authorized by law.

Section 1.2. Purpose of Charter.

It is the purpose of this Charter to establish a basic governmental structure that will provide for the effective and efficient conduct of the business of the Town. It is intended that the Charter shall provide for full participation in the affairs of the Town by all members of the community.

Section 1.3. Form of Government.

The municipal government provided in this Charter shall be known as a Council-Manager government.

Section 1.4. Powers of the Town.

- A. The Town shall have all the powers of local self-government and home rule, and all powers possible for the Town under the Colorado Constitution and all applicable laws. All such powers shall be exercised in a manner consistent with the United States Constitution, the Colorado Constitution, this Charter and laws enacted by the Town Council. The Town shall not enact any laws infringing upon the constitutional rights of any persons.
- B. Except as otherwise provided in this Charter, the Town shall also have all powers granted to cities, towns, and municipalities by the state statutes.
- C. The enumeration of specific powers in this Charter shall not be considered as limiting or excluding any other powers under the Colorado Constitution or any applicable laws. All powers shall be exercised in the manner set forth in this Charter or, if not provided for in this Charter, in such manner as shall be provided by Town ordinances, codes or other applicable powers and laws.

Section 1.5. Eminent Domain.

The Town shall have the right and power of eminent domain within and outside its corporate limits for all public purposes and/or public uses, as provided by the Colorado Constitution, state statutes, all applicable laws, and ordinances enacted by Town Council.

Section 1.6. Rights and Liabilities.

By the name "Town of Johnstown", the municipal corporation shall have perpetual succession; shall own, possess and hold all property, real and personal heretofore owned, possessed and held by the Town, and does assume and shall manage and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities; shall acquire all benefits and does assume and shall pay all bonds, financial obligations, and indebtedness of the Town; may, by the name of the Town of Johnstown, sue and defend, purchase, acquire, receive, hold and enjoy, or sell, lease and dispose of real and/or personal property; and shall have a common seal and alter the same at its pleasure.

Section 1.7. Present Ordinances in Effect.

All ordinances and codes of the Town in effect at the time this Charter becomes effective shall continue in effect, except as they may conflict with the provisions of this Charter or shall be amended or repealed by ordinances enacted under authority of this Charter.

Section 1.8. Amendments to the Charter.

This Charter may be amended in the manner provided in the Colorado Constitution and the state statutes pertaining to home rule charter amendments. Proceedings to amend the Charter may be initiated by the filing of a petition meeting the requirements of the state statutes or by the adoption of an ordinance by the Town Council submitting the proposed amendment to a vote of the registered electors of the Town.

ARTICLE 2 Town Council

[Section 2.1. Town Council.](#)

[Section 2.2. Mayor, Mayor Pro Tem.](#)

[Section 2.3. Mayor and Councilmembers - Qualifications.](#)

[Section 2.4. Term of Office; Time of Taking Office; Oath.](#)

[Section 2.5. Compensation.](#)

[Section 2.6. Vacancies.](#)

Section 2.1. Town Council.

- A. The Town Council shall be the governing body of the Town, and shall have such powers as are possessed by the Town and not conferred by this Charter on others. All such powers shall be exercised in the manner prescribed in this Charter or, if not provided for herein, in such manner as shall be provided by ordinances, codes and other applicable laws.
- B. The Town Council shall consist of six (6) Councilmembers nominated and elected from the Town at large, and a Mayor, who shall be nominated and elected from the Town at large. The Town Council may enact by ordinance for the nomination and election of six (6) Councilmembers from wards and districts; provided, however, the Mayor shall be elected at large. If and/or when the population of the Town reaches twenty thousand (20,000), the Town Council shall provide by ordinance, to be effective at the next general municipal election, for the election of six (6) Councilmembers to be nominated and elected by wards and districts, and a Mayor, who shall be nominated and elected from the Town at large.

Section 2.2. Mayor, Mayor Pro Tem.

- A. The Mayor shall be a member of the Town Council and shall have the same voting powers as any Councilmember.
- B. The Mayor shall preside over meetings of the Town Council and shall be recognized as the head of the Town government for ceremonial and political purposes.
- C. Subject to and consistent with this Charter, the Mayor's powers and duties may be prescribed by ordinance.
- D. By the affirmative vote of a majority of the entire Council, a Councilmember shall be appointed as Mayor Pro Tem for the term as prescribed by ordinance to perform the responsibilities and duties of the Mayor when the Mayor is absent or is otherwise unable to perform the responsibilities and duties of the Mayor.

Section 2.3. Mayor and Councilmembers - Qualifications.

- A. Each Councilmember and the Mayor shall be a citizen of the United States.

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- B. Each Councilmember shall be a registered elector of the Town who has resided in the Town or his/her respective ward or district, as the case may be with reference to Section 2.1.B of this Charter, for a period of at least twelve (12) consecutive months immediately preceding the election. However, in case the boundaries of the ward or district are changed or as a result of annexation the residence period is less than the prescribed time period of twelve (12) months within territory added to the ward or district, such shorter residency time period shall be deemed to meet the residency requirements for the ward or district to which the territory was added.
- C. The Mayor shall be a registered elector of the Town who has resided within the limits of the Town for a period of at least twelve (12) consecutive months immediately preceding the election. However, in the case of annexation, residence within the annexed territory for the prescribed time period shall be deemed to meet the residency requirements of this Paragraph C.
- D. No person who has been convicted of a felony or a willful violation of this Charter shall be qualified to serve as Mayor or Councilmember.
- E. Town Council may, by ordinance, enact requirements and procedures to govern the Council-related activities of Councilmembers and the Mayor while in office, which ordinance may prescribe disciplinary procedures and consequences for violations of such requirements and procedures.
- F. Except as provided in this Paragraph F, no person who is an employee of the Town, or a Town board or commission member, may serve as Mayor or Councilmember. Any Town employee who becomes a candidate for Mayor or Councilmember shall be deemed to have resigned from the position of Town employee on the date of announcing his/her candidacy for such office. Nothing in this Paragraph F shall prohibit the Council from appointing the Mayor or a Councilmember, after taking office, to a Town board or commission if the person is eligible to be so appointed pursuant to the ordinance establishing the board or commission.
- G. No person may be a candidate for both Mayor and Councilmember at the same election or hold both positions simultaneously. The Mayor or any Councilmember shall not hold any other elected public office.

Section 2.4. Term of Office; Time of Taking Office; Oath.

- A. Each Councilmember shall be elected for a four (4) year term. Councilmembers' terms shall be staggered, as provided by ordinance. The Mayor shall be elected for a four (4) year term.
- B. The Mayor and each Councilmember shall take office at the first regular or special meeting of the Council following certification of their election and shall continue in office until their successors have been elected and take office or a vacancy occurs.
- C. Before taking office, the Mayor and each Councilmember shall take and file with the Town Clerk an oath or affirmation to support the United States Constitution, the Colorado Constitution, the Charter, ordinances and codes of the Town and to faithfully perform the duties of the office.

Section 2.5. Compensation.

The Mayor and each Councilmember shall receive such salary and benefits as prescribed by ordinance. The salary of the Mayor or of any Councilmember shall not be increased or diminished during the term for which the Mayor or Councilmember has been elected. Subject to the Council's approval, the Mayor and Councilmembers may be reimbursed for the actual and necessary expenses incurred in the performance of the duties of office.

Section 2.6. Vacancies.

A Councilmember's office, and the office of the Mayor, shall become vacant whenever he/she is recalled, dies, is declared legally incompetent, resigns, is removed from office, moves from or becomes a

non-resident of the Town, ward or district, as the case may be with reference to Section 2.1.B. of this Charter. A Councilmember's office, and the office of the Mayor, may become vacant under Section 2.3 E of this Charter regarding discipline for violations of Council requirements and procedures. Vacancies shall be filled in the following manner:

- A. Appointment by Council if the vacancy occurs more than ninety (90) days before the next general municipal election. The appointee shall be selected by a majority vote of the remaining members of the Council and such appointment shall be made within thirty (30) days after such vacancy occurs. All such appointments shall continue until a successor is elected and qualified at the next general municipal election. In the event that a vacancy occurs in the office of Mayor, the Mayor Pro Tem shall assume the office of Mayor and the appointment shall be for the office of the Councilmember, who was the Mayor Pro Tem, only; or
- B. By election at the next general municipal election if the vacancy occurs within ninety (90) days immediately preceding said election; or
- C. By election at a special municipal election if three or more vacancies exist at any one time and there will not be a regular municipal election within the ninety (90) days immediately after the date that the third vacancy occurred. In the event of such multiple vacancies, Council shall call a special municipal election to be held within sixty (60) days from the occurrence of the third vacancy to elect a Councilmember to fill each vacated office.

All Councilmembers elected to fill vacancies as provided in Paragraphs B. and C. of this Section 2.6 and those elected subsequent to the filling of a vacancy by appointment as provided in Paragraph A. of this Section 2.6 shall be elected to fill only the unexpired terms of the offices so vacant.

ARTICLE 3 Council Procedure

[Section 3.1. Meetings.](#)

[Section 3.2. Special Meetings and Business at Special Meetings.](#)

[Section 3.3. Quorum.](#)

[Section 3.4. Public Meetings; Executive Sessions.](#)

Section 3.1. Meetings.

- A. The Council shall meet at least once a month or more often as prescribed by ordinance, with such meetings to be designated as general meetings. The Council shall prescribe the day and hour of its general meetings and the procedures governing meetings. The first meeting following each regular municipal election shall be the organizational meeting of Council.
- B. The Council shall cause minutes of its regular and special meetings to be taken and retained in the records of the Town.
- C. Council may meet in workshops, work sessions, retreats or other sessions as it deems necessary or as it may prescribe by procedures adopted by Council.

Section 3.2. Special Meetings and Business at Special Meetings.

- A. Special meetings shall be called by the Town Clerk at the request of the Mayor and two Councilmembers or at the request of three Councilmembers.
- B. A special meeting shall be held on notice to each Councilmember and Mayor, either personally, in writing or by electronic or telephonic means. The notice need not be made if the member has waived same.

- C. The Council shall not take action on any item of business at any special meeting of the Council unless it has been stated in the advance notice of the meeting or authorized by unanimous vote of all Councilmembers and the Mayor present at such special meeting.

Section 3.3. Quorum.

A majority of the Councilmembers holding office at the time shall be a quorum for the transaction of business at all Council meetings.

Section 3.4. Public Meetings; Executive Sessions.

- A. Except as provided in Section 3.4.D, all regular meetings, special meetings, workshops, retreats and work sessions of the Council shall be open to the public and all persons shall have a reasonable opportunity to be heard under such procedures as the Council shall prescribe.
- B. Notice of Council meetings, and work sessions shall be made available to the public in advance of the meetings. The notice shall include agenda information to the extent reasonably available.
- C. No formal action, final policy decision, rule, regulation, resolution, ordinance or action approving a contract or calling for the payment of money shall be adopted or approved except at a regular or special meeting.
- D. Executive sessions may be held in compliance with Town ordinances and applicable law related to such sessions.
- E. Except as authorized by majority vote of the entire Town Council, as required or permitted by judicial order or as otherwise required or permitted by law, no participant in any executive session shall reveal any information presented in the session. In addition to any other means available by law, a participant who is in doubt about the application of this provision may seek a judicial order by requesting an In Camera hearing in the District Court of Weld County at his/her expense. For purposes of this Paragraph E, "in camera" means in the judge's private chambers or in the courtroom with all spectators and the public excluded.

ARTICLE 4 Council Actions

[Section 4.1. Council Acts.](#)

[Section 4.2. Voting.](#)

[Section 4.3. Actions by Ordinance Required.](#)

[Section 4.4. Form of Ordinance.](#)

[Section 4.5. Severability of Ordinances.](#)

[Section 4.6. Adoption Procedure for Ordinances.](#)

[Section 4.7. Emergency Ordinances.](#)

[Section 4.8. Codification.](#)

[Section 4.9. Adoption of Codes by Reference.](#)

[Section 4.10. Public Records.](#)

[Section 4.11. Fines and Penalties for Ordinance Violations.](#)

Section 4.1. Council Acts.

The Council shall act only by ordinance, resolution or motion. All legislative enactments shall be in the form of ordinances. All other actions, except as provided in this Charter, may be in the form of resolutions or motions. A copy of every ordinance and resolution adopted shall be numbered and recorded in the records of the Town.

Section 4.2. Voting.

- A. The vote shall be recorded upon the adoption or failure to adopt, of all ordinances, resolutions and motions and entered in the minutes of the Council meetings.
- B. Except where a greater number is required in this Charter, the final adoption of any ordinance shall require the affirmative vote of a majority, which is four (4) of the Council, and resolutions and motions shall require the affirmative vote of a majority of the Councilmembers present at the meeting adopting such resolutions and motions.
- C. Neither the Mayor nor any Councilmember shall vote on any matter concerning such person's own conduct.
- D. Neither the Mayor nor any Councilmember shall vote on any matter in which such person has a conflict of interest, as prescribed by ordinance or applicable law.
- E. Except as provided by Paragraphs C. and D. of this Section 4.2, each Councilmember and the Mayor who is present shall vote on each matter.

Section 4.3. Actions by Ordinance Required.

In addition to such acts of the Council that are required by other provisions of this Charter to be done by ordinance, every act creating indebtedness, authorizing borrowing of money, levying a tax or tax increase, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property shall be by ordinance.

Section 4.4. Form of Ordinance.

Every ordinance shall be introduced in a written, printed or electronic format. The enacting clause of all ordinances shall be: BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO. Except as otherwise provided in this Article 4, all ordinances shall take effect seven (7) days after publication or notice by any other method provided in this Charter, following final approval.

Section 4.5. Severability of Ordinances.

Unless an ordinance shall expressly provide to the contrary, if any portion of an ordinance or the application of the ordinance to any person or circumstance shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the ordinance which can be given effect without the invalid portion or application; provided such remaining portions or applications are not determined by a court to be inoperable. To this end all ordinances are declared to be severable.

Section 4.6. Adoption Procedure for Ordinances.

- A. Each ordinance shall be presented to Council at least twice, and the following procedure shall be followed in adopting any ordinance, except an emergency ordinance:
 - 1. The ordinance shall be introduced by motion at a regular or special meeting of the Council.

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

2. The ordinance shall be read in full or by title with a brief description of the ordinance if copies of the entire ordinance are available to the public. Notwithstanding the foregoing, the ordinance may be introduced on first reading by inclusion by title only as a consent item within the Council agenda, as provided by ordinance or Council's procedures.
 3. If the ordinance is approved by Council upon its initial introduction, either as presented or as amended, it shall be published in full.
 4. The ordinance shall be introduced by motion and title a second time at a regular or special meeting of the Council held after the publication.
 5. Prior to taking final action on the ordinance, the Council shall permit public comments on the ordinance.
 6. Upon final approval, the ordinance shall be published or notice provided by any other method provided by this Charter by title, with a brief description of the ordinance and amendments, if any, provided copies of the entire ordinance, as finally approved, are available to the public.
 7. The ordinance shall be signed by the Mayor and attested by the Town Clerk and affidavits of publication shall be retained in the Town's records.
- B. Every ordinance published, or notice provided as described in this Charter by title and brief description, shall contain a provision that copies of the entire ordinance are available at the office of the Town Clerk or are available by other means of communication with or to the public.
- C. The Council may enact ordinances providing details of these procedures regarding consideration and adoption of ordinances consistent with this Charter.

Section 4.7. Emergency Ordinances.

- A. An emergency ordinance necessary for the immediate preservation of public property or assets, health, welfare, peace, or safety shall require the affirmative vote of five (5) Councilmembers. The facts determining the emergency shall be stated in the ordinance. Determination by the Council as to the existence of an emergency shall be final and conclusive.
- B. An emergency ordinance may be introduced and finally adopted at any regular or special meeting, shall require only one (1) reading and shall not require publication or notice prior to final adoption. An emergency ordinance shall take effect upon final adoption or on such later date as specified in the ordinance. Following final adoption, an emergency ordinance shall be published or notice provided by any other method provided by this Charter, in full, or by title with a summary description of the ordinance, as provided by the Council by ordinance.

Section 4.8. Codification.

The Council shall cause the ordinances to be codified and thereafter maintained in codified form. Revisions to the code(s) may be accomplished by reference as provided in Section 4.9 of this Charter.

Section 4.9. Adoption of Codes by Reference.

The Council may adopt, by ordinance, any code by reference. The procedure of adoption of a code by reference shall be as provided in the state statutes, or by laws applicable to the adoption of a code by reference, or such other procedure as the Council may provide by ordinance. Every ordinance adopting a code by reference shall contain a notice that copies of the code are available at the office of the Town Clerk or are available by other means of communication with/to the public. Any penalty clause in such a code may be adopted only if set forth in full in the adopting ordinance.

Section 4.10. Public Records.

All public records of the Town of Johnstown shall be open for inspection by any person at reasonable times in accordance with applicable laws and/or as provided by ordinances or Town procedures.

Section 4.11. Fines and Penalties for Ordinance Violations.

Penalties for violations of Town ordinances shall be established by ordinance. No fine or sentence for such violations shall exceed the maximum established by applicable laws for charter, ordinance and/or code violations.

ARTICLE 5 Ethics

Purpose. The Town Council shall enact a code of ethics to establish requirements for the ethical standards of conduct for Town officials and Town employees. For purposes of this Article 5, "Town officials" are defined to include elected and appointed officials and volunteers. Town officials and Town employees are to act in the best interest of the Town. Town officials and Town employees are to disclose any personal, financial or other interests in matters affecting the Town that come before them for action. Town officials and Town employees are to recuse themselves from decision making if they have a conflict of interest or the appearance of a conflict of interest. Town officials and Town employees are to be independent, impartial, and responsible to the citizens for their actions. Public offices and public positions in the Town will not be used for personal gain. It is important that the public has confidence in the integrity of its municipal government and that Town officials and Town employees have an opportunity to maintain their personal integrity and reputations. The ethics code is to establish a process by which one understands and functions under requirements and directions regarding ethical issues. The code is to establish a course of action for resolving disputes in a manner that is fair to all the parties involved. The code is also to provide for the consequences for violations of its requirements.

ARTICLE 6 Elections

[Section 6.1. State Election Laws Adopted.](#)

[Section 6.2. General Municipal Elections.](#)

[Section 6.3. Special Municipal Elections.](#)

[Section 6.4. Conduct of Elections.](#)

Section 6.1. State Election Laws Adopted.

Town elections shall be governed by the state statutes except as otherwise provided by this Charter or by ordinance. All general and special municipal elections shall be nonpartisan.

Section 6.2. General Municipal Elections.

General municipal elections shall be held on the first Tuesday in April of each even-numbered year, commencing in 2008.

Section 6.3. Special Municipal Elections.

Special municipal elections shall be called by a Council resolution adopted not less than thirty (30) days before the election. The resolution calling a special election shall describe the purpose of the election.

Section 6.4. Conduct of Elections.

The Town Clerk shall be in charge of all activities and duties required pursuant to this Charter relating to the conduct of Town elections. In any case where election procedures are in doubt or question, the Town Clerk shall prescribe the procedures to be followed.

ARTICLE 7 Initiative, Referendum, and Recall

[Section 7.1. Initiative.](#)

[Section 7.2. Referendum.](#)

[Section 7.3. Exceptions.](#)

[Section 7.4. Recall.](#)

[Section 7.5. Council Referral.](#)

[Section 7.6. Prohibited Action By Council.](#)

[Section 7.7. Withdrawal of Petition.](#)

Section 7.1. Initiative.

- A. The initiative power, reserved by Article 5, Section 1(9) of the Colorado Constitution, is hereby extended to the registered electors of the Town as to Town legislation which is subject to the initiative power. Any initiated measure shall be in the form of an ordinance. The measure shall be initiated pursuant to the state statutes, ordinances or applicable laws which establish procedures for a municipal initiative, except as otherwise provided in this Charter and in ordinances consistent with this Charter.
- B. The initiative petition shall be signed by registered electors of the Town equal in number to at least fifteen (15) percent of the total number of electors of the Town registered to vote at the last general municipal election.
- C. The Town Clerk shall not count as valid any signature on an initiative petition if the date of the signature is prior to the date the form of the petition was approved by the Town Clerk.
- D. The Town Clerk shall not count as valid any signature on an initiative petition if more than ninety (90) days have elapsed between the date the form of the petition was approved by the Town Clerk and the date of the signature.

Section 7.2. Referendum.

- A. The referendum power, reserved by Article 5, Section 1(9) of the Colorado Constitution, is hereby extended to the registered electors of the Town as to Town legislation which is subject to the referendum power. Such legislation shall be referred pursuant to the state statutes, ordinances or applicable laws which establish procedures for a municipal referendum, except as otherwise provided in this Charter and in ordinances consistent with this Charter.
- B. A referendum petition shall be signed by registered electors of the Town equal in number to at least ten (10) percent of the total number of electors of the Town registered to vote at the last regular municipal election.
- C. The Town Clerk shall not count as valid any signature on a referendum petition if the date of the signature is prior to the date the form of the petition was approved by the Town Clerk.

Section 7.3. Exceptions.

Notwithstanding these provisions for initiative and referendum, the following ordinances or resolutions shall not be subject to initiative and referendum:

- A. Ordinances or resolutions addressing budgets, capital programs, appropriations, levies of taxes, economic development and salaries of Town officials or Town employees shall not be subject to initiative.
- B. Ordinances or resolutions addressing budgets, capital programs, appropriations, levies of taxes, economic development, salaries of Town officials or Town employees, special elections, emergencies, authorization of issuance of improvement district bonds payable in part from special assessments, levying special assessments or contractual obligations of the Town shall not be subject to referendum.

Section 7.4. Recall.

- A. The Mayor and/or any Councilmember may be recalled at any time after six (6) months in office, pursuant to the state statutes or applicable laws which establish procedures for the recall of municipal elected officials, except as otherwise provided in this Charter and in ordinances.
- B. A petition to recall a Councilmember shall be signed by registered electors of the Town or of the ward or district, as the case may be with reference to Section 2.1.B., from which the Councilmember was elected and a petition to recall the Mayor shall be signed by registered electors of the Town.
- C. The signers shall number at least twenty-five (25) percent of the entire votes cast in the Town, ward or district, as the case may be with reference to Section 2.1.B., for all the candidates for that particular office at the last preceding election in which the person sought to be recalled was elected to office.
- D. For the recall of a person appointed to fill a vacancy, signers shall number at least twenty-five (25) percent of the entire vote cast for all candidates for the vacated office in the Town, ward or district, as the case may be with reference to Section 2.1. B., at the last preceding general municipal election at which a person was elected to that office.
- E. If a general municipal election or statewide general election is scheduled to be held within ninety (90) days after submission of a recall petition, although that election is not the one at which the office held by the person sought to be recalled would otherwise be filled, the recall election shall be held at the same time as that general municipal or statewide general election provided that the recall petition is submitted at least forty five (45) days before such election.
- F. After one (1) recall petition and election, no further petition shall be filed against the same person during the term for which such person was elected or appointed unless the number of petitioners signing said petition are equal to or exceed fifty (50) percent of all the votes cast in the Town, ward or district, as the case may be with reference to Section 2.1 B., for all the candidates for that particular office at the last preceding general municipal election.
- G. Except as to requirements contained in this Charter, state statutes, ordinances or other applicable laws regarding the recall of the Mayor or Councilmembers, the form, content, approval, and other petition requirements in the state statutes, ordinances or laws applicable to municipal initiatives shall apply as nearly as practicable to recall petitions.

Section 7.5. Council Referral.

The Council shall have the power to submit to a vote of the registered electors of the Town, without receipt of any petition, any proposed or adopted ordinance or any issue or question.

Section 7.6. Prohibited Action By Council.

- A. No initiated ordinance adopted by the registered electors of the Town may be substantively amended or repealed by the Council during a period of one (1) year after the date of the election on the initiated ordinance, unless the amendment or repeal is approved by a majority of the registered electors of the Town.
- B. No referred ordinance repealed by the registered electors of the Town may be re-adopted by the Council during a period of one (1) year after the date of the election on the referred ordinance, unless the re-adoption is approved by a majority of the registered electors of the Town.

Section 7.7. Withdrawal of Petition.

- A. An initiative, referendum, or recall petition may be withdrawn at any time prior to thirty (30) days before the day scheduled for a vote by filing with the Town Clerk a written request for withdrawal.
- B. The written request for withdrawal shall be signed by a majority of persons who are designated in the petition as representing the signers on matters affecting the petition.
- C. Upon the filing of such request the petition shall have no further force or effect and all proceedings thereon shall be terminated.

ARTICLE 8 Town Administration

[Section 8.1. Town Manager.](#)

[Section 8.2. Exclusive Service to Town.](#)

[Section 8.3. Powers and Duties of Manager.](#)

[Section 8.4. Town Clerk.](#)

[Section 8.5. Administrative Departments.](#)

[Section 8.6. Relationship of Council to Administration.](#)

Section 8.1. Town Manager.

- A. The Council shall appoint a Town Manager. The appointment shall provide for compensation to be fixed from time to time by Council. The Town Manager shall serve at the pleasure of the Town Council. The appointment or removal of the Town Manager shall require the affirmative vote of a majority of the entire Council, which is four (4).
- B. The Town Manager shall be appointed without regard to any consideration other than fitness, competency, training, and experience in professional administration.
- C. Neither any Councilmember nor the Mayor shall be appointed Town Manager during the term for which the person was elected or appointed nor within one (1) year after the term.
- D. The Town Manager, with approval of Council, shall designate a Town employee to serve as acting Manager in his/her temporary absence or temporary disability. The Town Council may appoint an interim Manager until a permanent replacement for the Manager is selected.
- E. The Council and Manager may agree by contract to terms of employment and termination consistent with this Charter.

Section 8.2. Exclusive Service to Town.

During the period of the appointment, the Town Manager shall not be an employee of, or perform any services for compensation from, any person or entity other than the Town, unless the Manager has first obtained the approval of a majority of the Council.

Section 8.3. Powers and Duties of Manager.

The Town Manager shall be the administrative officer of the Town. The Town Manager shall have the following powers and duties:

- A. Be responsible for the enforcement of the ordinances, resolutions, franchises, contracts, requirements, regulations, policies, directives and enactments of the Council and the Town.
- B. Establish and implement personnel rules and regulations for Town employees. Such rules and regulations shall provide, but not be limited to the selection, promotion and retention of Town employees on the basis of ability, training, experience and performance.
- C. Cause a proposed budget, including a capital budget, to be prepared and submitted to the Council biannually, annually or as provided by Council ordinance, and be responsible for the administration of the budget adopted by Council.
- D. Cause to be prepared and submitted to Council a report of all finances and financial activities of the Town as often as directed by Council, and keep the Council advised of the financial condition and existing and future financial needs of the Town.
- E. Cause to be prepared and submitted to the Town Council, as of the end of the fiscal year, a complete report on finances and administrative activities of the Town for that year and make other reports as requested by the Council concerning the activities of the Town which are within the Manager's responsibility.
- F. Except as to the Municipal Court and the office of the Town Attorney, including the Town Prosecutor, exercise supervision and control over all Town departments and employees and make recommendations to the Town Council concerning the establishment, alteration, consolidation or abolition of Town departments and employee positions.
- G. Attend Town Council meetings and participate in discussions with the Council in an advisory capacity.
- H. Make recommendations and offer advice to Council regarding administrative matters.
- I. Be responsible for informing the public on Town functions and activities.
- J. Perform such other duties as prescribed by this Charter or as required by the Council consistent with this Charter and Town codes, ordinances and laws.

Section 8.4. Town Clerk.

The Town Manager shall appoint a Town Clerk to perform such duties required by this Charter, applicable laws, ordinances, rules, regulations and policies and such other duties as directed by the Town Manager.

Section 8.5. Administrative Departments.

The administrative functions of the Town will be performed within the administrative departments that exist on the effective date of this Charter, subject to Section 8.3 F. of this Charter. The Council may, by ordinance, establish, alter, reduce, consolidate, or abolish administrative departments and/or employee positions.

Section 8.6. Relationship of Council to Administration.

The Council shall have authority to direct the Town Manager with respect to the performance of his duties and responsibilities. Although individual Councilmembers and the Mayor shall be authorized to discuss all matters relating to Town operations and administrative services with employees, officers, contractors and consultants of the Town, including the Town Manager, they shall not give any direct orders specifically to Town employees. The Mayor and Town Council are authorized to direct the Town Manager regarding the administration and operations of Town codes, ordinances, resolutions, policies, procedures and directives to be carried out by the administration.

ARTICLE 9 Town Attorney

- A. The Town Council, by majority vote of the entire Council, shall appoint a Town Attorney to serve at the pleasure of the Council.
- B. The Council shall establish the Town Attorney's compensation.
- C. The Town Attorney shall be, at all times while serving as Town Attorney, an attorney admitted to practice in Colorado.
- D. The removal of the Town Attorney shall require the majority vote of the entire Council.
- E. The Town Attorney shall serve as the chief legal officer and advisor of the Town, supervise the drafting of all ordinances, resolutions and legal documents, attend Council meetings, represent the Town in all legal matters and proceedings, advise the Council and all Town employees and officials in legal matters relating to their functions, powers and duties and perform all other duties designated by the Council.
- F. The Council may employ such Special Counsel or Town Prosecutor as may be recommended by the Town Attorney, the Town Manager, or as determined by Council. The Town Attorney and the Town Prosecutor may be the same person.

ARTICLE 10 Municipal Court; Municipal Judge

- A. There shall be a Municipal Court vested with jurisdiction over matters related to the Charter, ordinances and other enactments of the Town. The Municipal Court may be a court of record by enactment of Council ordinance. The Court shall have such powers and jurisdiction over all local, municipal matters and/or mixed local and statewide matters as provided by Council ordinances and applicable laws.
- B. The Town Council shall appoint, by the majority vote of the entire Council, a presiding municipal judge and such deputy municipal judges as the Council deems necessary. Each municipal judge shall be appointed for a two (2) year term.
- C. The Council shall establish the compensation for the presiding municipal judge and each deputy municipal judge. The compensation shall not be dependent upon the outcome of the matters to be decided by the judge.
- D. The presiding municipal judge and each deputy municipal judge shall be, at all times while serving as judge, an attorney admitted to practice in Colorado.
- E. The removal of any judge during the term of office shall require the majority vote of the entire Council. Any such removal shall only be for cause as specified in the state statutes applicable to the removal of municipal judges, and for any other conduct which would constitute a violation of the Colorado Code of Judicial Conduct, as from time to time amended, if committed by a judge subject to such Code.

ARTICLE 11 Boards and Commissions

[Section 11.1. Existing Boards and Commissions.](#)

[Section 11.2. Boards and Commissions - General.](#)

Section 11.1. Existing Boards and Commissions.

Each board and commission existing at the time this Charter is adopted shall continue, except as otherwise provided by ordinance. The Town Council may, by ordinance, establish, consolidate or abolish any board or commission.

Section 11.2. Boards and Commissions - General.

- A. The Council may, by ordinance, provide that boards and commissions shall be advisory or decision making in character and/or purpose. The selection, removal, terms, responsibilities, duties and policies concerning each board and commission shall be established by ordinance.
- B. The appointment or removal of any board or commission member who is required by ordinance to be appointed by the Town Council shall require the affirmative vote of a majority of the entire Council. A member appointed by the Town Council shall serve at the pleasure of the Council.
- C. The members of each board and commission shall serve without compensation, but may be paid authorized expenses actually incurred in the performance of the duties of office.

ARTICLE 12 Budget and Finance

[Section 12.1. Fiscal Year.](#)

[Section 12.2. Proposed Budget and Message.](#)

[Section 12.3. Contents of Proposed Budget.](#)

[Section 12.4. Capital Program.](#)

[Section 12.5. Budget Hearing.](#)

[Section 12.6. Council Amendments.](#)

[Section 12.7. Town Council Adoption.](#)

[Section 12.8. Appropriations.](#)

[Section 12.9. Property Tax Levy.](#)

[Section 12.10. Public Records.](#)

[Section 12.11. Contingencies.](#)

[Section 12.12. Amendments After Adoption.](#)

[Section 12.13. Payments and Obligations Provided.](#)

[Section 12.14. Multiple Year Obligations.](#)

[Section 12.15. Enterprises.](#)

[Section 12.16. Independent Audit.](#)

Section 12.1. Fiscal Year.

Unless otherwise provided by ordinance, the fiscal year of the Town shall begin on the first day of January and end on the last day of December of each year.

Section 12.2. Proposed Budget and Message.

At such time as the Council may provide by ordinance, the Town Manager shall cause to be prepared and submitted to the Council a proposed budget and accompanying message. The proposed budget shall provide a financial plan for all Town funds and activities for the next fiscal year and, if the Council provides by ordinance, shall provide such a financial plan for the subsequent fiscal year or years, and except as required by this Charter, shall be in such form as the Council may require. The proposed budget shall contain a general summary of its contents and, if the Council provides by ordinance, shall include comparative figures for revenues and expenditures for the current and prior fiscal year or years.

Section 12.3. Contents of Proposed Budget.

The proposed budget shall include, but not be limited to, in separate sections the following information:

- A. An estimate of anticipated revenues classified by source;
- B. An estimate of cash available, if any, as of December 31 of the current fiscal year;
- C. Proposed expenditures for the operation of the Town, by fund, department, office and agency, and the methods of financing such expenditures;
- D. Provisions for reserves and contingencies;
- E. Proposed capital expenditures, by fund, department, office and agency, and the proposed methods of financing such expenditures;
- F. Anticipated net surplus or deficit for each municipal utility system and the proposed method of its disposition;
- G. Anticipated net surplus or deficit for each municipal enterprise and the proposed method of its disposition;
- H. An estimate of the amount required to be raised from an ad valorem property tax levy;
- I. A statement of the outstanding securities and other debt and payment obligations of the Town, showing the debt redemption and interest requirements, the debt authorized and outstanding and the condition of sinking funds, if any; and
- J. Such other information as the Council may require.

Section 12.4. Capital Program.

- A. Concurrently with the date of submission of the proposed budget to the Council, or at such other time as the Council may require by ordinance, the Town Manager shall cause to be prepared and submitted to the Council a recommended capital program for the next fiscal year and for such subsequent fiscal years as provided by the Council by ordinance.
- B. The recommended capital program shall include, but not be limited to, the following information:
 - 1. A general summary of its contents;
 - 2. A list of all capital improvements which are recommended to be undertaken, continued or completed;
 - 3. Cost estimates and methods and timing of financing the improvements;
 - 4. The estimated annual cost of operating and maintaining the improvements; and
 - 5. Such other information as the Council may require.

- C. The recommended capital program, following adoption, shall serve as a guide for the planning of capital improvements.

Section 12.5. Budget Hearing.

A public hearing on the proposed budget and capital program shall be held by the Council after receipt of the proposed budget. Notice of the time and place of such hearing shall be published or notice provided by such methods as described in this Charter at least one (1) time not less than ten (10) days prior to the hearing and shall state that copies of the proposed budget and the proposed capital program are available for public review or inspection at the Town.

Section 12.6. Council Amendments.

After the public hearing the Council may adopt the budget as presented or amended. In amending the budget, the Council may add or increase programs or amounts and may delete or decrease programs or amounts except those expenditures required by law, for debt service or for estimated cash deficits. Such amendments shall not increase the total expenditures for the overall budget as presented at the public hearing. If such amendment does increase the total expenditures, then another public hearing shall be held prior to adoption of the budget, subject to notice as described in Section 12.5.

Section 12.7. Town Council Adoption.

The Council shall adopt the budget for the next fiscal year by ordinance or resolution on or before the final day of the current fiscal year. If it fails to adopt the budget for the next fiscal year by this date, the amounts appropriated for the current operations for the current fiscal year shall be deemed adopted for the next fiscal year on a month-to-month basis, with all items in it prorated accordingly, until such time as the Council adopts the budget for the next fiscal year.

Section 12.8. Appropriations.

- A. Adoption of the budget by the Council shall constitute appropriations of the amounts specified therein for expenditure from the funds indicated.
- B. The proceeds of any municipal borrowing shall not be subject to any requirement of prior budgeting or appropriation as a condition of their expenditures.
- C. The amount necessary to repay any such municipal borrowing, including interest, need not be budgeted or appropriated in full in the year in which the borrowing occurs. However, such amounts necessary to pay debt service shall be budgeted and appropriated on an annual basis, provided that no failure to budget and appropriate such annual debt service amounts shall affect the enforceability of any covenant of the Town to make such payments.

Section 12.9. Property Tax Levy.

The Council shall cause the property tax to be certified to the county for collection as required by law.

Section 12.10. Public Records.

Copies of the budget and the capital program as adopted shall be public records and shall be available to the public.

Section 12.11. Contingencies.

- A. The budget may include an item for contingencies.
- B. Expenditures shall not be charged directly to contingencies except if there is no logical account to which such expenditures may be charged.

Section 12.12. Amendments After Adoption.

- A. Supplemental Appropriations: If during the fiscal year the Town Manager certifies to the Council that there are revenues available for appropriation in excess of those estimated in the budget, the Council may by resolution make supplemental appropriations for the year not to exceed the amount of such excess, provided that such additional spending is not in conflict with the Colorado Constitution.
- B. Emergency Appropriations: To meet a public emergency affecting life, health, property or the public good or peace, the Council may make emergency appropriations. To the extent that there are no available unappropriated revenues to meet such appropriations, the Council may authorize the issuance of emergency notes.
- C. Reduction of Appropriations: If during the fiscal year it appears probable to the Town Manager that the revenues available will be insufficient to meet the amount appropriated, it shall be reported to the Council without delay, indicating the estimated amount of deficit, any remedial action taken and recommendations as to any other steps to be taken. The Council shall take such further action it deems necessary to prevent any deficit. For that purpose, it may, by resolution, reduce one or more appropriations.
- D. Transfer of Appropriations: The Town Council may, by resolution, authorize a maximum amount which the Town Manager may transfer from any unused balance of any general fund appropriation or portion thereof from one (1) department or other spending unit to another. Except as otherwise provided in this Charter, the transfer of monies from one (1) fund to another shall only be made by a resolution amending the budget as adopted.
- E. Reports: as often as required by the Council, the Town Manager shall submit to the Council data showing the relation between the estimated and actual revenues and expenditures to date.
- F. Administrative Fiscal Responsibilities: Each department head shall have the responsibility to advise the Town Manager, who shall then advise the Council, of any financial irregularities in the department.
- G. Limitation, Effective Date: No appropriation for debt service may be reduced or transferred. No appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental appropriations, emergency appropriations, and reduction or transfer of appropriations authorized by this Section 12.12 may be made effective immediately upon adoption.

Section 12.13. Payments and Obligations Provided.

During the fiscal year no Town official, employee, or spending agency shall expend any money, incur any liability, or enter into any contract which, by its terms, involves the expenditures of money in excess of the amounts appropriated. Any liability or contract, verbal or written, made in violation of this Section 12.13, shall be void and no monies belonging to the Town shall be paid on such liability or contract.

Section 12.14. Multiple Year Obligations.

Nothing in this Article 12 shall prevent the Town from entering into multiple fiscal year contracts in the manner provided by law.

Section 12.15. Enterprises.

The Council may adopt ordinances or resolutions providing for the establishment and operation of municipal enterprises.

Section 12.16. Independent Audit.

The Council shall provide for an independent annual audit of all Town funds and accounts by a certified public accountant selected by the Council and may provide for more frequent audits as it deems necessary. The accountant selected shall have no direct personal interest in the fiscal affairs of the Town, of any member of the Council, or of any other official of the Town. Unless another date is provided by ordinance, the audit shall be completed within six (6) months after the close of the fiscal year. Copies of the audit shall be available for public inspection or review.

ARTICLE 13 Municipal Borrowing and Payment Obligations

[Section 13.1. Forms of Borrowing and Obligations.](#)

[Section 13.2. Short-term Securities and Financial Obligations.](#)

[Section 13.3. General Obligation Securities and Obligations.](#)

[Section 13.4. Revenue Securities and Obligations.](#)

[Section 13.5. Refunding Securities.](#)

[Section 13.6. Limitations.](#)

[Section 13.7. Sale of Securities.](#)

[Section 13.8. Other Contracts and Agreements.](#)

[Section 13.9. Limitation of Actions.](#)

Section 13.1. Forms of Borrowing and Obligations.

The Town may borrow money and issue bonds, securities, documents and instruments of indebtedness or enter into other obligations to evidence such borrowing and may otherwise incur payment obligations in such form and manner as the Council determines to be advantageous to the Town.

Section 13.2. Short-term Securities and Financial Obligations.

The Council may, by ordinance and without any election, borrow money, and may, without any election, otherwise incur payment obligations in anticipation of the collection of taxes or other revenues in the same fiscal year. The Council may issue short-term securities or otherwise evidence the amount so borrowed or the payment obligation so incurred. Short-term securities may be secured in any manner determined by the Council, including a pledge of the full faith and credit of the Town. Any such short-term securities or obligations shall mature or become payable on or before the end of the same fiscal year.

Section 13.3. General Obligation Securities and Obligations.

- A. Except as otherwise provided in this Charter, no securities or other financial obligations, which the Town is obligated to pay in whole or in part from the proceeds of general ad valorem property taxes,

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

shall be issued or otherwise incurred until the question of their issuance has been approved by a majority of the registered electors voting thereon at an election.

- B. Paragraph A. of this Section 13.3 shall not apply to any securities issued or other financial obligations incurred for the purpose of acquiring, constructing, improving, or extending any municipal utility system or for the purpose of acquiring water or water rights, nor shall it apply to other long-term financial obligations or contracts for municipal utility system properties, services or operations.

Section 13.4. Revenue Securities and Obligations.

- A. The Council may, by ordinance and without any election and indebtedness, issue securities, and may, without any election, otherwise incur financial obligations for any public purpose payable in whole or in part from any source of revenues other than general ad valorem property taxes or sales and use taxes.
- B. Notwithstanding the provisions of Paragraph A in this Section 13.4 the Council may, by ordinance and without any election and indebtedness, utilize property, sales or use tax incentives for economic development or public purpose incentives as determined by Council.

Section 13.5. Refunding Securities.

- A. The Council may, by ordinance and without any election, issue securities for the purpose of refunding outstanding securities or other payment obligations to accomplish any refunding purpose determined by the Council to be advantageous to the Town. Any refunding securities which are revenue securities may be payable in whole or in part from any source of revenue or any combination of sources of revenues other than general ad valorem property taxes.
- B. Refunding securities may be issued in such principal amount and otherwise on such terms as the Council may determine to be necessary or appropriate to accomplish the refunding purpose.

Section 13.6. Limitations.

Except as provided in this Charter, there shall be no limitation on the total amounts or other terms of securities the Town may issue or on the incurring of other debts or payment obligations by the Town.

Section 13.7. Sale of Securities.

All securities issued pursuant to this Charter shall be sold in such manner and pursuant to such terms as determined by the Council to be to the best advantage of the Town.

Section 13.8. Other Contracts and Agreements.

The Town may, without any election, enter into lease-purchase and installment-purchase agreements, construction contracts, contracts for the purchase, installation or acquisition of any real or personal property for public purposes and/or public uses and any executory contracts or agreements and may, without any election, commit to pay such obligations in whole or in part from the proceeds of general ad valorem property taxes. The Council may pledge the full faith and credit and the general taxing power of the Town to the payment of its obligations under any such agreement and may enter into such covenants regarding the rights of the lessor-vendor in the property upon default, as the Council may deem necessary or appropriate.

Section 13.9. Limitation of Actions.

- A. No action of any nature whatsoever against any act, proceeding, or election of the Town pursuant to this Article 13 shall be maintained unless commenced within thirty (30) days after the election or performance of the act or proceeding or effective date of any ordinance or resolution complained of to:
 - 1. Question the validity or enforceability of or enjoin the performance of any act;
 - 2. Question the validity or enforceability of or enjoin the issuance or payment of any securities;
 - 3. Question the validity or enforceability of or enjoin the incurring of any other payment obligation;
 - 4. Question the validity or enforceability of or enjoin the imposition or collection of any taxes, fees, charges or revenues; or
 - 5. Obtain any other review of or relief against any act, proceeding or election of the Town pursuant to this Article 13.
- B. Any action not commenced within the time limits provided in paragraph A. of this Section 13.9 shall be thereafter perpetually barred.
- C. The limitations of this Section 13.9 shall be in addition to any limitations or restrictions provided by ordinance.

ARTICLE 14 Municipal Taxation and Fees

- A. The Council shall have the authority to adopt and levy, by ordinance, all taxes which are not prohibited for home rule municipalities by the Colorado Constitution, subject to any applicable limitations in that Constitution. Prior to the institution of any new tax or tax increase, the Council shall comply with applicable voter approval requirements in the Colorado Constitution.
- B. The Council shall have the authority to enact, establish and enforce, by ordinance and resolution, the imposition of fees and/or charges for all municipal and/or public services, facilities and improvements and fees and/or charges for impacts upon such municipal and/or public services, facilities and improvements it deems in the best interests of the Town.

ARTICLE 15 Municipal Investments

The Council may, by ordinance or resolution, initiate and adopt policies for municipal investments, subject to compliance with the following conditions:

- A. Such policies are subject to any applicable limitations in the Colorado Constitution; and
- B. Such policies are determined by Council to be in the best interest of the Town.

ARTICLE 16 Town Utilities

[Section 16.1. Authority and Powers.](#)

[Section 16.2. Utility Rates and Finances.](#)

[Section 16.3. Separate Utility Accounting.](#)

Section 16.1. Authority and Powers.

The Town shall have and exercise all the authority and powers provided by the Colorado Constitution, state statutes and other applicable laws in any matter pertaining to Town utilities, including without limitation, water and water rights and acquisition thereof, sanitary sewer and storm and water drainage and bonded indebtedness in connection therewith.

Section 16.2. Utility Rates and Finances.

- A. The Council shall from time to time by resolution fix, establish, maintain, enforce and provide for the collection of rates, fees and charges for water, sanitary sewer, storm and water drainage, gas and/or electric, any power sources, and all other utilities and services furnished by the Town.
- B. Such rates, fees and charges shall be sufficient in the Council's judgment to provide services to customers; pay all securities and bonded indebtedness; pay legally required refunds; cover the cost of operations, maintenance, additions, extensions, betterments, and improvements; provide a reasonable return on the Town's investment in utility properties and capital investments, including by illustration only, reimbursement to the Town for the utilities' use of the Town's rights-of-way and reimburse the Town for administrative services and overhead provided and incurred by the Town on behalf of all utilities; and any other consideration reasonably determined by the Council to be in the best interest of the Town.

Section 16.3. Separate Utility Accounting.

- A. All monies derived from Town utilities shall be accounted for separately from other monies of the Town.
- B. Any loan of money derived from Town utilities to any other Town utility, or to any other Town fund, shall be approved by ordinance.

ARTICLE 17 Franchises and Permits

[Section 17.1. Franchises.](#)

[Section 17.2. Granting of Franchises.](#)

[Section 17.3. Terms of Franchises.](#)

[Section 17.4. Revocable Permits or Licenses.](#)

Section 17.1. Franchises.

All franchises in effect upon enactment of the Charter shall remain in full force and effect in accordance with their respective terms and conditions and the applicable laws.

Section 17.2. Granting of Franchises.

Any franchise and all renewals, extensions or amendments thereof shall be granted only by ordinance.

Section 17.3. Terms of Franchises.

Every grant of a franchise shall specify its duration, terms, fees, compensation, conditions, record keeping and other provisions and requirements as reasonably determined by the Council.

Section 17.4. Revocable Permits or Licenses.

The Town may grant a permit or license at any time for the temporary use or occupation of any street, alley, other public way, or Town-owned place. Any such permit or license shall be revocable by the

Town at any time and without cause, whether or not such right to revoke is expressly reserved in the permit, license or agreement.

ARTICLE 18 Improvement Districts

The Council, subject to applicable restrictions in the Colorado Constitution, shall have authority to create, by ordinance, improvement districts within the Town.

ARTICLE 19 General Legal Provisions

[Section 19.1. Interpretation.](#)

[Section 19.2. Severability of Charter Provisions.](#)

[Section 19.3. Bonding.](#)

[Section 19.4. Bequests, Gifts and Donations.](#)

[Section 19.5. Saturdays, Sundays and Holidays.](#)

[Section 19.6. Penalty for Violation of Charter.](#)

[Section 19.7. Intergovernmental Agreements.](#)

[Section 19.8. Bidding.](#)

[Section 19.9. Emergency Acquisitions.](#)

Section 19.1. Interpretation.

- A. Except as otherwise specifically provided in or indicated by the context, all words used in this Charter indicating the present tense shall not be limited to the time of the adoption of this Charter, but shall extend to and include the time of the happening of any event or requirement for which provision is made in this Charter.
- B. Except as otherwise specifically provided in or indicated by the context, the singular number shall include the plural and the plural shall include the singular. The word "person" may extend and be applied to bodies politic and corporate, partnerships, individuals and other public or private entities. Words in the masculine gender include the feminine and the neuter, and when the sense so indicates, words of the neuter gender refer to any gender.

Section 19.2. Severability of Charter Provisions.

If any part of this Charter or the application of any part of this Charter to any person or circumstance is found to be invalid, such invalidity shall not affect the validity of any remaining part of this Charter, and to this end this Charter is declared to be severable.

Section 19.3. Bonding.

Before permitting any Town official or Town employee to perform any function or duty involving the handling of Town funds, the Council may require, by ordinance, that such person obtain a fidelity bond or insurance coverage in an amount prescribed by Council.

Section 19.4. Bequests, Gifts and Donations.

Except as otherwise provided in this Charter, the Town may receive bequests, gifts, and donations of all kinds of property with power to manage, sell, lease, or otherwise dispose or provide for the disposition of same.

Section 19.5. Saturdays, Sundays and Holidays.

If the last day of any period required to be computed under this Charter is a Saturday, Sunday, Town, state or national holiday, the period shall be extended to include the next day which is not a Saturday, Sunday or holiday.

Section 19.6. Penalty for Violation of Charter.

Any willful violation of a provision of this Charter shall be deemed a misdemeanor and may be prosecuted in the Municipal Court. Any person convicted of such a violation may be punished by imprisonment for a term not to exceed the maximum term of imprisonment that the Municipal Court is authorized to impose, by a fine in an amount not to exceed the maximum fine that the Municipal Court is authorized to impose, or by both such fine and imprisonment.

Section 19.7. Intergovernmental Agreements.

The Council may, by resolution or by ordinance, enter into contracts or agreements with public and/or governmental units, agencies, boards, commissions and entities for the use of properties, improvements, buildings, equipment, or facilities, and for furnishing or receiving commodities or services and for all other legal purposes.

Section 19.8. Bidding.

Purchases of/or contracts for supplies, material, equipment or improvements shall be made under such requirements regarding bidding procedures, as prescribed by ordinance.

Section 19.9. Emergency Acquisitions.

In case of an emergency affecting the public peace, well-being, health, or safety, the Council may waive all provisions for competitive bidding and direct the Town Manager, acting as purchasing agent for the Town, to purchase, use, acquire and/or lease equipment, goods, supplies, services and materials.

ARTICLE 20 Transitional Provisions

[Section 20.1. Effective Date of Charter.](#)

[Section 20.2. Prior Town Legislation.](#)

[Section 20.3. Continuation of Appointed Officers and Employees.](#)

[Section 20.4. Continuation of Terms of Office - Mayor, Councilmembers and Board and Commission Members.](#)

[Section 20.5. Saving Clause.](#)

Section 20.1. Effective Date of Charter.

This Charter shall become effective immediately upon filing and recording the Charter with the Secretary of State of Colorado following approval of the registered electors of the Town.

Section 20.2. Prior Town Legislation.

All ordinances, resolutions, rules, regulations, policies and procedures of the Town which are consistent with this Charter and which are in force and effect on the effective date of this Charter, shall continue in force and effect until repealed or amended. Any ordinances, resolutions, rules or regulations, policies and procedures which are inconsistent with this Charter are hereby repealed.

Section 20.3. Continuation of Appointed Officers and Employees.

Except as otherwise provided herein, after the effective date of this Charter, all appointed officials and all employees of the Town shall continue in those Town offices or employment, which corresponds to the Town offices or employment which they held prior to the effective date of this Charter as though they had been appointed or employed in the manner provided in this Charter. In all respects, they shall be subject to the provisions of this Charter, except that any official or employee who holds a position which this Charter provides be held at the pleasure of the appointing officer or body, shall hold such position only at such pleasure regardless of the term for which originally appointed.

Section 20.4. Continuation of Terms of Office - Mayor, Councilmembers and Board and Commission Members.

Notwithstanding any other provision of this Charter, the terms of office of the Mayor and each Councilmember and of the members of each Town board and commission, serving prior to the effective date of this Charter, shall continue.

Section 20.5. Saving Clause.

Neither the adoption of this Charter nor the amendment or repeal of any ordinance, resolution, rule, regulation, policy or procedure, or portion thereof, inconsistent with this Charter, shall be construed to destroy any property right, contract right or right of action of any nature or kind, civil or criminal, vested in or against the Town by virtue of any such ordinance, resolution, rule, or regulation, policy or procedure, or portion thereof, or any other provision of law theretofore existing or otherwise accruing to the Town. All such rights shall vest in and inure to the Town or to any persons asserting any such claims against the Town as fully and as completely as though this Charter had not been adopted and as though there had been no amendment or repeal of any ordinance, resolution, rule, regulation, policy, contract or procedure, or portion thereof. Such rights shall include but not be limited to:

- A. Any contractual relationships between the Town and any employees related to any retirement and pension plans in effect on the effective date of this Charter; and
- B. Any franchise ordinances and agreements of the Town in effect on the effective date of this Charter; and
- C. Any contracts between any persons, companies, individuals, entities, governments or corporations.

ARTICLE 21 Definitions

The following definitions shall apply as used in this Charter:

1. "**Ad valorem tax**" means the general property tax levied annually on the value of real or personal property listed with the county assessors of Weld and Larimer Counties, Colorado.

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

2. **"Adoption" or Approved** means the same thing, such as to authorize the passage of an ordinance.
3. **"Appropriation"** means the authorized amount of money designated for an expenditure during a specified time for a specified purpose, usually as an appropriation of funds in the Town budget or amendment to the budget.
4. **"Board or Commission" or "Board and Commission"** means the boards and commissions authorized by this Charter or established by ordinances of the Town Council.
5. **"Clerk"** means the Town Clerk of the Town of Johnstown or such office designation as may be used in place of the office of Town Clerk.
6. **"Colorado Constitution"** means the Constitution of the State of Colorado, as amended from time to time.
7. **"Council" or "Town Council"** means the elected or appointed governing body constituting the Town Council of Johnstown, including the Mayor.
8. **"Councilmember"** means each member of the Town Council, except the Mayor. Councilmember may also be referred to as "Councilor", "Councilwoman" or "Councilman".
9. **"Elected Town Official" or "Elected Official"** means the Mayor and each Councilmember, whether elected or appointed.
10. **"Electronic"** is the means, methods or systems of communication or communicating which may be related to devices such as computers, video or visual devices, televisions, audio facilities or other technological devices which serve to communicate with and/or convey information to persons, and particularly the public.
11. **"Emergency ordinance"** means an ordinance which, in the opinion of the Town Council is necessary for the immediate preservation of the public property, health, welfare, peace, safety and well being.
12. **"Employee"** means each compensated person in the service of the Town who is designated as an employee in the personnel code or applicable rules and regulations of the Town.
13. **"Entire Council"** means all of the members of the Council, including the Mayor.
14. **"External"** means the electronic communication system that is not within or used exclusively by and within the Town government or Town properties. It is the electronic communication system which may be used by and available to the general public such as, but not limited to, cable television, the internet, web sites, computers, and other such systems or facilities as exist or which may be developed in the future.
15. **"Franchise"** means a right conferred by the Town (such as to a public utility) to use public property for public use but for private profit.
16. **"General Municipal Election"** means the Town election held on the first Tuesday in April of each-even numbered year beginning in 2008.
17. **"Initiative"** means the power of the registered electors of the Town of Johnstown to propose to the Town Council, in accordance with the provisions of this Charter, certain ordinances for adoption by the Town Council which, if not adopted by the Council, shall be submitted to a vote of the registered electors of the Town for acceptance or rejection.
18. **"Manager"** means the Town Manager of the Town of Johnstown appointed by the Town Council.
19. **"Mayor"** means the Mayor of the Town.
20. **"Newspaper"** means a newspaper of general circulation in the Town which meets the requirements for a legal newspaper as established in the state statutes.
21. **"Notice"** means that notice may be provided to the public as prescribed by this Charter and/or by ordinance by any or all means and methods of communication.

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

22. **"Ordinance"** means a permanent law or regulation adopted by legislative action of the Town Council pursuant to the procedures set forth in this Charter or by ordinances.
23. **"Publication or Posting"** means:
 - A. Publication in a newspaper of general circulation; or
 - B. Publication by external electronic means and methods; or
 - C. In the event of an emergency, or when no such newspaper is available, posting as provided in Paragraph D below. Anything published by such posting because of an emergency shall subsequently be published in a newspaper of general circulation or published electronically; or
 - D. Posting shall be effected by providing written or printed notice in locations throughout the Town as provided by ordinance or resolution.
24. **"Referendum"** means the power of the registered electors of the Town of Johnstown to request that Town Council reconsider certain ordinances adopted by the Council; and, if Council fails to repeal such ordinances, to require that Council submit the referred ordinances to a vote of the registered electors of the Town for approval or rejection.
25. **"Registered Elector"** means an elector who has registered in compliance with the provisions for registration to vote as provided in the state statutes.
26. **"Resolution"** means an expression of an administrative or a ministerial act of Council without any required form or procedure, as distinguished from legislative acts embodied in Town ordinances.
27. **"Securities"** means evidence or legal documents of debt, borrowing money, or financial obligations such as bonds, certificates, notes or mortgages.
28. **"Shall"** and **"May"** as used in this Charter are differentiated as: "shall" is to mean mandatory, required, non-discretionary; and "may" is to mean permissive, discretionary.
29. **"Special Election"** means a Town election held at a time other than a general municipal election.
30. **"State statutes"** means the statutes of the State of Colorado, as amended or repealed from time to time, and are known as the Colorado Revised Statutes (C.R.S.).
31. **"Statewide general election"** means the statewide election held on the Tuesday succeeding the first Monday of November in each even-numbered year.
32. **"Town"** means the Town of Johnstown, Colorado.
33. **"Town Officials", "Officials", or "Public Officials"** shall mean persons elected or appointed to the Council, including the Mayor; boards or commissions; appointed positions in the Town government; volunteers; and Town employees.
34. **"United States Constitution"** means the Constitution of the United States of America, as amended from time to time.

**TOWN OF JOHNSTOWN, COLORADO
HOME RULE CHARTER COMMISSION
CERTIFICATE OF FINAL ADOPTION**

We, the undersigned, representing the members of the Town of Johnstown Home Rule Charter Commission, duly elected by the voters of Johnstown, Colorado, at a special election held on April 4, 2006 to prepare a Home Rule Charter for the Town of Johnstown, do hereby certify that the foregoing is the Proposed Home Rule Charter as finally approved and adopted by the members of the Commission on

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

the 11th day of July 2006 for submission to the Town Board of Trustee and to the registered electors of the Town of Johnstown.

Signed at Johnstown, Colorado, the 11th day of July 2006.

Clyde Briggs, Chair

Paul B. Kingsolver, Vice-Chair

Russ McConnell, Treasurer

Steve Ramsey, Secretary

Bernie Coffin, Commissioner

Jim Dowling, Commissioner

Chet Hays,
Commissioner

Shirley Newsom-Gamez,
Commissioner

Brian Wells, Commissioner

State of Colorado)
)ss.
County of Weld)

Subscribed and sworn to before me the 12th day of July 2006.

Diana Seele, Town Clerk
Town of Johnstown, Colorado

Certificate of Receipt by the Town Clerk

State of Colorado)
)ss.
County of Weld)

I hereby certify that the above and foregoing document is the Proposed Home Rule Charter, delivered to me by the Johnstown Home Rule Charter Commission on the 12th day of July 2006.

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

Diana Seele, Town Clerk
Town of Johnstown, Colorado

**TOWN OF JOHNSTOWN, COLORADO
CERTIFICATE OF ELECTOR APPROVAL**

I hereby certify that the foregoing is the Home Rule Charter as approved by the registered electors of the Town of Johnstown, Colorado at a regular general election held on November 7, 2006.

TOWN OF JOHNSTOWN, COLORADO
HOME RULE CHARTER COMMISSION

/s/ By:

Clyde Briggs, Chair

**TOWN OF JOHNSTOWN, COLORADO
CERTIFICATE OF FILING**

I hereby certify that a true and correct copy of the Home Rule Charter, certified as such, and as approved by the registered electors of the Town of Johnstown, Colorado at a regular general election held on the 7th day of November, 2006, was filed with the Colorado Secretary of State and with the Town Clerk of the Town of Johnstown, Colorado on the 30th day of November 2006.

TOWN OF JOHNSTOWN, COLORADO
HOME RULE CHARTER COMMISSION

/s/ By:

Clyde Briggs, Chair

JOHNSTOWN MUNICIPAL CODE

1991

A Codification of the General Ordinances

of the Town of Johnstown, Colorado

Published by

MUNICIPAL CODE CORPORATION

Tallahassee, Florida

PREFACE

The Town of Johnstown, a home rule town, has published its Municipal Code in a format which features the following:

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

The *two-place section numbering system* places the chapter number first, followed by a hyphen and section number. This two-place system is simplified by the elimination of article numbering. Each section may be cited by the chapter and section numbers which, together with reserved section numbers, are in sequence within each chapter.

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

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

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

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

municode



Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316

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ORDINANCE NO. 463 OF THE TOWN OF JOHNSTOWN, COLORADO

Adopting and Enacting a New Municipal Code for the Town of Johnstown; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing a Penalty for the Violation Thereof; Providing for

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

the Manner of Amending Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be It Ordained by the Board of Trustees of the Town of Johnstown:

Section 1. The code entitled "Municipal Code of the Town of Johnstown" published by Colorado Code Publishing Company consisting of Chapters 1 through 18, is adopted.

Section 2 . All ordinances of a general and permanent nature enacted on or before , 1991, and not included in the Code or recognized and continued in force by reference therein are repealed.

Section 3 . The repeal established in the forgoing section shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this ordinance.

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

(1) The "Model Traffic Code for Colorado Municipalities" 1977 Edition, Articles I through XXVI, as published by the State Department of Highways, as adopted and amended in Section 8-21 *et seq* ;

(2) The Model Energy Efficiency Construction and Renovation Standards for Nonresidential Buildings, second edition, dated November 1977, including the Renovation Energy Conservation Performance Code for New Construction and Renovation of Residential Buildings, published by the State of Colorado, as adopted in Section 18-7;

(3) The Uniform Building Code, 1982 Edition, including the Uniform Building Code Appendix, published by the International Conference of Building Officials, as adopted and amended in Section 18-21 *et seq* ;

(4) The National Electrical Code, 1984 Edition, published by the National Fire Protection Association, adopted in Section 18-41;

(5) The Uniform Plumbing Code, 1982 Edition, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended in Section 18-61;

(6) The Uniform Mechanical Code, 1985 Edition, including Appendices A, B, C and D of the Uniform Mechanical Code, published by the International Association of Building Officials, as adopted and amended in Section 18-81 *et seq* ;

(7) The Uniform Fire Code, 1982 Edition, published by the International Conference of Building Officials, as adopted in Section 18-101; and

(8) The Uniform Solar Energy Code, including Appendices B and C of the Uniform Solar Energy Code, published by the International Association of Plumbing and Mechanical Officials, as adopted and amended in Section 18-121 *et seq*;

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

(1) Sec. 1-62. ;hg;General penalty for violations of Code; continuing violations.

Whenever in this Code or in any ordinance of the Town an act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinances shall be punished by a fine not exceeding three hundred dollars (\$300.00). Each day any violation of this Code or any ordinance continues shall constitute a separate offense.

(2) Sec. 1-63. ;hg;Application of penalties to juveniles.

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

contendere to, a violation of any provision of this Chapter, shall be punished by a fine of not more than three hundred dollars (\$300.00) per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Nothing in this Section shall be construed to prohibit incarceration in an appropriate facility, at the time of charging, of a juvenile violating any section of this Code.

(3) Sec. 2-72. ;hg;Procedure governed by Colorado Municipal Court Rules and the court; maximum penalty for contempt.

The procedure in the Municipal Court shall be governed by Colorado Municipal Court Rules. The Municipal Court may make rules for procedures which are not inconsistent with such Colorado Municipal Court Rules, including powers incident to compelling attendance of witnesses, punishment for contempt and enforcement of orders of court. However, no imprisonment for contempt shall exceed five (5) days and no fine for such cause shall exceed one hundred dollars (\$100.00). (Prior code 17-2)

(4) Sec. 5-31. ;hg;Civil penalties.

(a) For failure to complete system construction in accordance with the provisions of this franchise, unless the Board of Trustees specifically approves the delay by motion or resolution, the Grantee shall pay to the Town two hundred dollars (\$200.00) per day for each day, or part thereof, the deficiency continues.

(b) For failure to provide data, documents, reports, information during a CATV system review or rate inquiry, the Grantee shall pay to the Town fifty dollars (\$50.00) per day as each violation occurs or continues.

(c) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, the Grantee shall pay to the Town fifty dollars (\$50.00) per day for each day, or part thereof, that such noncompliance continues.

(d) Forty-five (45) days following adoption of a resolution of the Board of Trustees determining a failure of the Grantee to comply with operational or maintenance standards, the Grantee shall pay to the Town one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues.

Section 6. Additions or amendments to the Code, when passed in the form as to indicate the intention of the town to make the same a part of the Code, shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 7. Ordinances adopted after July 1, 1991, that amend or refer to ordinances that have been codified in the Code, shall be construed as if they amend or refer to those provisions of the Code.

Section 8. The Town Board herewith finds, determines and declares that this ordinance is necessary for the immediate preservation of the public health and safety in order to make this ordinance applicable to the town at the earliest possible date and to assure that the purposes of this ordinance shall be effective upon adoption on second reading.

INTRODUCED, READ IN FULL, ADOPTED AND ORDERED PUBLISHED ONCE IN FULL this 1st day of July, 1991.

TOWN OF JOHNSTOWN, COLORADO

SEAL

/s/ (signature)

Jim Noah, Mayor

Attest:

/s/ (signature)

Diana L. Seele, Town Clerk

PASSED ON SECOND AND FINAL READING this 5th day of August, 1991.

SEAL

/s/ (signature)

Jim Noah, Mayor

Attest:

/s/ (signature)

Diana L. Seele, Town Clerk

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

Ord. No.	Date Adopted	Include/Omit	Supp. No.
2014-132	2-19-2014	Included	10
2014-135	9-15-2014	Included	10
2015-137	3-16-2015	Included	10
2015-138	10-19-2015	Included	10
2015-139	12-21-2015	Included	10
2016-141	1-20-2016	Included	10
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2016-143	9-19-2016	Included	10
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2017-148	8-21-2017	Included	10
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Sec. 1-1. Adoption of Code.

The published code known as the *Johnstown Municipal Code* , of which one (1) copy is now on file in the office of the Town Clerk and may be inspected during regular business hours, is enacted and adopted by reference as a primary code and incorporated herein as if set out at length. This primary code has been promulgated by the Town of Johnstown, Colorado, as a codification of all the ordinances of the Town of Johnstown of a general and permanent nature through Ordinance No. 463 for the purpose of providing an up-to-date code of ordinances, properly organized and indexed, in published form for the use of the citizens and officers of the Town.

(Ord. 463, § 1, 1991)

Sec. 1-2. Adoption of codes by reference.

Codes may be adopted by reference, as provided by state law.

(Ord. 463, § 1, 1991)

Sec. 1-3. Repeal of ordinances not contained in Code.

All ordinances and parts of ordinances of a general and permanent nature adopted by the Board of Trustees, and in force on the date of adoption of this Code and not contained in the Code, are hereby repealed as of the effective date of the adopting ordinance, except as hereinafter provided.

(Ord. 463, § 1, 1991)

Sec. 1-4. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

- (1) Any ordinance promising or guaranteeing the payment of money for the Town, or authorizing the issuance of any bonds of the Town or any evidence of the Town's indebtedness;
- (2) Any ordinance levying a temporary tax or fixing a temporary tax rate;
- (3) Any appropriation ordinance or ordinance providing for the levy of taxes or for an annual budget, or for the appointment of salaries, vacation, sick leave, holiday schedule, retirement plan or any other condition of employment for Town officers and employees;
- (4) Any ordinance authorizing the sale, purchase or lease of property by the Town;
- (5) Any ordinance annexing territory to the Town or disconnecting territory as a part of the Town;
- (6) Any ordinance granting any franchise or pertaining to any contract;
- (7) Any ordinance creating or assessing any local improvement district, including Ordinance No. 28, adopted on April 3, 1968, establishing a sanitary district;
- (8) Any ordinance authorizing specific contracts for purchase of beneficial use of water by the Town.
- (9) Any ordinance calling for a special election;
- (10) Any ordinance creating, opening, dedicating, vacating or closing specific streets, alleys and other public ways;
- (11) Any ordinance naming or changing the names of specific streets and other public ways;
- (12) Any ordinance granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers;
- (13) Any ordinance establishing the grades of specific streets and other public ways;
- (14) Any ordinance establishing the grades or lines of specific sidewalks;
- (15) Any ordinance authorizing construction of public works facilities;
- (16) Any zoning ordinance, amendments thereto and ordinances including zoning map amendments for the rezoning of specific property; and
- (17) Ordinance No. 122, adopted on March 2, 1959, imposing an occupation tax on Colorado Central Power Company.

(Prior code 1-5; Ord. 463, § 1, 1991)

Sec. 1-5. Code supersedes prior ordinances.

This Code shall supersede all other general and permanent ordinances and parts of ordinances passed by the Board of Trustees, except such ordinances as are expressly saved from repeal or continued in force and effect as shall hereafter be set forth by reference.

(Ord. 463, § 1, 1991)

Sec. 1-6. Changes in previously adopted ordinances.

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

(Ord. 463, § 1, 1991)

Sec. 1-7. When effective.

The Board of Trustees finds, determines and declares that the ordinance codified in this Chapter is necessary for the general health, safety and welfare of the community.

(Ord. 463, § 1, 1991)

Secs. 1-8—1-20. Reserved.

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Sec. 1-21. Definitions.

In the construction of this Code, and of all ordinances and resolutions passed by the Board of Trustees, the following definitions and rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Board of Trustees:

- (1) *Board of Trustees* means the Board of Trustees of the Town of Johnstown, Colorado.
- (2) *Code* means the *Johnstown Municipal Code* as designated in Section 1-1.
- (3) *Computation of time* means, in computing any period of time prescribed within this Code, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. As used in this Section, *legal holiday* includes New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, General Election Day, Veteran's Day, Thanksgiving, Friday following Thanksgiving, Christmas, last working day before Christmas dismissed at noon and last working day before New Year's Day, dismissed at noon and any other day appointed as a holiday by the President or the Congress of the United States or pursuant to

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

state statute. When an authorized holiday occurs on a Saturday or Sunday, the official observance shall be the previous Friday or the following Monday, respectively.

- (4) *County* means Weld County, Colorado.
- (5) *C.R.S.* means the Colorado Revised Statutes.
- (6) *Law* denotes applicable federal law, the constitution and statutes of the State of Colorado, the ordinances of the Town and, when appropriate, any and all rules and regulations which may be promulgated thereunder.
- (7) *Misdemeanor* means and is to be construed as meaning violation and is not intended to mean crime or criminal conduct.
- (8) *Oath* includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words *swear* and *sworn* shall be equivalent to the words *affirm* and *affirmed*.
- (9) *Officer, board or commission* shall be construed as if followed by the words *of the Town*.
- (10) *Ordinance* means a law of the Town; provided that a temporary or special law, administrative action, order or directive may be in the form of a resolution.
- (11) *Owner*, applied to a building or land, shall include any part owner, joint owner, tenant in common or joint tenant, of the whole or of a part of such building or land.
- (12) *Person* means associations, corporations, firms, partnerships and bodies politic and corporate as well as individuals.
- (13) *Personal property* includes all property other than real property.
- (14) *Preceding, following* means next before and next after, respectively.
- (15) *Property* shall include real, tangible and intangible personal property.
- (16) *Real property* shall include lands, tenements and hereditaments.
- (17) *Roadway* means that portion of a street improved, designed or ordinarily used for vehicular traffic.
- (18) *Shall* is mandatory; *may* is permissive.
- (19) *Sidewalk* means any portion of the street between the curb, or the lateral line of the roadway and the adjacent property line, intended for the use of pedestrians.
- (20) *State* shall be construed to mean the State of Colorado.
- (21) *Street* shall include any highway, alley, street, avenue, public place, square, bridge, viaduct, underpass, overpass, tunnel or causeway in the Town, dedicated or devoted to public use.
- (22) *Tenant or occupant*, applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.
- (23) *Town* means the Town of Johnstown, Colorado, or the area within the territorial limits of the Town of Johnstown, and such territory outside of the Town over which the Town has jurisdiction or control by virtue of any constitutional or statutory provision.
- (24) *Valid development application*, for the purposes of an annexation, shall include, as a minimum, the annexation petition demonstrating all of the requirements of state law to be met by that applicant with at least five (5) copies of a map or a plat of the territory proposed to be annexed, and a conceptual plan, site plan, development plan or other similar-type plan that adequately shows the applicant's proposal for development of the property to be annexed. Such application, in order to be a *valid development application*, must also include as a minimum the following (the following information shall also constitute the minimum requirements for all other development applications in order to constitute a *valid development application*):

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

- a. Applicant name;
- b. Current owner;
- c. Applicant's representative;
- d. Site location, vicinity map and address;
- e. Legal description of property;
- f. Existing use of property;
- g. Proposed use of property;
- h. Existing zoning;
- i. Proposed zoning (if applicable);
- j. Proposed gross building square feet (if applicable);
- k. Proposed number of lots (if applicable); and
- l. Proposed number of dwellings (if applicable).

The development application must be accompanied by any applicable fees. Submission of an application does not guarantee approval nor does it prevent the Town Staff from requesting amendments or additional information determined necessary for compliance with this Code, rules, regulations or any other requirements relating to the particular development. The application material shall not constitute a "site specific development plan," the requirements of which are defined elsewhere in this Code. The filing of a *valid development application* shall not grant to the applicant any vested property right within the meaning of state law or this Code. In addition, the submittal of a *valid development application* shall not be construed as exempting the applicant from complete compliance with the Town's comprehensive plan, subdivision regulations, zoning or development standards, building code, fire code or any other applicable ordinance or other enactment that may now exist or may hereafter be properly enacted by the Town, nor shall the submittal of a *valid development application* limit in any way the discretion of the Planning and Zoning Commission, the Board of Trustees or any other governmental body having jurisdiction to review and approve, disapprove or approve with conditions any and all development-related submittals, and the applicant shall be required to comply fully with any and all requirements that the Town may have in granting approval of such *valid development application*.

(25) *Written* or *in writing* shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

(26) *Year* means a calendar year.

(Prior code 1-2; Ord. 463, § 1, 1991; Ord. 2000-634, § 1, 2000)

Sec. 1-22. Usage of terms.

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

(Ord. 463, § 1, 1991)

Sec. 1-23. Grammatical interpretation.

(a) Any gender includes the other genders.

- (b) Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.
- (c) Words used in the past or present tense include the future as well as the past and present.
- (d) Words and phrases not specifically defined shall be construed according to the context and approved usage of the language.

(Prior code 1-2; Ord. 463, § 1, 1991)

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Sec. 1-31. Section headings.

The headings of the several sections of this Code, printed in boldface type, are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the headline, are amended or reenacted.

(Prior code 1-3)

Sec. 1-32. Authorized acts.

- (a) Whenever a provision appears requiring an officer of the Town to do some act or make certain inspections, it is to be construed to authorize the officer to designate, delegate and authorize subordinates to perform the required act or make the required inspection unless the terms of the provision or section designate otherwise.
- (b) The time within which an act is to be done shall be computed by excluding the first and including the last day; but if the time for an act to be done shall fall on Saturday, Sunday or a legal holiday, the act shall be done upon the next regular business day following such Saturday, Sunday or legal holiday.

(Ord. 463, § 1, 1991)

Sec. 1-33. Prohibited acts.

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

(Ord. 463, § 1, 1991)

Sec. 1-34. Purpose of ordinances.

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

(Ord. 463, § 1, 1991)

Sec. 1-35. Repeal of ordinances.

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

(Ord. 463, § 1, 1991)

Sec. 1-36. Publication of ordinances.

All ordinances, as soon as may be after their passage, shall be recorded in a book kept for that purpose and authenticated by the signature of the Mayor and Town Clerk. All ordinances of a general or permanent nature, and those imposing any fine or forfeiture, shall be published in a newspaper published within the Town. Such ordinances shall not take effect until thirty (30) days after such publication, except for ordinances calling for special elections or necessary for the immediate preservation of the public peace, health and safety and containing the reasons making the same necessary in a separate section. The excepted ordinances shall take effect upon their final passage, adoption and the approval and signature of the Mayor, if they are adopted by an affirmative vote of three-fourths ($\frac{3}{4}$) of the members of the Board of Trustees.

(Ord. 463, § 1, 1991)

Sec. 1-37. Severability of parts of Code.

It is hereby declared to be the intention of the Board of Trustees that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the Board of Trustees without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

(Prior code 1-8)

Sec. 1-38. Amendments to Code.

Ordinances and parts of ordinances of a permanent and general nature, passed or adopted after the adoption of this Code, may be passed or adopted either in the form of amendments to the Code adopted by this Code or without specific reference to the Code. However, in either case, all such ordinances and parts of ordinances shall be deemed amendments to the Code, and all of the substantive, permanent and general parts of said ordinances and changes made thereby in the Code shall be inserted and made in the Code as provided in Section 1-42 hereof.

(Ord. 463, § 1, 1991)

Sec. 1-39. Numbering of amendments or additions to Code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. When subsequent ordinances repeal any chapter, section, subsection or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the Board of Trustees.

(Prior code 1-4)

Sec. 1-40. Certification of Code.

The Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code adopted by this ordinance to see that it is a true and correct copy of the Code. Similarly, after each supplement has been prepared, printed and inserted in the Code, the Mayor and Town Clerk shall carefully examine at least one (1) copy of the Code as supplemented. The Town Clerk shall then insert a certificate in the front of said true and correct copy of the Code, certifying substantially that the copy is a true and correct copy containing all permanent and general ordinances passed or adopted since the previous supplement and until the date of the current supplement. Both the Mayor and the Town Clerk shall sign the certificate and the Town Clerk shall seal it with the Seal of the Town. The copy of the Code as originally adopted or amended, certified and sealed shall constitute the permanent and general ordinances of the Town as of the date indicated in the certificate and shall be so accepted by the courts of law, administrative tribunals and all others concerned.

(Ord. 463, § 1, 1991)

Sec. 1-41. Copy of Code on file.

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

(Ord. 463, § 1, 1991)

Sec. 1-42. Supplementation of Code.

- (a) The Town Clerk shall cause supplementation of the Code to be prepared and printed from time to time as it may see fit. All substantive, permanent and general parts of ordinances passed by the Board of Trustees or adopted by initiative and referendum, and all amendments and changes in temporary and special ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation, shall be included.
- (b) It shall be the duty of the Town Clerk or someone authorized and directed by the Town Clerk, to keep up to date the one (1) certified copy of the book containing the Code required to be filed in the office of the Town Clerk for the use of the public.

(Ord. 463, § 1, 1991)

Sec. 1-43. Sale of Code books; supplementation.

Copies of the Code book may be purchased from the Town Clerk upon the payment of a fee to be set by resolution of the Town Council.

(Ord. 463, § 1, 1991)

Sec. 1-44. Altering or tampering with Code; penalties for violation.

Any person, firm or corporation who shall alter, change or amend this Code, except in the manner prescribed in this Article, or who shall alter or tamper with the Code in any manner so as to cause the ordinances of the Town to be misrepresented thereby shall, upon conviction thereof, be punishable as provided by Section 1-62.

(Ord. 463, § 1, 1991)

Sec. 1-45. Code does not affect prior offenses, contracts, etc.

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

(Prior code 1-6)

Secs. 1-46—1-60. Reserved.

ARTICLE IV General Penalty

[Sec. 1-61. Violations.](#)

[Sec. 1-62. General penalty for violations of Code; continuing violations.](#)

[Sec. 1-63. Application of penalties to juveniles.](#)

[Sec. 1-64. Penalty for violations of ordinances adopted after adoption of Code.](#)

[Secs. 1-65—1-80. Reserved.](#)

Sec. 1-61. Violations.

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

(Ord. 463, § 1, 1991)

Sec. 1-62. General penalty for violations of Code; continuing violations.

Whenever in this Code or in any ordinance of the Town an act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or wherever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinances shall be punished by a fine not exceeding one thousand dollars (\$1,000.00). Each day any violation of this Code or any ordinance continues shall constitute a separate offense.

(Prior code 1-7; Ord. 2006-760 §1; Ord. 2008-808 §1)

Sec. 1-63. Application of penalties to juveniles.

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age and who is subsequently convicted of or pleads guilty or nolo contendere to a violation of any provision of this Chapter shall be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or count. Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge. Nothing in this Section shall be construed to prohibit incarceration in an appropriate facility, at the time of charging, of a juvenile violating any section of this Code.

(Ord. 463, § 1, 1991; Ord. 2006-760 §1; Ord. 2008-808 §1)

Sec. 1-64. Penalty for violations of ordinances adopted after adoption of Code.

Any person, firm or corporation who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in the Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-62 or 1-63, unless another penalty is specifically provided for the violation.

(Prior code 1-21)

Secs. 1-65—1-80. Reserved.

ARTICLE V Inspections

[Sec. 1-81. Entry.](#)

[Sec. 1-82. Authority to enter premises under emergency.](#)

[Secs. 1-83—1-90. Reserved.](#)

Sec. 1-81. Entry.

Whenever necessary to make an inspection to enforce any ordinance, or whenever there is probable cause to believe that there exists an ordinance violation in any building or upon any premises within the jurisdiction of the Town, any public inspector of the Town may, upon presentation of proper credentials and upon obtaining permission of the occupant or if unoccupied, the owner, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the occupant, or if unoccupied, the owner, refuses entry to such building or premises, or the public inspector is unable to obtain permission of such occupant or owner to enter such building or premises, the public inspector is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. 463, § 1, 1991)

Sec. 1-82. Authority to enter premises under emergency.

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

(Ord. 463, § 1, 1991)

Secs. 1-83—1-90. Reserved.

ARTICLE VI Seal

[Sec. 1-91. Town seal.](#)

[Secs. 1-92—1-100. Reserved.](#)

Sec. 1-91. Town seal.

- (a) The common seal of the Town shall be of circular shape, in the center of which shall be the word *SEAL* engraved thereon, and with the words *TOWN OF JOHNSTOWN, COLORADO* surrounding the word *SEAL*, and around the margin of said seal, engraved upon the face thereof in Roman capitals. Said seal above described is hereby established and declared to be the seal of the Town.
- (b) Said seal shall be kept in the office of the Town Clerk, who shall be the custodian thereof. It shall be the duty of the Town Clerk to affix said seal to all instruments hereinafter mentioned. However, any other person who shall have been specifically directed so to do by resolution of the Board of Trustees may affix said seal to any such instrument.
- (c) Said seal shall be affixed to all transcripts, orders or certificates which it may be necessary or proper to authenticate under the provisions of the statute in such cases made and provided, or any ordinance of the Town. The seal shall be affixed to every contract or other instrument requiring the seal of the Town under any law of the State or any ordinance of the Town.

(Prior code 2-2)

Secs. 1-92—1-100. Reserved.

CHAPTER 2 Administration and Personnel

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ARTICLE III - Municipal Court

ARTICLE IV - Police Department

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ARTICLE VII - Military Leave

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ARTICLE I Mayor and Town Council

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Sec. 2-1. Corporate authority.

The corporate authority of the Town is by state law vested in the Town Council, consisting of one (1) Mayor and six (6) Trustees.

(Prior code 2-1)

Sec. 2-2. Time for regular elections; procedure for special elections.

Each regular election shall be held on the first Tuesday in April in even-numbered years. All special elections called by the Town Council for any purpose shall be in the manner prescribed by the Colorado Municipal Election Code of 1965.

(Prior code 2-3)

Sec. 2-3. Filling of vacancies.

The Town Council shall have power, by appointment, to fill all vacancies of the Town Council or in any other elected office, and the person so appointed shall hold office until the next regular election and until his or her successor is elected and qualified. If the term of the person creating the vacancy was to extend beyond the next regular election, the person elected to fill the vacancy shall be elected for the unexpired term. Where a vacancy or vacancies exist in the office of Council member and a successor or successors are to be elected at the next election to fill the unexpired term or terms, the three (3) candidates for Council member receiving the highest number of votes shall be elected to four (4) year terms, and the candidate or candidates receiving the next highest number of votes, in descending order, shall be elected to fill the unexpired term or terms.

(Prior code 2-4)

Sec. 2-4. Write-in candidate's affidavit.

No write-in vote for a Town office shall be counted unless an affidavit of intent has been filed with the Town Clerk, by the person who desires the office and is qualified to assume the duties of that office if elected. The affidavit of intent shall be filed with the Town Clerk no later than sixty-four (64) days before the day of the election.

(Prior code 2-4.1; Ord. 469, 1992; Ord. No. 2017-150, § 1, 12-18-2017)

Sec. 2-4.1. Election may be cancelled; when.

- (a) If the only matter before the voters is the election of persons to office and if, at the close of business on the sixty-fourth day before the election, there are not more candidates than offices to be filled at such election, including candidates filing affidavits of intent as set forth in Section 2-4, the Town Clerk shall certify such fact to the Town Council. Town Council shall thereafter hold a meeting and, by resolution, instruct the Town Clerk to cancel the election and declare the candidates elected.
- (b) Notice of such cancellation shall be published, if possible, and notice of such cancellation shall be posted at each polling place and in not less than one (1) other public place.

(Ord. 468, 1992; Ord. 470, 1992; Ord. No. 2017-150, § 2, 12-18-2017)

Sec. 2-5. Mayor, qualifications.

The Mayor shall be a qualified elector who has resided within the limits of the Town for a period of at least twelve (12) consecutive months immediately preceding the date of the election; provided that in case of annexation, any person who has resided in the annexed territory for the time prescribed shall be deemed to have met the residency requirements for the Town to which the territory was annexed.

(Prior code 2-66)

Sec. 2-6. Election; term of office.

At the regular municipal election every four (4) years, a Mayor shall be elected to serve a four (4) year term.

(Prior code 2-67)

Sec. 2-7. Powers and duties generally.

- (a) The Mayor shall preside over the meetings of the Town Council, and shall perform such duties as may be required of him or her by statute, the provisions of this Code or other ordinances of the Town.
- (b) Insofar as required by statute, and for all ceremonial purposes, the Mayor shall be the executive head of the Town, and shall be the presiding officer of the Town Council.
- (c) The Mayor shall execute and authenticate by his or her signature such instruments as the Trustees, or any statutes or ordinances shall require.
- (d) Except as may be required by statute, the Mayor shall exercise only such powers as the Trustees shall specifically confer upon him or her.

(Prior code 2-68)

Sec. 2-8. Mayor pro tem.

At its first meeting following each election, the Town Council shall choose one (1) of the Trustees as Mayor pro tem who, in the absence of the Mayor from any meeting of the Town Council, or during the Mayor's absence from the Town or his or her inability to act, shall perform the duties of Mayor.

(Prior code 2-69)

Sec. 2-9. Councilmember elections; terms of office; nomination of candidates in mail ballot elections.

- (a) Councilmember election and terms of office. At each regular municipal election, three (3) members of the Town Council shall be elected to serve four (4) year terms.
- (b) Candidate nomination procedures for mail ballot elections. Any person who desires to be a candidate in a mail ballot election conducted during a regular municipal election shall comply with the nominating procedures set forth in the Colorado Municipal Election Code of 1965, except that:
 - (1) Candidate nomination petitions may be circulated and signed beginning on the ninety-first day prior to the day of election and ending on the seventy-first day prior to the day of the election.
 - (2) Each candidate nomination petition shall be filed with the Town Clerk no later than the seventy-first day prior to the day of the election.
 - (3) Any candidate nomination petition may be amended to correct or replace those signatures which the Town Clerk finds are not in apparent conformity with the requirements of the Colorado Municipal Election Code by filing such changes no later than the close of business on the sixty-sixth day before the election.
 - (4) Any person who has been nominated and who has accepted a nomination may cause his or her name to be withdrawn from such nomination by filing a written and signed affidavit withdrawing from such nomination with the Town Clerk at any time prior to sixty-three (63) days before the election. If the only matter before the voters is the election of persons to office and if the withdrawal results in there not being more candidates than offices to be filled at such election, then the election may be cancelled as set forth in Section 2-4.1.

(Prior code 2-17; Ord. 2012-123 §1; Ord. No. 2017-150, § 1, 12-18-2017)

Sec. 2-10. Qualifications.

Members of the Town Council shall be qualified electors who have resided within the limits of the Town for a period of at least twelve (12) consecutive months immediately preceding the date of the election; provided that in case of annexation, any person who has resided within the annexed territory for the time prescribed shall be deemed to have met the residency requirements for the Town to which the territory was annexed.

(Prior code 2-18)

Sec. 2-11. Authority generally.

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

(Prior code 2-19)

Sec. 2-12. Authority to appoint and control Town officers.

The Town Council is given the power to appoint such officers for the Town as it may deem necessary for the good government of the Town, prescribe their duties and fix their compensation.

(Prior code 2-20)

Sec. 2-13. Vacation of office by moving from Town.

If any Council member shall move from, or become, during the term of his or her office, a nonresident of the Town, he or she shall be deemed thereby to have vacated his or her office, upon the adoption by the Town Council of a resolution declaring such vacancy to exist. Such vacancy shall be filled as provided in Section 2-3.

(Prior code 2-21)

Sec. 2-14. Authority to enter into intergovernmental contracts.

- (a) The Town may cooperate or contract with other local governments to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes or the incurring of debt, only if such cooperation or contracts shall be authorized by each party thereto with the approval of the Town Council and the other legislative body or other authority having the power to so approve.
- (b) Any such contract shall set forth fully the purposes, powers, rights, obligations and responsibilities, financial and otherwise, of the contracting parties.
- (c) Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.
- (d) Any such contract may provide for the joint exercise of the function, service or facility, including the establishment of a separate legal entity to do so.
- (e) On or before February 1 the Town shall file with the State Division of Local Government an informational list of all contracts in effect with other political subdivisions. Said list shall contain the names of the contracting political subdivisions, the nature of the contract and the expiration date thereof. At the same time a copy of each contract establishing a separate legal entity pursuant to Subsection (d), or a memorandum summarizing said contract, shall be filed with the Division of Local Government, but failure to so file shall not invalidate the contract.

(Prior code 2-22)

Sec. 2-15. Time and place for regular meetings.

The Town Council shall hold regular meetings on the first and third Monday of each month at 7:00 p.m.; provided, however, that when the day fixed for any regular meeting of the Town Council falls upon a day designated by law as a legal or national holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday. All regular meetings of the Town Council will be held in the Town Hall.

(Prior code 2-28; Ord. 555 §1, 1997)

Sec. 2-16. Special meetings.

The Mayor may convene the Town Council at any time. Whenever a special meeting shall be called, a summons or a notice in writing signed by the Mayor shall be served upon each member of the Town Council at least twenty-four (24) hours prior to the meeting, either in person or by notice left at his or her place of residence, stating the date and hour of the meeting and the purpose for which such meeting is called, and no business shall be transacted thereat, except such as is stated in the notice. If the Mayor is absent from the Town, a special meeting may be convened by a majority of the Town Council. Presence at any such meeting constitutes a waiver of notice. Notice of the meeting may also be made by a written waiver executed by a Council member.

(Prior code 2-29)

Sec. 2-17. Quorum; authority to demand attendance of absent members.

No action shall be taken by the Town Council at a meeting unless a quorum is present. A majority of the Town Council shall constitute a quorum. A lesser number may adjourn from time to time and compel the attendance of absent members. Any member of the Town Council, at any regular or special meeting, may, in writing, demand the attendance of the absent members, which demand shall be entered on the record forthwith by the Town Clerk, who shall thereupon notify the absent members of the time and place of the meeting.

(Prior code 2-30)

Sec. 2-18. Agenda.

All reports, communications, ordinances, resolutions, contracts, documents or other matters to be submitted to the Town Council shall, prior to each meeting, be delivered to the Town Clerk, who shall immediately arrange a list of such matters according to the order of business. Each Councilmember, the Mayor and the Town Attorney will be furnished with a copy of the order of business, together with a copy of the minutes of the last preceding meeting, prior to the Town Council meeting and as far in advance of the meeting as time for preparation will permit. The Town Council shall provide for the order of business on its agenda by resolution.

(Prior code 2-31; Ord. 2005-734 §2)

Sec. 2-19. Reserved.

Sec. 2-20. Resolution or motion required; roll call vote.

Every subject coming before the Town Council meeting for its action shall be submitted by ordinance, resolution or motion. On consideration of every ordinance and of every resolution authorizing the expenditure of money or the entering into of a contract, the yeas and nays shall be called and recorded.

(Prior code 2-33)

Sec. 2-21. Adoption of ordinances.

Introduction, adoption, approval and publication of ordinances enacted by the Town Council shall be in accordance with applicable state law.

(Prior code 2-34)

Sec. 2-22. Mayor to vote; votes required for passage.

The Mayor shall be considered a member of the Town Council and shall have the same voting powers as any member of the Town Council. All ordinances, all resolutions or orders for appropriation of money, all resolutions or orders to enter into contracts, and all appointments of officers shall require for passage or adoption the concurrence of a majority of all the members elected to the Town Council. In all other matters, a majority of those present if a quorum exists shall be sufficient, except in cases of special emergency, for the preservation of the public peace, health or safety, and then only by the affirmative vote of three-fourths ($\frac{3}{4}$) of the members of the Town Council.

(Prior code 2-35)

Sec. 2-23. Publication of ordinances.

All ordinances, as soon as may be possible after their passage, shall be recorded in a book kept for that purpose, and authenticated by the signature of the Mayor and Town Clerk.

(Prior code 2-36)

Sec. 2-24. Commissions.

- (a) In the absence of a Town Manager, standing commissions of the Town Council shall be appointed after each biannual election by the Mayor. These commissions shall be as follows:
- (1) Finance and Budget.
 - (2) Parks, Recreation and Cemetery.
 - (3) Public Buildings.
 - (4) Police.
 - (5) Water, Sewer and Sanitation.
 - (6) Streets and Alleys.
 - (7) Building Official.
- (b) Any question pending before the Town Council may be referred by the appropriate commission, or to a special commission, for its consideration and report. When a question has been referred to a commission, such commission shall report thereon with its recommendation at the next regular Town Council meeting.

(Prior code 2-37; Ord. 99-594 §1)

Sec. 2-25. Suspension of the rules.

Any of the provisions of this Article may be temporarily suspended in connection with any matter under consideration by a recorded vote of three-fourths ($\frac{3}{4}$) of the members present, except that this shall not be construed to permit any action that is contrary to state statute.

(Prior code 2-38)

Sec. 2-26. Financial disclosure by elected officials.

(a) Application. The provisions of this Section shall apply to the members of the Town Council, the Mayor and to all candidates for election to the aforementioned offices.

(b) Definitions. In this Section, unless the context otherwise requires:

Business means any activity which is engaged in for the purpose of earning a profit.

Business entity includes a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association, real estate investment trust or other business trust.

Business with the Town shall mean any one (1) or any combination of sales, purchases, leases or contracts to, from or with the Town, or agency thereof, involving consideration of five hundred dollars (\$500.00) or more on a cumulative basis during the calendar year for which a required statement is to be filed. As of the awarding or execution of a contract or lease, the total then ascertainable consideration thereby committed to be paid, regardless of the period of time over which such payments are to be made, shall be included.

Description of any real property means a legal description of the property, or the address of the property if such address is sufficient to enable a reasonable person to locate and identify the property.

Interest shall mean:

- a. Any legal or equitable interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or part, jointly or severally, directly or indirectly, at any time during the calendar year from which a required statement is to be filed;
- b. An interest in: any stock or similar security, preorganization certificate or subscription, investment contract, voting trust certificate, limited or general partnership or joint venture, business trust, or certificate of interest or participation in a profit-sharing agreement or in an oil, gas or other mineral royalty or lease; or any other equity interest, however evidenced, which entitles the owner or holder thereof, directly or indirectly to receive or direct any part of the profits from, or to exercise any part of the control over, a business entity, as well as any interest which, conditionally or unconditionally, with or without consideration, is convertible thereto;
- c. An interest in a note, bond, debenture or any other evidence of a creditor interest;
- d. However, it shall not include an interest held solely in the capacity of a personal representative, agent, custodian, fiduciary or Council member, nor an interest in a time or demand deposit in a financial institution, nor an interest in an insurance or endowment policy or annuity contract.

Legal or equitable interest does not include any interest over which the owner of the interest exercises only ministerial control or from which the owner of the interest derives no tangible benefit. Without limitations, such interests shall not include title, rights or interests held by one as agent, executor or Council member, or in another fiduciary capacity, unless coupled with a beneficial interest in the subject matter.

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

Person includes any natural person, corporation, partnership, trust, unincorporated association, or other organization, entity or enterprise.

Source of income means any source from which a person obtained income, except that, in the case of income received in pursuit of a business or profession in the course of which income is received from a number of clients, patients or customers, the source of the income shall be deemed to be the business or profession and not the individuals from whom the income is received.

- (c) Information to be disclosed.
- (1) Every person described in Subsection (a) above shall disclose the following information:
 - a. Any source of income from which the person, his or her spouse or minor children residing with the person derived more than five hundred dollars (\$500.00) during the preceding year.
 - b. The name of any business, however organized, in which the person, his or her spouse or minor children residing with the person have any legal or equitable interest or serve as a director or fiduciary or is a member.
 - c. A description of any real property located in Weld or Larimer County, Colorado, in which the person, his or her spouse or minor children residing with the person have any legal or equitable interest.
 - d. The name of any client, patient, customer or other single source which provides twenty percent (20%) or more of the total income of individual, his or her spouse or minor children residing with the person.
 - e. The name of each creditor for the person, his or her spouse or minor children residing with the person, to whom is owed an amount in excess of five hundred dollars (\$500.00), including the interest rate, excluding customary household expenses, retail credit accounts, contracts for commercial retail sale and mortgage contracts on the principal place of dwelling of the person filing.
 - (2) A schedule of the identity of the person to whom a liability is owed doing business with the Town, owed at any time during the year for which the statement is filed, excluding customary household expenses, retail credit accounts, contracts for a commercial retail sale and mortgage contracts on the principal place of dwelling of the person filing.
 - (3) Notwithstanding the requirements of Subsection (c)(1) above, no person shall be required to disclose any interest which could not be affected materially by any action, failure to act or decision of the person making disclosure, acting within the scope of the official duties of the office which the person holds or seeks.
- (d) Procedure for making disclosure. Every person required by this Section to make disclosure shall file a completed financial disclosure statement in the office of the Town Clerk at the following stated times:
- (1) Every official required by this Section to make disclosure shall file a completed financial disclosure statement on or before April 15 of the year during which the official holds office; provided, however, that no official whose term of office expires before April 15 of any year shall be required to file a financial disclosure statement for that year.
 - (2) Every candidate for election to the offices named in Subsection (a) above shall file a completed financial disclosure statement on the date upon which such candidate files a nomination petition for election to municipal office, except that no person shall be required by this Section to file a financial disclosure statement during the same year the person filed a financial disclosure statement pursuant to Subsection (d)(1) above.
 - (3) Any person appointed to fill any office described in Subsection (a) above shall file a completed financial disclosure statement within seven (7) days after being appointed to such office.
 - (4) Every official required by this Section to make disclosure, if the disclosable information required by this Section changes after the annual disclosure has been filed, shall file an updated disclosure statement within seven (7) days after such disclosable change to information occurs.

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- (e) Duties of Town Clerk.
- (1) Within thirty (30) days of the effective date of the ordinance codified in this Section, the Town Clerk shall prepare and have available in the office of the Town Clerk a form to be entitled "Financial Disclosure Statement." Said form shall contain instructions, consistent with the provisions of this Section, explaining the manner in which the form is to be filled out. There shall be designated spaces on the form for disclosure of each matter required by this Section to be disclosed, and a space sufficient for an acknowledgment before a notary public. The form shall also contain a place for the signature of the person making disclosure; an affidavit that the information disclosed is true, accurate and complete to the best knowledge of the party making disclosure, and a place for the date upon which the statement was completed and the date upon which the statement was received by the Town Clerk.
 - (2) Any financial disclosure statement filed by any person required by this Section to make disclosure shall be preserved by the Town Clerk until six (6) months after:
 - a. The defeat of the person making disclosure, in the case of an unsuccessful candidate for elective municipal office;
 - b. The date upon which the person leaves office, in the case of an elected or appointed municipal official; or
 - c. Receipt by the Town Clerk of a more current disclosure statement.
 - (3) The Town Clerk shall permit any person who requests permission to inspect any financial disclosure statement on file in the office of the Town Clerk to inspect or copy the same during normal business hours of the office of the Town Clerk. A reasonable charge may be assessed for any copy provided by the office of the Town Clerk.
 - (4) If any person required to file a financial disclosure statement fails to file the same, the Town Clerk shall, within three (3) days of the deadline for filing, notify the person that such person may be in violation of this Section.
- (f) Affirmative defense. It shall be an affirmative defense to any prosecution under this Section that, within seven (7) days after receipt of notice pursuant to Subsection (e)(4) above, the person filed a completed financial disclosure statement, and no prosecution under this Section shall be initiated until such seven-day period has passed.
- (g) Rules of construction. This Section shall be construed in such a way as to ensure that the electorate is fully and effectively informed of all matters required by this Section to be disclosed. If any portion of this Section is adjudged invalid or unenforceable for any reason, the remainder of the Section shall continue in force unless to give effect to the remaining provisions would defeat the policy embodied in this Section.
- (h) Appointment of special associate municipal judge. If any charge of violation of this Section is filed in the Municipal Court, the presiding municipal judge shall forthwith notify the court administrator of the State and request the court administrator to furnish to the presiding municipal judge the name or names of one (1) or more municipal judges of the State who may be available to try such case; and the presiding municipal judge shall determine the availability of such judge or judges to try such case and shall designate a municipal judge whose name is furnished by the court administrator to try such case. Such judge shall be an associate municipal judge of the Town during and for all the purposes of such case and the trial and decision thereof, upon taking an oath of office as an associate municipal judge of the Town. Such judge shall be paid reasonable compensation for services rendered.

(Ord. 99-595 §1; Ord. 2006-765 §1)

Sec. 2-27. Compensation.

- (a) Pursuant to Part 4 of Article 4, Title 31, C.R.S., the Mayor shall receive the sum of two hundred dollars (\$200.00) for each regular meeting of the Town Council that he or she attends, but no compensation shall be given for attendance at special meetings or work sessions.
- (b) Pursuant to Part 4 of Article 4, Title 31, C.R.S., each member of the Town Council shall receive the sum of one hundred twenty-five dollars (\$125.00) for each regular meeting of the Town Council that he or she attends, but no compensation shall be given for attendance at special meetings or work sessions.
- (c) To be eligible for compensation, a member of the Town Council must be present for at least three-fourths ($\frac{3}{4}$) of the votes taken at the meeting attended, the roll call counting as one (1) vote. Votes missed as a result of a conflict of interest by a member shall not be counted in the total against that member.
- (d) The Mayor Pro Tem, if acting as Mayor for three-fourths ($\frac{3}{4}$) of the meeting as defined in Subsection (c) above, shall receive the compensation of the Mayor for the meeting.
- (e) Compensation established by this Section shall apply to the Mayor and members of the Town Council elected at the regular Town election in April 2002 and thereafter, but no compensation shall be paid for any meeting held prior to January 1, 2003.

(Ord. 2002-686, § 1, 2002)

Secs. 2-28—2-40. Reserved.

ARTICLE II Officers and Employees

[Sec. 2-41. Oath for Town officers.](#)

[Sec. 2-42. Removal or suspension of Town officers or employees.](#)

[Sec. 2-43. Intent of Article.](#)

[Sec. 2-44. Town Manager; position created; termination of employment.](#)

[Sec. 2-45. Duties of Town Manager.](#)

[Sec. 2-46. Plan of administrative organization.](#)

[Sec. 2-47. Relationship of the Town Council to Town Administrator.](#)

[Sec. 2-48. Appointment of Town Attorney.](#)

[Sec. 2-49. Powers and duties.](#)

[Sec. 2-50. Appointment of Town Clerk.](#)

[Sec. 2-51. Oath and bond.](#)

[Sec. 2-52. Powers and duties generally.](#)

[Sec. 2-53. Town Clerk may act as treasurer; Town Treasurer.](#)

[Sec. 2-54. Appointment.](#)

[Sec. 2-55. Oath and bond; duty to turn over property when leaving office.](#)

[Sec. 2-56. Powers and duties generally.](#)

[Sec. 2-57. Drug and alcohol testing.](#)

[Secs. 2-58—2-70. Reserved.](#)

Sec. 2-41. Oath for Town officers.

All officers elected or appointed in any capacity shall take an oath to support the Constitution of the United States and the Constitution of the State.

(Prior code 2-5)

Sec. 2-42. Removal or suspension of Town officers or employees.

Any officer or employee appointed by the Town Council may be removed from office or suspended for a specific time, with or without pay, by a vote a majority of Town Council members whenever such officer shall, after a hearing before the Town Council, be found guilty of a dereliction or violation of his or her duty or conduct unbecoming an officer or incompetency.

(Prior code 2-6; Ord. 463, § 1, 1991)

Sec. 2-43. Intent of Article.

Nothing in this Article shall impair the responsibility of the Town Council for the overall operation of the Town government as required by state law.

(Prior code 2-115)

Sec. 2-44. Town Manager; position created; termination of employment.

- (a) There is hereby created the position of Town Manager. The Town Manager shall be hired by the Town Council based upon his or her experience, credentials and such other relevant factors as deemed appropriate by the Town Council. The Town Council shall be authorized to establish the beginning and continuing salary of the Town Manager, and the Town Manager shall serve at the pleasure of the Town Council. Authority is specifically vested in the Town Council to enter into a contract with the person hired as Town Manager, but the entry into such contract is not mandatory but is only permissive. The salary of the Town Manager shall not be subject to modification during any budget year, and shall never be subject to reduction as a punitive measure. At the time of his or her hiring, the Town Manager need not be a resident of the Town or State, but during tenure of office he or she shall reside within the Town.
- (b) The Town Manager shall be employed for an indefinite term, which may be terminated by a majority vote of the Town Council. Upon such termination, the Town Council, in its discretion, may provide termination pay.

(Prior code 2-116; Ord. 501, § 1, 1995; Ord. 509, 1995; Ord. 674, § 2, 2001)

Sec. 2-45. Duties of Town Manager.

- (a) The Town Manager shall have the power to recommend to the Town Council the appointment and removal of all employees of the Town. Specifically excepted are elected officials and Council or Commission appointees, including the Town Attorney and the Municipal Judge. He or she shall have

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the power to suspend and discipline affected employees in accordance with written personnel policies and procedures adopted by the Town Council, which policies and procedures shall include an appeal procedure to the Town Council in those instances deemed appropriate by the Town Council.

- (b) In addition to those powers enumerated in Subsection (a) above, the Town Administrator shall have the powers:
- (1) To supervise the administration of the enforcement of all laws and ordinances of the Town, except to the extent that the administration of such enforcement is confided to other Town officials by law or ordinances; and to essentially see that things get done.
 - (2) To be responsible to the Town Council for the administration of all departments of the Town, save and except those departments confided to the supervision of other Town officers by law or administrative functions of such departments to the extent requested or delegated by the Town officers having primary responsibility for the operation of such departments.
 - (3) To issue such administrative regulations and outline general administrative procedures applicable to areas and departments confided to his or her supervision in the form of rules which are not in conflict with the laws of the State or the Town ordinances.
 - (4) To assist in preparing the budget and to submit the same to the Town Council.
 - (5) In cooperation with the Town Clerk, to keep the Town Council fully informed as to the financial condition of the Town.
 - (6) To recommend to the Town for adoption such measures as he or she may deem necessary or proper for the efficient and proper operation of the Town.
 - (7) To prepare and submit to the Town Council a monthly report of the Town's affairs, including a summary of the reports of the operations of all Town departments.
 - (8) Subject to the requirements of statutes and ordinances, and in accordance with rules and regulations now or hereafter promulgated by the Town Council, to purchase materials and authorize budgeted expenditures of funds on behalf of the Town.
 - (9) Develop proposals to achieve intergovernmental cooperation between the Town and other units of local government regarding growth concerns and to such areas as joint purchasing, law enforcement, street repairs and maintenance, animal control and the like as directed by the Town Council.
 - (10) Work with department heads and employees to solve internal organizational problems both within departments and across departmental lines.
 - (11) Meet with individuals, groups, community or regional organizations and business or industrial concerns to represent the Town and discuss Town policies.
 - (12) Attend conferences and seminars to keep abreast of current trends in the field of municipal management.
 - (13) Review and update personnel policies.
 - (14) To attend Town Council meetings and Board of Adjustment meetings.
 - (15) To perform such other duties as may be prescribed by ordinance or by direction of the Town Council.

(Prior code 2-117; Ord. 501, § 2, 1995; Ord. 509, 1995)

Sec. 2-46. Plan of administrative organization.

The Town Administrator shall propose a plan of administrative organization to the Town Council within sixty (60) days after his or her appointment, which, if approved by the Town Council, shall be

adopted by ordinance. The administrative plan shall provide for such departments and officers as may be deemed necessary for the efficient administration of the Town.

(Prior code 2-118; Ord. 501, 1995, § 2, Ord. 509, 1995)

Sec. 2-47. Relationship of the Town Council to Town Administrator.

Neither the Mayor nor any member of the Town Council shall in any way interfere with the Town Administrator in his or her exercise of the powers and duties granted by this Article. Except for the purpose of inquiry, the Mayor and members of the Town Council shall deal with the Town Administrator solely through the Town Council, and neither the Mayor nor any member of the Town Council shall give orders to any of the subordinates of the Town Administrator.

(Prior code 2-119)

Sec. 2-48. Appointment of Town Attorney.

The Town Council at its first regular meeting after each election shall appoint a qualified attorney at law as the Town Attorney and shall fix his or her compensation. The Town Attorney shall serve at the pleasure of the Town Council. In case a vacancy should occur in the office of Town Attorney, the Town Council shall appoint a Town Attorney for the unexpired term.

(Prior code 2-130)

Sec. 2-49. Powers and duties.

The Town Attorney shall perform the following duties:

- (1) Act as legal advisor to, and be attorney and counsel for, the Town Council and be responsible solely to the Town Council. He or she shall advise any officer or department head of the Town in matters relating to his or her official duties when so requested by the Town Council and shall file with the Town Clerk a copy of all written opinions given by him or her.
- (2) Prosecute ordinance violations and conduct for the Town cases in Municipal Court. He or she shall file with the Town Clerk copies of such records and files relating thereto.
- (3) Prepare or review all ordinances, contracts, bonds and other written instruments which are submitted to him or her by the Town Council, and promptly give his or her opinion as to the legal consequences thereof.
- (4) Call to the attention of the Town Council all matters of law, and changes or developments therein, affecting the Town.
- (5) Perform such other duties as may be prescribed for him or her by the Town Council.

(Prior code 2-131)

Sec. 2-50. Appointment of Town Clerk.

The Town Council at its first regular meeting after each election shall appoint a qualified person as Town Clerk, who shall serve at the pleasure of the Town Council. In case a vacancy should occur in the office of Town Clerk, the Town Council shall appoint a Town Clerk for the unexpired term.

(Prior code 2-141)

Sec. 2-51. Oath and bond.

Before entering upon the duties of the office, the Town Clerk shall take an oath of office and furnish a surety bond in the amount of ten thousand dollars (\$10,000.00) conditioned upon the faithful discharge of his or her duties as Town Clerk.

(Prior code 2-142)

Sec. 2-52. Powers and duties generally.

The Town Clerk shall perform the following duties:

- (1) Be the Town Clerk of the Town Council, attend all meetings of the Town Council and keep a permanent journal of its proceedings.
- (2) Be the custodian of all of the Town's records, and such records shall be open at all reasonable times for inspection by electors of the Town.
- (3) Certify by his or her signature all ordinances and resolutions enacted or passed by the Town Council.
- (4) Provide and maintain in his or her office a supply of forms for all petitions required to be filed for any purpose provided by the Town Council.
- (5) Countersign all warrants drawn on the Town Treasury.
- (6) Be custodian of all bonds of all officers or employees of the Town.
- (7) Perform such other duties as may be prescribed for him or her by law or by the Town Council.

(Prior code 2-143)

Sec. 2-53. Town Clerk may act as treasurer; Town Treasurer.

The powers and duties of the Town Treasurer as provided in this Article may be performed by the Town Clerk at the discretion of the Town Council.

(Prior code 2-154)

Sec. 2-54. Appointment.

The Town Council at its first regular meeting after each election shall appoint a qualified person as Town Treasurer, who shall serve at the pleasure of the Town Council. In case a vacancy should occur in the office of Town Treasurer, the Town Council shall appoint a Town Treasurer for the unexpired term.

(Prior code 2-155)

Sec. 2-55. Oath and bond; duty to turn over property when leaving office.

Before entering upon the duties of the office, the Town Treasurer shall take an oath of office and furnish a surety bond in the amount of ten thousand dollars (\$10,000.00) to be approved by the Town Council, conditioned upon the faithful performance of his or her duties as Town Treasurer and that when

he or she shall vacate such office, he or she will turn over and deliver to his or her successor all monies, books, papers, property or things belonging to the Town and remaining in his or her charge as Treasurer.

(Prior code 2-156)

Sec. 2-56. Powers and duties generally.

The Town Treasurer shall perform the following duties:

- (1) The Town Treasurer shall receive all monies belonging to the Town and give receipts therefor; shall keep his or her books and accounts in such manner as may be prescribed by the Town Council; shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto; and shall report to the Town Council, at each regular monthly meeting thereof, the state of the Treasury at the date of such account and the balance of money in the Treasury. He or she shall also accompany such statement of accounts with a statement of all monies received in the Treasury and on what account, during the preceding month, together with all warrants redeemed and paid by him or her, and such warrants and their supporting vouchers shall be delivered and filed in the Town Clerk's office upon every day of such statement. All books and accounts of the Town Treasurer shall always be subject to inspection of any member of the Town Council.
- (2) Annually within ten (10) days after the close of the fiscal year, the Town Treasurer shall make out and file with the Town Clerk a full and detailed account of all receipts and expenditures of the Town, and all of his or her transactions as Town Treasurer during the preceding fiscal year, and shall show in such account the state of the Treasury at the close of the fiscal year. The Town Clerk shall immediately cause such account to be published in a newspaper published in the Town.
- (3) If there shall be no funds in his or her hands for the payment of any Town warrant presented to him or her for such payment, it shall be his or her duty to register such warrants in a book to be kept by him or her for that purpose, and the Town Treasurer shall endorse upon all such warrants so presented to him or her the time and date of such registry. Whenever the Town Treasurer shall pay such warrant, he or she shall enter the payment and the amount of interest allowed or paid on such warrant in the registry.
- (4) The Town Treasurer shall perform all other duties, keep all records and make all reports that are required by other provisions of the Code, other ordinances of the Town or state law.

(Prior code 2-157)

Sec. 2-57. Drug and alcohol testing.

- (a) *Job applicant testing: general standard* . Applicants for the following classes will be required to undergo a drug and alcohol test upon an offer of employment and prior to their final appointment:
 - (1) Public safety employees and
 - (2) Any employees for whom testing is required by either state or federal rules and regulations or law.
- (b) *Current employees testing: general standard* . The Town may require a current Town employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs or alcohol during work hours. *Reasonable suspicion* means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining *reasonable suspicion* may include, but are not limited to:

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- (1) A pattern of abnormal or erratic behavior;
- (2) Information provided by a reliable and credible source;
- (3) A work-related incident such as an accident with a Town vehicle; and
- (4) Presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

Supervisors are required to detail in writing the specific facts, symptoms, or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head or designee.

- (c) *Consent* . Before a drug and alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those Town officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the Town's drug testing policy and to indicate current or recent use of prescription or over-the-counter medication. The consent form shall also set forth the following information:
 - (1) The procedure for confirming an initial positive test result;
 - (2) The consequences of a confirmed positive test result;
 - (3) The right to explain a confirmed positive test result and the appeal procedures available; and
 - (4) The consequences of refusing to undergo a drug and alcohol test.
- (d) *Refusal to consent - applicants* . A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the Town.
- (e) *Refusal to consent - employees* . An employee who refuses to consent to a drug and alcohol test when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action.
- (f) *Blood, urine and breath collection* . Blood or urine samples shall be provided at a recognized medical facility such as a hospital or doctor's office. The test shall be administered according to the procedures of the facility authorized by the Town to perform such tests. Breath samples may be collected at such locations where there is certified equipment and operators available to perform the test. All reasonable efforts shall be taken to assure privacy of employees or applicants at such a time that the collection of samples are taken.
- (g) *Confirmation of test results* . An employee or job applicant whose drug test yields a positive result shall be given a second test using methods and equipment which is commonly used for testing at laboratories qualified to perform such analysis. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test.
 - (1) If the second test confirms the positive test result, the employee or applicant shall be notified of the results in writing by the appropriate department head or designee. The letter of notification shall identify the particular substance found and its concentration level.
 - (2) An employee or applicant whose second test confirms the original positive test result may, at the employee's or applicant's own expense, have a third test conducted on the same sample at a laboratory selected by the Town.
- (h) *Consequences of a confirmed positive test result* .
 - (1) *Applicants* . Job applicants will be denied employment with the Town if their initial positive test results have been confirmed and when there is no legal or legitimate reason for the use of a detected drug identified.
 - (2) *Employees* . If an employee's positive test result has been confirmed, the employee is subject to disciplinary action up to and including termination. Factors to be considered in determining the

appropriate disciplinary response shall include but not be limited to the employee's current and past job performance. No disciplinary action may be taken against employees who voluntarily identify themselves as drug users, obtain counseling and rehabilitation and thereafter refrain from violating the Town's policy on drug and alcohol abuse.

- (i) *Confidentiality of test results* . All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

(Ord. 572 §1, 1997)

Secs. 2-58—2-70. Reserved.

ARTICLE III Municipal Court

[Sec. 2-71. Municipal Court created.](#)

[Sec. 2-72. Procedure governed by Colorado Municipal Court Rules and the court; maximum penalty for contempt.](#)

[Sec. 2-73. Jurisdiction over juveniles; sentencing restrictions.](#)

[Sec. 2-74. Fines imposed by the Municipal Court.](#)

[Secs. 2-75—2-90. Reserved.](#)

Sec. 2-71. Municipal Court created.

A Municipal Court in and for the Town is hereby created and established.

(Prior code 17-1)

Sec. 2-72. Procedure governed by Colorado Municipal Court Rules and the court; maximum penalty for contempt.

The procedure in the Municipal Court shall be governed by Colorado Municipal Court Rules. The Municipal Court may make rules for procedures which are not inconsistent with such Colorado Municipal Court Rules, including powers incident to compelling attendance of witnesses, punishment for contempt and enforcement of orders of court.

(Prior code 17-2; Ord. 2011-121 §2)

Sec. 2-73. Jurisdiction over juveniles; sentencing restrictions.

The Municipal Court shall have jurisdiction over cases involving alleged violations of this Code by persons between the ages of ten (10) and eighteen (18) years.

(Prior code 17-3)

Sec. 2-74. Fines imposed by the Municipal Court.

- (a) *Additional fine.*
- (1) For parking citations, an additional fine in the amount of ten dollars (\$10.00) shall be added.
 - (2) For traffic citations that do not require a mandatory court appearance, an additional fine in the amount of twenty-five dollars (\$25.00) shall be added.
 - (3) For all other citations, after determining the appropriate fine for each person convicted of violating an ordinance of the Town, the Municipal Judge shall add thereto an additional fine in an amount equal to ten percent (10%) of such fine.
- (b) *Maximum fine.* The total fine, including the additional fine, shall not exceed the maximum fine permitted under state law.
- (c) *Disposition of proceeds.* All proceeds of the additional fine shall be paid into the General Fund of the Town to be used for the purpose of law enforcement training or for the purchase of equipment for traffic enforcement and traffic safety.

(Ordinance 456, 1990, §2; Ord. No. 2015-138, § 1, 10-19-2015)

Secs. 2-75—2-90. Reserved.

ARTICLE IV Police Department

[Sec. 2-91. Created; composition.](#)

[Sec. 2-92. Rules and regulations.](#)

[Sec. 2-93. Employment, powers and duties of Chief of Police.](#)

[Sec. 2-94. Duties of police officers.](#)

[Sec. 2-95. Oath for police officers.](#)

[Sec. 2-96. Duty of citizens to aid.](#)

[Sec. 2-97. Extraterritorial duty on request.](#)

[Sec. 2-98. Reserve police generally.](#)

[Sec. 2-99. Removal, disposition of lost, abandoned or confiscated property.](#)

[Secs. 2-100—2-110. Reserved.](#)

Sec. 2-91. Created; composition.

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

(Prior code 21-1)

Sec. 2-92. Rules and regulations.

The Police Department shall be operated and managed in accordance with such departmental rules and regulations as may from time to time be adopted by the Town Council.

(Prior code 21-2)

Sec. 2-93. Employment, powers and duties of Chief of Police.

The Town Council shall hire a Chief of Police who shall be the head of the Police Department and report directly to the Police Commission as his or her supervisor. It shall be the duty of the Chief of Police to:

- (1) See that the ordinances of the Town are duly enforced and the rules and regulations of the Police Department obeyed, and perform such duties as may be required by the Town Council acting through the Town Administrator.
- (2) Direct the operations of the Police Department, subject to the rules and regulations thereof.
- (3) Arrest any person violating any of the Town ordinances and take such violator before the Municipal Court for trial.
- (4) Take charge of the Town jail and all prisoners confined therein.
- (5) Render such accounts of the Police Department, his or her duties, and receipts as may be required by the Town Council, and keep the records of his or her office open to inspection by the Town Council at any time.
- (6) Before entering upon the duties of such office, the Chief of Police shall take and subscribe to an oath that he or she will support the Constitution and laws of the State, Constitution of the United States and ordinances of the Town, and that he or she will faithfully perform the duties of the office upon which he or she is about to enter.

(Prior code 21-3; Ord. 534, § 1, 1996)

Sec. 2-94. Duties of police officers.

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

- (1) They shall perform all duties required by the Chief of Police and all necessary duties on behalf of and at the direction of the Chief of Police.
- (2) They shall suppress all riots, disturbances and breaches of the peace, apprehend all disorderly persons in the Town, and pursue and arrest any person fleeing from justice in any part of the State.
- (3) They shall be the enforcement officers of the Town and shall see that the provisions of this Code and the laws of the State are complied with. They shall arrest without process all persons engaged in the violation in their presence of any provision of this Code or the law of the State.
- (4) They shall report such offenses as may come to their knowledge to the proper Town official or they shall report the same to the Municipal Judge, securing a warrant for the arrest of offenders when desirable.
- (5) They shall execute and return all writs and processes to them directed by the Municipal Judge in any case arising under a Town ordinance, and they may serve the same in any part of the County.

(Prior code 21-4)

Sec. 2-95. Oath for police officers.

Before entering upon the duties of his or her office, each police officer shall take and subscribe an oath that he or she will support the Constitution and laws of the State, the Constitution of the United States and the ordinances of the Town, and that he or she will faithfully perform the duties of the office upon which he or she is about to enter.

(Prior code 21-5)

Sec. 2-96. Duty of citizens to aid.

It shall be the duty of all persons, when called upon by any police officer, to promptly aid and assist such officer in the discharge of his or her duties.

(Prior code 21-7)

Sec. 2-97. Extraterritorial duty on request.

The Chief of Police may in his or her discretion, upon request of the chief of police or person exercising the functions thereof in any other jurisdiction, assign police officers under his or her control together with such equipment as he or she shall deem to be proper, to perform temporary duty in the requesting jurisdiction.

(Prior code 21-8)

Sec. 2-98. Reserve police generally.

The Mayor may, upon any emergency, riot, pestilence, invasion or at any time he or she shall deem it necessary for the peace, good order or health of the Town, order the Chief of Police to appoint reserve police officers for a specified time, not exceeding two (2) days, without the approval of the Town Council. The Mayor may also, with the approval of a majority of the Town Council, order the Chief of Police to appoint such number of reserve police officers as may be agreed upon by the Town Council, to serve upon days of election, public celebration and holidays, and said reserve police officers shall have and possess all the powers and privileges of regular police officers during the time for which they may be appointed.

(Prior code 21-9)

Sec. 2-99. Removal, disposition of lost, abandoned or confiscated property.

- (a) The Police Department is authorized to remove and dispose of all property, other than automobiles, which is found to be lost or abandoned, or which is confiscated, upon the streets or alleys of the Town or upon private property within the Town limits. Disposal of such removed or confiscated property shall be in accordance with Subsection (b) of this Section.
- (b) The Chief of Police shall cause to be held public sales at which lost or confiscated property shall be offered for sale to the highest bidder(s). These sales shall be held as frequently as deemed proper and necessary by the Chief of Police, but at least one (1) sale shall be held annually. No item of lost or confiscated property shall be offered at any such regular sale unless that item has been in the

custody of the Police Department for three (3) months or more, and any such item which has been in the custody of the Police Department for three (3) months shall be offered for sale at the next public sale. No such item shall be offered for sale which is the subject of any civil or criminal judicial proceeding involving, directly or indirectly, a determination of the ownership of such property. If it is determined in any such civil or criminal judicial proceeding that the individual claiming the ownership or right of possession of such item is not entitled thereto as against the Town, such item shall then be offered for sale at the next regularly scheduled public sale. The sale shall be conducted insofar as possible at the Town Municipal Building. Notice of the sale shall be published in a newspaper of general circulation in the Town once during each of the two (2) weeks preceding the day of the sale, which notice shall contain a description of all articles to be sold. The Police Department shall execute and deliver a bill of sale for each article sold to the purchaser thereof.

- (c) In the event property is sold under this authority, said proceeds shall be placed in the General Fund of the Town.

(Prior code 21-10; Ord. 463, § 1, 1991; Ord. 476, 1992)

Secs. 2-100—2-110. Reserved.

ARTICLE V Fire Department

[Sec. 2-111. Fire prevention.](#)

[Sec. 2-112. Appeals.](#)

[Secs. 2-113—2-130. Reserved.](#)

Sec. 2-111. Fire prevention.

The Fire Code adopted by the Town shall be enforced by the appropriate Fire District in the Town governing those areas for which such Fire District has properties within its boundaries.

(Prior code 12-18; Ord. 2008-814 §1)

Sec. 2-112. Appeals.

Whenever the Fire Chief shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Fire Chief to the Board of Appeals within thirty (30) days from the date of the decision appealed.

(Prior code 12-23; Ord. 2008-814 §1)

Secs. 2-113—2-130. Reserved.

ARTICLE VI Social Security

[Sec. 2-131. Participation authorized.](#)

[Sec. 2-132. Payroll deductions.](#)

[Sec. 2-133. Contributions and agreements authorized.](#)

[Secs. 2-134—2-140. Reserved.](#)

Sec. 2-131. Participation authorized.

The 38th General Assembly of the State of Colorado, in regular session, enacted a statute, known as House Bill No. 291, which is the enabling act provided for in Section 218 of Public Law 734, 81st Congress, which designated the State Department of Employment Security, to act as the department to implement the coverage of employees and officers under the Federal Old-Age and Survivors Insurance system. The Town is hereby authorized to execute and deliver to the Department of Employment Security a plan, or plans, and agreement, required under Section 5 of said enabling act and the Social Security Act, to extend coverage to employees and officers of the Town and do all other necessary things to effectuate coverage of employees and officers under the Federal Old-Age and Survivors Insurance system.

(Prior code 2-85)

Sec. 2-132. Payroll deductions.

The Town Clerk is hereby authorized to establish a system of payroll deduction to be matched by payments by the Town to be made into the contribution fund of the social security act through the Department of Employment Security, and to make charges of this tax to the fund or funds from which wage or salary payments are issued to employees of the Town. Such payments are to be made in accordance with the provisions of Section 1400 of the Federal Insurance Contribution Act on all services which constitute employment within the meaning of that act. Payments made to the Department of Employment Security shall be due and payable on or before the 18th day of the month immediately following the completed calendar quarter, and such payments which are delinquent shall bear interest at the rate of one-half of one percent (0.5%) per month until such time as payments are made.

(Prior code 2-86)

Sec. 2-133. Contributions and agreements authorized.

Authority is given to the Mayor and the Town Clerk to enter into an agreement with the Department of Employment Security, which agreement shall be in accordance with House Bill No. 291 and with Section 218 of the Social Security Act. Such plan and agreement shall provide that the participation of this Town shall be in effect as of April 1, 1951.

(Prior code 2-87; Ord. 463, § 1, 1991)

Secs. 2-134—2-140. Reserved.

ARTICLE VII Military Leave

[Sec. 2-141. Conditions for leave.](#)

[Secs. 2-142—2-150. Reserved.](#)

Sec. 2-141. Conditions for leave.

The following conditions pertain to authorization of military leave for public employees.

- (1) As per Section 28-3-601, C.R.S., any public employee of the Town who is a member of the National Guard or any other component of the military forces of the State organized or constituted under state or federal law or who is a member of the Reserve Forces of the United States, organized under federal law is entitled to leave of absence from his or her public employment without loss of pay, seniority, status, efficiency rating, vacation, sick leave or other benefits for all the time when he or she is engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes. Such leave shall be allowed if the required military service is satisfactorily performed, which shall be presumed unless the contrary is established.
- (2) Such leave shall not be allowed unless the employee returns to this public position immediately on being relieved from such military service, or is prevented from so returning by physical or mental disability or other cause not due to his or her own fault, or is required by proper authority to continue in such military service beyond the time limited in Subsection (1) for such leave.
- (3) When under said orders pursuant to law for military leave, said employee will submit one (1) copy of said orders to the Town Council, in order for full pay as per Section 28-3-601, C.R.S.

(Prior code 1-2)

Secs. 2-142—2-150. Reserved.

ARTICLE VIII Civil Defense and Disaster Relief

[Sec. 2-151. Purpose.](#)

[Sec. 2-152. Exercise of emergency powers by Mayor.](#)

[Sec. 2-153. Circumstances warranting declaration of emergency. _](#)

[Sec. 2-154. Proclamation of emergency required following declaration.](#)

[Sec. 2-155. Specific emergency powers following declaration.](#)

[Sec. 2-156. Duration and termination of emergency periods.](#)

[Sec. 2-157. Violations; penalty.](#)

[Secs. 2-158—2-170. Reserved.](#)

Sec. 2-151. Purpose.

The Town will from time to time in the future, in all probability, have within its corporate limits fire, flood, civil disturbances and riots; and, therefore, it is deemed in the best interest of the Town to exercise certain emergency police powers necessary to and incidental to the maintenance of the safety, health and welfare of the citizens of the Town as prescribed in this Article.

(Prior code 11-1)

Sec. 2-152. Exercise of emergency powers by Mayor.

Emergency police powers shall be placed in the hands of the Mayor and these powers should be exercised only in the event of an emergency as contemplated in Section 2-151 and shall only be exercised for such period of time as the actual emergency exists. Such powers shall only be invoked after a declaration and proclamation of an emergency as provided in this Article.

(Prior code 11-2)

Sec. 2-153. Circumstances warranting declaration of emergency.

The Mayor shall have the power to declare an emergency to exist as authorized in this Article when, in his or her opinion, one (1) or more of the following conditions exists:

- (1) There is extreme likelihood of danger of destruction of life or property due to unusual conditions;
- (2) Unusual or extreme weather conditions exist, making use of Town streets or areas difficult or impossible;
- (3) Civil unrest, commotion or uprising is imminent or exists; or
- (4) There is a stoppage or loss of electrical power affecting a major portion of the Town.

(Prior code 11-3)

Sec. 2-154. Proclamation of emergency required following declaration.

If the conditions stated in Section 2-153 are found to exist, the emergency shall be declared in a proclamation of the Mayor, which proclamation shall be delivered to the Chief of Police, who shall then see that the proclamation is delivered to all news media within the Town and who shall also use public address systems throughout the Town and immediately notify the public of said proclamation, and the violators will be arrested and subject to penalty. The proclamation of specifying with exactness the area in which the emergency is declared to exist shall become effective upon its issuance and dissemination to the public by the appropriate news media.

(Prior code 11-4)

Sec. 2-155. Specific emergency powers following declaration.

After declaration of an emergency as provided in Section 2-154, the Mayor shall have the authority to exercise any or all of the following powers:

- (1) To call upon regular and auxiliary enforcement agencies and organizations within or without the Town to assist in preserving and keeping the peace and the preservation of life and property of the citizenry of the Town.
- (2) To close streets and sidewalks and to delineate areas within the Town wherein an emergency exists.
- (3) To impose a curfew upon all or any portion of the Town thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public places; provided, however, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firemen and Town authorized or requested enforcement officers and personnel may be exempted from such curfew.

- (4) To order the closing of any business establishments anywhere within the Town for the period of the emergency, such businesses to include, but not be limited to, those selling intoxicating liquors, malt beverages, gasoline or firearms.
- (5) To do any and all acts necessary and incidental to the preservation of life, limb and property within the Town.

(Prior code 11-5)

Sec. 2-156. Duration and termination of emergency periods.

- (a) Any emergency proclaimed in accordance with the provisions of this Article shall terminate after forty-eight (48) hours from the issuance thereof or upon the issuance of a proclamation determining an emergency no longer exist, whichever occurs first. However, upon declaration of a second or further emergencies to exist, the emergency powers set forth herein may be exercised during such further emergency period but never for more than forty-eight (48) hours in one (1) declared emergency period.
- (b) No emergency period shall extend beyond the next regular, special or called meeting of the Town Council unless at such meeting the declaration of emergency is specifically approved by resolution of the Town Council.

(Prior code 11-6)

Sec. 2-157. Violations; penalty.

Any person who shall willfully fail or refuse to comply with the order of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized in this Article shall be deemed guilty of an offense, and upon conviction thereof, shall be punished as provided in Section 1-62.

(Prior code 11-7)

Secs. 2-158—2-170. Reserved.

ARTICLE IX Reserved

[Secs. 2-171—2-180. Reserved.](#)

Secs. 2-171—2-180. Reserved.

ARTICLE X Planning and Zoning Commission

[Sec. 2-181. Created.](#)

[Sec. 2-182. Composition; appointments; term.](#)

[Sec. 2-183. Qualifications of members; compensation.](#)

[Sec. 2-184. Officers; meetings; rules and records.](#)

[Sec. 2-185. Staff and finances.](#)

[Sec. 2-186. Duties and powers.](#)

[Sec. 2-187. Preparation and purpose of master plan and regulations.](#)

[Sec. 2-188. Adoption of master plan.](#)

[Secs. 2-189—2-200. Reserved.](#)

Sec. 2-181. Created.

Pursuant to Section 31-23-201, *et seq.*, C.R.S., there is hereby created a Planning and Zoning Commission for the Town.

(Prior code 2-98)

Sec. 2-182. Composition; appointments; term.

The Planning and Zoning Commission shall consist of seven (7) members who shall be residents of the Town and shall be appointed at the discretion of the Town Council. The term of each appointed member shall be four (4) years or until his or her successor takes office.

(Prior code 2-99; Ord. 99-596 §1)

Sec. 2-183. Qualifications of members; compensation.

All members of the Planning and Zoning Commission shall be bona fide residents in the Town, and if any member ceases to reside in the Town, his or her membership shall immediately terminate. All members of said Commission shall serve as such without compensation and the appointed members may hold one (1) other municipal office, further except that one (1) such appointed member may be a member of the Zoning Board of Adjustment.

(Prior code 2-100)

Sec. 2-184. Officers; meetings; rules and records.

The Planning and Zoning Commission shall elect its chairman from among the appointed members and create and fill such other of its offices as it may determine. The term of the chairman shall be one (1) year, with eligibility for reelection. The Commission shall hold at least one (1) regular meeting in each month and such meetings may be held consecutively on the same date. The Commission shall adopt rules for the transaction of business and shall keep a record of the resolutions, transactions, findings and determinations, which record shall be a public record.

(Prior code 2-101)

Sec. 2-185. Staff and finances.

The Planning and Zoning Commission may also, with the consent of the Town Council, contract with Town planners, engineers and architects and other consultants for such services as it may require. The expenditures of the Planning and Zoning Commission, exclusive of gifts, shall be within the amounts

appropriated for the purpose by the Town Council which shall provide the funds, equipment and accommodations necessary for the commission's work.

(Prior code 2-102)

Sec. 2-186. Duties and powers.

The Planning and Zoning Commission shall have all of the powers and perform each and all of the duties specified by Section 31-23-201, *et seq.*, C.R.S., together with any other duties or authority which may hereafter be conferred upon it by state law. The performance of such duties and the exercise of such authority is to be subject to each and all of the limitations expressed in such legislative enactment or enactments.

(Prior code 2-103)

Sec. 2-187. Preparation and purpose of master plan and regulations.

- (a) It shall be the duty of the Planning and Zoning Commission to prepare a master plan. In the preparation of a master plan, the Commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the Town with due regard to its relations to neighboring territory. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the Town and its environs, which will, in accordance with present and future needs, best promote health, safety morals, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.
- (b) The Planning and Zoning Commission shall prepare its regulations in accordance with a comprehensive plan, designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulation shall be made with reasonable consideration, among other things, as to the character of the district and its particular suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

(Prior code 2-104)

Sec. 2-188. Adoption of master plan.

- (a) The Town Council deems that the master plan is intended to serve as a guide for the harmonious development of the Town and its environs, which will, in accordance with present and future needs, best promote health, safety, order, convenience, prosperity and general welfare, as well as efficiency and economy in the process of development, including adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements.
- (b) All maps, figures or other descriptive materials accompanying this document and all other materials intended to form the whole or part hereof are hereby made a part of this Code and are adopted herewith.

(Prior code 2-105)

Secs. 2-189—2-200. Reserved.

ARTICLE XI Tree Board

[Sec. 2-201. Creation.](#)

[Sec. 2-202. Term of office.](#)

[Sec. 2-203. Functions.](#)

[Sec. 2-204. Operation.](#)

[Sec. 2-205. Review by Town Council.](#)

[Secs. 2-206—2-220. Reserved.](#)

Sec. 2-201. Creation.

There shall be a Tree Board, consisting of seven (7) members. Six (6) of these members shall be residents of the Town and be appointed by the Town Council. The seventh member shall be a Council member, preferably the Parks Commissioner. All will serve without pay.

(Ord. 454, 1989, § A)

Sec. 2-202. Term of office.

- (a) The term of the six (6) persons to be appointed by the Town Council shall be three (3) years except that the term of two (2) of the members appointed to the first Town Council shall be for only one (1) year and the term of two (2) other members of the first Town Council shall be for two (2) years. In the event that a vacancy shall occur during the term of any member, the Town Council shall appoint his or her successor for the unexpired portion of the term.
- (b) The Town Council may remove any Tree Board member who displays a lack of interest, or who fails to attend Tree Board meetings for two (2) consecutive months or three (3) months within a one (1) year period, without formal leave of absence.

(Ord. 454, 1989, § B)

Sec. 2-203. Functions.

- (a) The Tree Board shall make recommendations to the Town Council concerning the purchase or disposition of trees, shrubs, vines, hedges or plants located upon the public right-of-way of any street, alley, sidewalk or other public place in the Town.
- (b) The Tree Board shall make recommendations to the Town Council concerning the trimming, spraying, removal, planting, pruning and protection of trees, shrubs, vines, hedges and other plants upon the public right-of-way of any street, alley, sidewalk or other public place in the Town. Upon adoption by the Town Council, copies of such policies, rules, regulations and specifications shall be available to the public through the office of the Town Clerk.

- (c) The Tree Board may make recommendations on any related subject as requested by the Town Council.

(Ord. 454, 1989, § C)

Sec. 2-204. Operation.

The Tree Board shall meet monthly, choose its own officers, make its own rules and regulations and keep a journal of its proceedings. Four (4) members shall be a quorum for the transaction of business.

(Ord. 454, 1989, § D)

Sec. 2-205. Review by Town Council.

The Town Council shall have the right to review, modify or suspend the conduct, acts and decisions of the Tree Board. Any person may appeal any ruling or order of the Tree Board to the Town Council which may hear and make final decisions.

(Ord. 454, 1989, § E)

Secs. 2-206—2-220. Reserved.

ARTICLE XII Ethics Code

[Sec. 2-220. Declaration of policy.](#)

[Sec. 2-221. Definitions.](#)

[Sec. 2-222. Code of ethics.](#)

[Sec. 2-223. Disclosure and resolution of conflict.](#)

[Sec. 2-224. Violations; penalty.](#)

[Sec. 2-225. Guideline violations.](#)

[Secs. 2-226—2-240. Reserved.](#)

Sec. 2-220. Declaration of policy.

The proper operation of government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a code of ethics for all Town officials and employees is adopted. The purpose of this code is to establish guidelines for standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the Town, by directing disclosure by such officials and employees of private financial or other interests in matters affecting the Town and by imposing sanctions upon public officers or employees who violate the provisions of this Article.

(Ord. 570 §1, 1997)

Sec. 2-221. Definitions.

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

Business entity means any corporation, limited liability company, sole proprietorship, firm, partnership representation, association, venture, trust or corporation for profit.

Contract means any express or implied agreement which creates, modifies, or terminates a particular relationship with the Town, and shall include the designation of a depository for public funds.

Interest means a pecuniary or valuable benefit accruent to a public officer or employee, individually, as a result of a contract or transaction which is, or may be, the subject of an official act or action by or with the Town, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated.

- a. For the purposes of this Article, a public officer or employee shall be deemed to have an interest in the affairs of:
 1. Any relative;
 2. Any person or business entity with whom a contractual relationship exists with the public officer or employee;
 3. Any business entity in which the public officer or employee is an officer, director, owner, employee or investor;
 4. Any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent (5%) of the total legal and beneficial ownership, is controlled by or owned by the public officer or employee.

Official action means any legislative, administrative or appointive act of any officer or employee of the Town, or any agency, board, committee or commission thereof.

Public officer or employee means any person holding a position by election, appointment or employment in the service of the Town, whether paid or unpaid.

Relative means any person related to any public officer/employee by blood or marriage, to include but not limited to parents, spouses, children, brothers and sisters, parents-in-law, nephews, nieces, aunts, uncles, first cousins, grandparents, grandchildren, and children-in-law, and a divorce or separation between spouses shall not be deemed to terminate any such relationship.

(Ord. 570 §1, 1997)

Sec. 2-222. Code of ethics.

The following requirements shall constitute a code of ethics establishing reasonable standards and guidelines for the ethical conduct of public officers and employees of the Town.

- (1) No public officer or employee having the power or duty to perform an official act, related to a contract or transaction which is the subject of an official act or action of the Town, shall:
 - a. Have or thereafter acquire an interest in such contract or transaction, unless said contract or transaction resulted from the proper bid process for the Town;
 - b. Have an interest in any business entity representing, advising or appearing on behalf of any person involved in such contract or transaction with the Town;
 - c. Have solicited or accepted present or future employment with a person or business entity involved in such contract or transaction with the Town, or;

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- d. Have solicited, accepted or granted a present or future gift, favor, service, or thing of value from or to a person involved in a contract or transaction with the Town, except that provisions of this Subsection shall not apply to an occasional nonpecuniary gift of twenty dollars in value or less, or to an award publically presented in recognition of public service.
- (2) No public official or employee shall attempt to influence the hiring, rate of pay, or appointment of any relative by the Town.
- (3) No relative shall be hired into any position unless proper notification and advertisement has been made to insure all potential applicants receive an equal opportunity for employment.
- (4) No public officer or employee with respect to any contract or transaction which is, or may be, the subject of an official act or action of the Town, shall personally acquire an interest in any property which may be affected by such action; nor disclose any confidential information concerning a contract or transaction which may involve the Town for the purpose of advancing any private interest.
- (5) No public employee shall engage in or accept private employment or render service for private interest when such employment or service would tend to impair his or her independence of judgment or action in the performance of his or her official duties.
- (6) No public official shall engage in or accept private employment or render service for private interest when such employment or service would tend to impair his or her independence of judgment or action in the performance of his or her official duties, unless, such official discloses the conflict for the public record and abstains from voting on such issue. Furthermore, the official shall remove himself or herself from the room where such discussion and voting takes place.
- (7) No public officer or employee shall appear on behalf of any person, other than himself or herself, his or her spouse, minor children, parents or grandparents before any Town agency. However, a member of the Town Council may appear before any municipal agency on behalf of his or her constituents in the course of his or her duties as a representative of the electorate or in the performance of public or civic obligations.
- (8) No public officer or employee who in his or her capacity as such officer or employee participates in the making of a contract in which he or she has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on his or her part, shall enter into any contract with the Town unless the contract is awarded through proper bid process.
- (9) No public officer shall request or permit the unauthorized use of any Town-owned vehicles, equipment, personnel, materials or property for personal convenience or profit.
- (10) No public officer or employee shall request or grant a special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen in similar circumstances or need.
- (11) A public official or employee shall not, at any time within two (2) years after his or her termination from his or her position with the Town, appear before any board, commission, committee, or agency of the Town in relation to or with respect to any matter in which he or she was directly involved in the review, acceptance, policy formulation, or administration of such matter while a Town official or employee.
- (12) At any meeting or gathering of three (3) or more members of the Town Council or any appointed board of the Town, the board members shall not discuss any public business, nor shall matters pertaining to public business be presented unless such meeting is open to the general public and prior notice for such meeting has been given.

(Ord. 570 §1, 1997)

Sec. 2-223. Disclosure and resolution of conflict.

A public officer or employee shall remove himself or herself from any conflict or as follows:

- (1) Any elected or appointed public official or employee who has an interest in any proposed action before the Town Council or a board or commission of which the public official or employee is a member shall immediately disclose the nature and extent of such interest, which such disclosure being a matter of public record.
- (2) The public official or employee shall not vote on the proposed action before the Town Council, other board or commission.
- (3) Said public official or employee shall not participate in any discussion on the proposed action.

(Ord. 570 §1, 1997)

Sec. 2-224. Violations; penalty.

Any board member who violates any of the provisions of this code shall be subject to the following penalties:

- (1) In all cases, the determination of the Town Council as to whether there has been a violation shall be final.
- (2) In the case of a Town Council member, if a violation is established to the satisfaction of a majority of the Town Council, such violation shall be grounds for an official reprimand by the Town Council.
- (3) In the case of a board member, if a violation is established to the satisfaction of a majority of the Town Council, such violation shall be grounds for an official reprimand by the Town Council and grounds for termination of such person's appointment to any board of which he or she is a member. If the Town Council votes to terminate the appointment of a board member upon such grounds, the Town Council may appoint another person to fulfill the term of the individual removed from office.

(Ord. 570 §1, 1997)

Sec. 2-225. Guideline violations.

Any apparent violations of any of this Article may be referred to the Town Council for investigation and discussion by any Town official, board or citizen of the Town. If, upon investigation and discussion, the Town Council finds that a violation of the guidelines contained in Section 2-222 has occurred, the Town Council may caution or reprimand the board member responsible thereof or take such other action as it deems to be in the best interests of the Town.

(Ord. 570 §1, 1997)

Secs. 2-226—2-240. Reserved.

CHAPTER 4 Revenue and Finances

ARTICLE I - Fiscal Year, Finances

ARTICLE II - Administration

ARTICLE III - General and Special Funds

ARTICLE IV - Sales Tax

ARTICLE V - Use Tax

ARTICLE VI - Development Cost Reimbursement

ARTICLE VII - Deferral of Development Fees

ARTICLE VIII - Lodging Tax

ARTICLE I Fiscal Year, Finances

[Sec. 4-1. Fiscal year same as calendar year.](#)

[Sec. 4-2. Annual budget.](#)

[Sec. 4-3. Rate of tax levy. _](#)

[Sec. 4-4. Annual appropriation.](#)

[Sec. 4-5. Publication of financial statements.](#)

[Secs. 4-6—4-20. Reserved.](#)

Sec. 4-1. Fiscal year same as calendar year.

The fiscal year of the Town shall commence on the first day of January and end on the last day of December of each year.

(Prior code 2-49)

Sec. 4-2. Annual budget.

No later than the first regular meeting of the Town Council in October of each year, the budget committee or other duly authorized persons designated by the Town Council, shall submit to the Town Council the itemized annual budget for the ensuing fiscal year. The budget as approved by the Town Council shall be adopted and administered in accordance with the provisions of the Local Government Budget law of the State.

(Prior code 2-50)

Sec. 4-3. Rate of tax levy.

The Town Council shall by resolution fix the rate of tax to be levied upon all the taxable property within the Town for municipal purposes and, through the Town Clerk, shall officially certify said levy to the County Commissioners prior to October 16 of each year.

(Prior code 2-51)

Sec. 4-4. Annual appropriation.

The Town Council shall pass an ordinance within the last quarter of each fiscal year, to be termed the annual appropriation ordinance for the next fiscal year. In such ordinance the Town Council shall appropriate such sums of money as are necessary to cover the items in its budget and to defray all necessary expenses and liabilities of the Town, specifying the objects and purposes for which such appropriations are made and the amount appropriated for each object or purpose. The total amount appropriated shall not exceed the probable amount of revenue that will be collected during the fiscal year.

(Prior code 2-52)

Sec. 4-5. Publication of financial statements.

The Town Council shall, within twenty (20) days after the adjournment of each regular or special meeting, publish such of its proceedings as relate to the payment of bills, stating for what the same are allowed, the name of the person to whom allowed and to whom paid. It shall also publish a statement concerning all contracts awarded and rebates allowed.

(Prior code 2-53)

Secs. 4-6—4-20. Reserved.

ARTICLE II Administration

[Sec. 4-21. Deposits; investments; funds.](#)

[Sec. 4-22. Annual audit.](#)

[Secs. 4-23—4-30. Reserved.](#)

Sec. 4-21. Deposits; investments; funds.

The Town Treasurer shall deposit all of the funds and monies which come into his or her possession by virtue of his or her office as Town Treasurer in one (1) or more responsible banks located in the State which have been designated by written resolution of the Town Council. The Town Council may also authorize the Town Treasurer, by written resolution, to invest all or any part of such funds in securities which are authorized for such investment by state law.

(Prior code 2-54)

Sec. 4-22. Annual audit.

The Town Council shall select a qualified person as auditor and cause to be made an annual audit of the financial affairs and transactions of the Town in accordance with the requirements of state law.

(Prior code 2-55)

Secs. 4-23—4-30. Reserved.

ARTICLE III General and Special Funds

[Sec. 4-31. General Fund created.](#)

[Sec. 4-32. Special funds created.](#)

[Sec. 4-33. Custody and management of funds.](#)

[Secs. 4-34—4-40. Reserved.](#)

Sec. 4-31. General Fund created.

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

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

(Ord. 463, § 1, 1991)

Sec. 4-32. Special funds created.

The following special funds are hereby created:

- (1) *Cemetery Perpetual Care Fund* . There is created a Cemetery Perpetual Care Fund for revenues derived and administered pursuant to Section 11-108 of this Code.
- (2) *Conservation Trust Fund* . There is hereby created a special fund, to be known as the Conservation Trust Fund.
- (3) *Police Pension Fund* . The police pension fund of the Town is hereby created. The police pension fund of the Town shall be operated in accordance with the laws and statutes of the State as provided in Section 31-30-301, et seq., C.R.S.
- (4) *Sanitary Sewer Refunding and Improvement Bond Fund* . There is created a Sanitary Sewer Refunding and Improvement Bond Fund for revenues derived and administered pursuant to Section 13-25 of this Code.
- (5) *Use Tax Capital Improvement Fund* . There is hereby established a special fund of the Town to be known as the Town of Johnstown Use Tax Capital Improvement Fund, pursuant to Section 4-65 of this Article.

(Prior code 21-20, 21-21, 21-22, 21-23, 21-24; Ord. 463, § 1, 1991)

Sec. 4-33. Custody and management of funds.

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

(Ord. 463, § 1, 1991).

Secs. 4-34—4-40. Reserved.

ARTICLE IV Sales Tax

[Sec. 4-41. Purpose.](#)

[Sec. 4-42. Definitions.](#)

[Sec. 4-43. Amendments to Article.](#)

[Sec. 4-44. Effective date.](#)

[Sec. 4-45. Penalty.](#)

[Sec. 4-46. License for retail sale of tangible property.](#)

[Sec. 4-47. General application of tax and exemptions.](#)

[Sec. 4-48. Schedule of sales tax.](#)

[Sec. 4-49. Unpaid tax a prior lien.](#)

[Sec. 4-50. Sales tax credit.](#)

[Secs. 4-51—4-60. Reserved.](#)

Sec. 4-41. Purpose.

The purpose of this Article is to impose a sales tax on the sale of tangible personal property at retail or the furnishing of services, the sale of which tangible personal property and services are taxable pursuant to Section 39-26-101, C.R.S.

(Prior code 23-16)

Sec. 4-42. Definitions.

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

(Prior code 23-17)

Sec. 4-43. Amendments to Article.

The Town Council may amend, alter or change this Article except as to the three percent (3%) rate of tax herein imposed, subsequent to adoption by a majority vote of the Town Council. Such amendment, alteration or change need not be submitted to the electors of the Town for their approval.

(Prior code 23-18; Ord. 2002-694, § 1, 2002)

Sec. 4-44. Effective date.

This Article shall take effect January 1, 1971, and shall apply to all retail sales and the furnishing of certain services unless made exempt on or after that date.

(Prior code 23-19)

Sec. 4-45. Penalty.

Any person convicted of violating any of the provisions of this Article shall be punished as provided in Section 1-62.

(Prior code 23-20)

Sec. 4-46. License for retail sale of tangible property.

- (a) It shall be unlawful for any person to engage in the business of selling tangible personal property at retail without first having obtained a license therefor. Such license shall be granted and issued by the Town Clerk and shall be in force and effect until December 31 of the year in which it is issued, unless sooner revoked.
- (b) Such licenses shall be granted and renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location and such other facts as the Town Clerk may require.
- (c) It shall be the duty of each licensee on or before January 1 of each year during which this Article remains in effect to obtain a renewal thereof if the licensee remains in the retail business or liable to account for the tax herein provided, but nothing herein contained shall be construed to empower the Town Clerk to refuse such renewal except revocation for cause of licensee's prior license.
- (d) In case business is transacted at one (1) or more separate premises by one (1) person, a separate license for each place of business shall be required.
- (e) Any person engaged in the business of selling tangible personal property at retail in the Town, without having secured a license therefor, except as specifically provided herein, shall be guilty of a violation of this Code.
- (f) Each license shall be numbered and shall show the name, residence, place and character of business of the licensee and shall be posted in a conspicuous place in the place of business for which it is issued. No license shall be transferable.
- (g) No license shall be required for any person engaged exclusively in the business of selling tangible personal property which is exempt from taxation under this Article.
- (h) The annual fee for such license shall be the sum of one dollar (\$1.00), which shall be paid to the Town Clerk prior to the issuance of such license.

(Prior code 23-21)

Sec. 4-47. General application of tax and exemptions.

- (a) For the purpose of collection, exemption, administration and enforcement of this Article by the director of revenue, the provisions of Section 39-26-114, C.R.S., shall be deemed applicable and incorporated into this Article.
- (b) The amount subject to tax under this Article shall not include the state sales and use tax imposed by Section 39-26-101, *et seq.*, C.R.S.
- (c) For the purpose of this Article, all retail sales shall be considered consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to a final destination outside the limits of the Town or to a common carrier for delivery to a final destination outside the limits of the Town.
- (d) The gross receipts from sales shall include delivery charges, when such charges are subject to the state sales and use tax imposed by Section 39-26-101, *et seq.*, C.R.S., regardless of the places to which delivery is made.
- (e) In the event a retailer has no permanent place of business in the Town, or more than one (1) place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Section 39-26-101, *et seq.*, C.R.S., and by the rules and regulations promulgated by the State Department of Revenue.
- (f) The Town shall permit the retailer to withhold a collection fee in an amount of money equal to three and one-third percent (3 $\frac{1}{3}$ %) of the total sales tax collected.
- (g) For transactions consummated on or after January 1, 2003, the tax imposed by this Article shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed upon the purchaser or user by another statutory or home rule municipality equal to or in excess of three percent (3%). A credit shall be granted against the tax imposed by this Article with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed three percent (3%).
- (h) For transactions consummated on or after January 1, 1986, the Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 39-26-102, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.

(Prior code 23-22; Ord. 2002-694, § 1, 2002)

Sec. 4-48. Schedule of sales tax.

- (a) There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services where such personal property and services are taxable pursuant to Section 39-26-104, C.R.S., a tax equal to three percent (3%) of the gross receipts. The imposition of the tax on individual sales shall be in accordance with schedules set forth in Subsection (c).
- (b) The collection, administration and enforcement of this sales tax shall be performed by the State Director of Revenue in the same manner as the collection, administration and enforcement of the State sales tax. The provisions of Section 39-26-101, *et seq.*, C.R.S., and all rules and regulations promulgated by the Director of Revenue shall govern the collection, administration and enforcement of the sales tax imposed by this Article.

- (c) The imposition of the tax on individual sales shall be in accordance with schedules set forth in the rules and regulations of the Department of Revenue or by separate resolution of the Town.

(Prior code 23-23; Ord. 2002-694, § 1, 2002)

Sec. 4-49. Unpaid tax a prior lien.

- (a) The taxes imposed by Section 4-48 above shall be a first and prior lien upon the goods and business fixtures owned or used by any retailer required by the provisions of this Article to submit a return and make payment of the taxes collected, except the stock of goods held for sale in the ordinary course of business, until said taxes are paid in full.
- (b) The lien created by Subsection (a) above shall be construed to be liens and encumbrances upon the specific items of personal property therein enumerated, shall take precedence over all other liens, encumbrances or claims of whatsoever nature and shall immediately attach to such items without the necessity of the filing of any notice of lien thereof.

(Ord. 2007-790 §1)

Sec. 4-50. Sales tax credit.

Notwithstanding any other provision of this Article, and in order to implement the provisions of the Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, dated as of the Effective Date thereof (as amended or supplemented from time to time, the "Agreement"), by and among the Town of Johnstown, Johnstown Plaza, LLC and the Johnstown Plaza Metropolitan District, there shall be granted to each person or entity obligated to pay, collect or remit sales tax on the sale of tangible personal property at retail or the furnishing of services, which are subject to Town sales tax occurring within the PIF Property, as defined in the PIF Covenant, and incorporated herein by this reference, a tax credit against collection of the sales tax as hereinafter set forth. Such sales tax credit shall be granted in form of a reduction in the applicable sales tax rate in an amount equivalent to two percent (2%), the rate of the Credit PIF, and shall attach to a particular transaction only to the extent that the Credit PIF Revenues are received by the PIF Collecting Agent for such transaction. The sales tax credit shall be automatic and shall take effect immediately upon the occurrence of a Taxable Transaction within the PIF Property, but shall be subject to the applicable retailer's remittance to and receipt by the PIF Collecting Agent of the Credit PIF Revenues in accordance with the PIF Covenant and the Agreement. The sales tax credit shall be granted during the Credit PIF Period and shall automatically terminate when the Credit PIF Period terminates. All capitalized terms used in this Section and not otherwise defined herein shall have the meanings set forth in the Agreement.

(Ord. No. 2016-141, § 2, 1-20-2016)

Secs. 4-51—4-60. Reserved.

ARTICLE V Use Tax

[Sec. 4-61. Definitions.](#)

[Sec. 4-62. Imposed.](#)

[Sec. 4-63. Exemptions.](#)

[Sec. 4-64. Motor and other vehicle use tax collection.](#)

[Sec. 4-65. Use of revenues.](#)

[Sec. 4-66. Collection, administration and enforcement.](#)

[Sec. 4-67. Unpaid tax a prior lien.](#)

[Secs. 4-68—4-80. Reserved.](#)

Sec. 4-61. Definitions.

- (a) *Building materials* are those construction materials for which a Town Building Permit is required.
- (b) *Construction materials* are all other construction materials, including but not limited to tangible personal property, which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project, including public and private improvements. *Construction materials* include, but are not limited to, such things as: asphalt, bricks, builders' hardware caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, wood preserver, electrical conduit, cable, transformers, pipelines, utility line, railroad ties and rails, or other similar property, whether or not such property may lose its identity as personal property by being incorporated as part of the real property. The above materials, when used for forms or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials. However, in no event shall the term *construction materials* include any tangible personal property stored, used or consumed by a person or entity subject to regulation by the Colorado Public Utilities Commission.

(Prior code 23-24; Ord. 2010-115 §1)

Sec. 4-62. Imposed.

There is imposed, and there shall be paid and collected, a use tax upon the privilege of using or consuming within the Town any construction and building materials, and motor and other vehicles on which registration is required, purchased at retail, or both, such use tax to be in the amount of three percent (3%) of the retail cost thereof.

(Prior code 23-25; Ord. 2002-694, § 1, 2002)

Sec. 4-63. Exemptions.

- (a) In no event shall the use tax apply:
 - (1) For the storage, use or consumption of any tangible property, the sale of which is subject to a retail sales tax imposed by the Town.
 - (2) To the storage, use or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.
 - (3) To the storage, use or consumption of tangible personal property brought into the Town by a nonresident thereof for his or her own storage, use or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use or consumption of tangible

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personal property brought into the Town by a nonresident to be used in the conduct of a business in this Town.

- (4) To the storage, use or consumption of tangible personal property by the United States Government or the State, or their institutions or political subdivisions, in their governmental capacities only, or by religious or charitable corporations in the conduct of their religious or charitable functions.
 - (5) To the storage, use or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished, and the container, label or the furnished shipping case thereof.
 - (6) To the storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sale and use tax of another town, city or county equal to or in excess of the use tax. A credit shall be granted against the use tax with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid to him or her by reason of the imposition of a sales or use tax of another town, city or county on his or her purchase or use of the property. The amount of the credit shall not exceed the amount of the use tax.
 - (7) To the storage, use or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a nonresident acquiring residency.
 - (8) To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a nonresident of the Town; and he or she purchased the vehicle outside of the Town for use outside of the Town and actually so used it for a substantial and primary purpose for which it was acquired; and he or she registered, titled and licensed the motor vehicle outside of the Town.
 - (9) To the storage, use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of the use tax.
 - (10) To the storage, use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let or entered into at any time prior to the effective date of the use tax.
 - (11) To the storage of construction and building materials after January 1, 1986.
- (b) For transactions consummated on or after January 1, 1986, the Town's use tax shall not be imposed with respect to the use or consumption of tangible property within the Town which occurs within three (3) years after the most recent sale of the property if, within the three (3) years following such sale, the property has been significantly used within the State for the principal purpose for which it is purchased.

(Prior code 23-26)

Sec. 4-64. Motor and other vehicle use tax collection.

The use tax shall be applicable for every motor or other vehicle for which registration is required by the laws of the State. No registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the State Department of Revenue or its authorized agents until any use tax due upon the use, storage or consumption thereof has been paid.

(Prior code 23-27)

Sec. 4-65. Use of revenues.

Revenues collected under this Article shall be credited to the General Fund of the Town for the year 1988; for the year 1989 and thereafter, there is established a special fund of the Town to be known as the *Town of Johnstown Use Tax Capital Improvement Fund*, to be credited with all revenues collected after December 1, 1988, to be used solely for the purpose of capital improvement.

(Prior code 23-28)

Sec. 4-66. Collection, administration and enforcement.

- (a) The collection, administration and enforcement of the use tax shall be performed by the Town Clerk. The Town Council is authorized to adopt all rules and regulations which may be necessary or appropriate for the collection, administration and enforcement of the use tax.
- (b) The use tax on building and construction material shall be due and payable to the Town at the time a building permit application is submitted.
- (c) For transactions consummated on or after January 1, 1986, the taxpayer may elect a State hearing on the Town Clerk's final decision on a deficiency notice or claim for refund within thirty (30) days after the mailing of such final decision, pursuant to the procedures set forth in Section 29-2-106.1, C.R.S.

(Prior code 23-29)

Sec. 4-67. Unpaid tax a prior lien.

- (a) The taxes imposed by Section 4-62 above shall be a first and prior lien upon the goods and business fixtures owned or used by any obligor required by the provisions of this Article to make payment of the taxes imposed until said taxes are paid in full.
- (b) The lien created by Subsection (a) above shall be construed to be liens and encumbrances upon the specific items of personal property therein enumerated, shall take precedence over all other liens, encumbrances or claims of whatsoever nature and shall immediately attach to such items without the necessity of the filing of any notice of lien thereof.

(Ord. 2007-790 §2)

Secs. 4-68—4-80. Reserved.

ARTICLE VI Development Cost Reimbursement

[Sec. 4-81. Cost agreement.](#)

[Sec. 4-82. Funds deposit agreement.](#)

Sec. 4-81. Cost agreement.

All development proposals, including annexation, subdivision, zoning, rezoning, site plans and final development plans, shall require a cost agreement to be entered into between landowners or developers and the Town to provide for reimbursement to the Town for cost of consultants used by the Town to assist in evaluating landowners' or developers' requests and to assist the Town in negotiation, review,

consultation and advice. Such agreement shall also reimburse the Town for other related costs, including but not limited to legal publication costs and administrative costs.

(Ord. 2000-623, § 1, 2000)

Sec. 4-82. Funds deposit agreement.

- (a) At the time the Town and the developer enter into a cost agreement as provided in Section 4-81 above, they shall also enter into a funds deposit agreement whereby the developer shall deposit with the Town a minimum of five thousand dollars (\$5,000.00) to help defray the cost of processing the developer's community development application.
- (b) The funds received by the Town in such funds deposit agreement shall have a separate accounting for each community development request.
- (c) The Town shall provide the developer with statements from its consultants as each payment is made from such funds on deposit.
- (d) Any amounts remaining in the deposited funds after completion or termination of all work regarding the owner's development proposal shall be returned to the developer/landowner. If there are insufficient funds to cover costs, an additional deposit shall be required.
- (e) The required five-thousand-dollar deposit may be amended by the Town Council by a resolution of the Town Council.

(Ord. 2000-623, § 1, 2000)

ARTICLE VII Deferral of Development Fees

[Sec. 4-83. Deferral of development fees.](#)

[Secs. 4-84—4-90. Reserved.](#)

Sec. 4-83. Deferral of development fees.

The Town Council may allow for the deferral of fees imposed on new development in the Town. The Town Council may do so by approving, by resolution, a written agreement entered into with the person owing the fees, which agreement shall contain such terms and conditions as the Council determines are in the best interests of the Town and provided that the Council also determines and finds in the resolution that allowing the deferral of development fees (i.e. use tax, building permit fees, and impact fees) or any other fees imposed on new development will serve a public purpose. A public purpose may include, without limitation, providing the public with significant social, economic, or cultural benefits. The Town Council may also allow, under such agreement, that a portion or all of the taxes generated by such development be credited to the payment of the deferred development fees. In the event that any amounts owed under the agreement are not paid when due and except as otherwise provided in the deferral agreement, such unpaid amounts shall be a perpetual lien upon the real property for which the deferred fees are owed from the date the fees are due under the agreement until paid and such lien shall have priority over all other liens except those for real property taxes. If any deferred fee is not paid when due, the Town may pursue all remedies available to it under the law to collect such fee including, without limitation, by judicially foreclosing the lien. The Town Clerk may also certify any delinquent fees and other amounts owed under the deferral agreement to the County Treasurer and such fees and amounts shall then be collected in the same manner as though they were real property taxes. The agreement may further provide that the Town shall have the right to withhold or revoke any building permits, certificates of

occupancy, and other Town approval relating to the development of the real property for which deferred fees are delinquent in payment.

(Ord. No. 2014-132, § 1, 2-19-2014)

Secs. 4-84—4-90. Reserved.

ARTICLE VII Lodging Tax ¹¹

[Sec. 4-91. Purpose.](#)

[Sec. 4-92. Definitions.](#)

[Sec. 4-93. Tax levied.](#)

[Sec. 4-94. Liability for tax.](#)

[Sec. 4-95. Collection; remittance of tax; audit.](#)

[Sec. 4-96. Disputes over exemption from tax; application for refund.](#)

[Sec. 4-97. Disposition of funds.](#)

[Sec. 4-98. Duties and powers of town manager.](#)

[Sec. 4-99. Tax information confidential.](#)

[Sec. 4-100. Penalties; assessment.](#)

[Sec. 4-101. Administrative review; appeals.](#)

[Sec. 4-102. Liens.](#)

[Sec. 4-103. Recovery of unpaid taxes by action at law.](#)

[Sec. 4-104. Status of unpaid taxes in bankruptcy and receivership.](#)

[Sec. 4-105. Statute of limitations.](#)

[Sec. 4-106. Tax overpayments.](#)

[Sec. 4-107. Violations.](#)

[Secs. 4-108—4-120. Reserved.](#)

Sec. 4-91. Purpose.

The purpose of this Article is to impose a lodging tax on every person who, for consideration, leases or rents a hotel room, motel room, lodging room, guesthouse room, recreational vehicle PAD or other similar accommodation located in the Town for a period of less than thirty (30) consecutive days, and to require that every person who furnishes any such lodging accommodation collect and remit to the Town the tax imposed herein.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-92. Definitions.

For purposes of this Article, the following words shall have the following meanings:

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- (a) *Lodging accommodation* means hotel room, motel room, lodging room, motor hotel room, guesthouse room, recreational vehicle PAD or other similar accommodation located in the Town that is leased, rented or otherwise furnished to persons for a period of less than thirty (30) consecutive days.
- (b) *Lodging tax* or *tax* means an excise tax payable by a person for the purchase of a lodging accommodation and also means the aggregate amount of taxes due from a vendor during the period for which such vendor is required to collect and remit the tax imposed by this Article, as more fully described in Section 4-93 below.
- (c) *Taxpayer* means a person obligated to pay the tax under the terms of this Article.
- (d) *Vendor* means a person furnishing lodging accommodations for consideration within the Town.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-93. Tax levied.

- (a) *Lodging tax.* Effective April 1, 2016, there is levied and shall be paid and collected an excise tax of three percent (3%) on the compensation paid for the leasing, rental or furnishing of any lodging accommodation for a period of less than thirty (30) consecutive days. This tax shall be in addition to the sales tax established pursuant to Articles IV of this Chapter and any other lawfully imposed tax or fee.
- (b) *Exemptions.* The following transactions shall be exempt from the tax:
 - (1) Lodging accommodations provided to the United States Government, the State of Colorado, its departments and institutions, and political subdivisions thereof, including the Town, in their governmental capacities and in the conduct of their governmental functions and activities only;
 - (2) Lodging accommodations provided to any person who the Town is prohibited from taxing under the Constitution or laws of the United States or the State of Colorado;
 - (3) Lodging accommodations provided to religious, charitable and eleemosynary corporations in the conduct of their religious, charitable and eleemosynary functions and activities only; and
 - (4) Lodging accommodations provided to any person for a period of at least thirty (30) consecutive days.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-94. Liability for tax.

- (a) No taxpayer leasing or renting a lodging accommodation shall fail to pay the lodging tax levied pursuant to Section 4-93.
- (b) No vendor leasing, renting or otherwise furnishing lodging accommodations shall fail to collect and remit to the Town the lodging tax levied pursuant to Section 4-93. The burden of proving that any transaction is not subject to the tax imposed by this Article is upon the vendor.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-95. Collection; remittance of tax; audit.

- (a) Every vendor providing lodging accommodations taxable under this Article shall add the lodging tax to the compensation paid for the lodging accommodation, showing the tax as a separate and distinct item on the final invoice, or equivalent thereof, and shall collect the lodging tax.

- (b) The lodging taxes collected by the vendor shall be and remain public money and the property of the Town. Until remitted to the Town, the vendor shall account for the money separately and hold such money in trust for the sole use and benefit of the Town.
- (c) The vendor shall report the lodging taxes collected on forms prescribed by the Town and shall remit such taxes to the Town on or before the twentieth day of each month for the preceding month, unless the Town, in its discretion, agrees in writing to a longer reporting period.
- (d) Every vendor shall maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town in order to determine the amount of the lodging tax for which the vendor is liable under this Article. The vendor shall keep and preserve all such books, invoices and other records for a period of three (3) years, and the same shall be open for examination by the Town.
- (e) For the purpose of ascertaining the correct amount of the lodging tax due from a vendor under this Article, the Town or an authorized agent of the Town may conduct an audit by examining any relevant books, accounts and records of the vendor at the lodging accommodation.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-96. Disputes over exemption from tax; application for refund.

If a dispute arises between the taxpayer and vendor as to whether a lodging transaction is exempt from taxation, the taxpayer shall pay and the vendor shall collect the lodging tax, and the vendor shall issue to the taxpayer a receipt showing the name of the taxpayer and vendor, the lodging accommodation furnished, the date, the price for the lodging accommodation and the amount of lodging tax paid along with a brief statement of the claim of exemption. The taxpayer shall thereafter, within ten (10) days of payment of the lodging tax, be entitled to apply to the Town for a refund of such taxes. If an application is filed, the Town shall determine the question of exemption, subject to review as provided in Section 4-101.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-97. Disposition of funds.

The revenues derived from the lodging tax imposed by this Article shall be placed in the General Fund for expenditures for all lawful municipal purposes, including but not limited to police protection services, community and economic development services, community events and beautification projects.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-98. Duties and powers of town manager.

The administration of this Article is hereby vested in and shall be exercised by the Town Manager. The Town Manager is authorized to prescribe forms and rules and regulations for the proper administration and enforcement of the provisions hereof. The Town Manager may delegate the administration of this Article, or any part of it, subject to the limitations of this Code, to duly qualified employees and agents of the Town.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-99. Tax information confidential.

- (a) All specific information gained under the provisions of this Article used to determine the lodging tax collected and remitted to the Town, whether furnished by a taxpayer or a vendor or obtained through an audit, shall be treated by the Town and its officers, employees and legal representatives as confidential.
- (b) Except as directed by judicial order or otherwise provided by law, the Town, its officers, employees or legal representatives shall not divulge any confidential information obtained under the provisions of this Article. If directed by judicial order, the officials charged with the custody of such information shall be required to provide only such information as is directly ordered.
- (c) Nothing contained in this Section shall be construed to prohibit the delivery to the vendor, or to such vendor's authorized representative, of a copy of confidential information relating to such vendor, or to prevent the inspection of such confidential information by an authorized officer, employee, agent or legal representative of the Town.
- (d) Nothing contained in this Section shall be construed to prohibit the publication of statistics relating to the lodging tax if the statistics are classified to prevent the identification of particular reports or returns.
- (e) Notwithstanding the provisions of this Section, the Town may furnish to the taxing officials of the State or its political subdivisions, and other state or its subdivisions of the United States, any confidential information, provided that such jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town and such information is to be used by the jurisdiction only for tax-related purposes.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-100. Penalties; assessment.

- (a) *Penalty.* A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth day of the month as required by this Article, or such other date as prescribed by the Town, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance.
- (b) *Penalty due to fraud.* If the Town Manager determines that the tax is not paid due to fraud with the intent to evade the tax, then, in lieu of the penalty set forth in Subsection (a), the Town Manager shall add fifty percent (50%) of the total amount of the tax due and one and one-half percent (1.5%) interest each month on the unpaid balance.
- (c) *Assessment.* If any vendor fails to remit the tax imposed by this Article, the Town Manager may make an estimate, based upon available information, of the amount of tax due and add the penalty and interest provided above. Such estimate shall thereupon become an assessment, and such assessment shall be final, due and payable.
- (d) *Notice.* The Town Manager shall mail notice of the amount of lodging tax due, together with penalties and interest, pursuant to the foregoing subsections, by certified mail to the vendor at the address indicated in the Town's records, and such amount shall be due and payable from the vendor to the Town within ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that, within the ten (10) day period, the vendor may petition the Town for a revision or modification of the amount due as provided in Section 4-101 below.
- (e) *Waiver.* The Town Manager is hereby authorized to waive, for good cause shown, any penalty assessed pursuant to this Section.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-101. Administrative review; appeals.

- (a) *Petition.* A taxpayer or vendor who disputes the amount of the lodging tax due or who disputes any determination made by or on behalf of the Town pursuant to and by the authority of this Article may, within ten (10) days of such assessment or determination, petition for a hearing on a revision or modification of such assessment or such determination. The petition shall be in writing, filed with the Town Clerk and contain facts and figures in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. Only one petition in connection with a particular assessment or determination may be filed, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.
- (b) *Hearing.* The Town Manager may hold a hearing on the petition or may designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (c) *Order.* Within thirty (30) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order of the hearing officer, which may, within thirty (30) days of its issuance, be appealed to the Town Council.
- (d) *Appeal to Town Council.* An appeal to the Town Council shall be in writing, filed with the Town Clerk and allege with particularity the errors and omissions contained in the final order. The appellant shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of the hearing shall be given to all parties concerned at least seven (7) days prior to the hearing. The appellant shall have the burden of proof on appeal. Within thirty (30) days of the hearing, the Town Council shall make its final determination and affirm, modify or reverse the final order. Such assessment shall be considered the final order of the Town and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town of such intention within ten (10) days after receipt of the final order.
- (e) *Service.* Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-102. Liens.

The lodging tax imposed by this Article, together with penalties and interest, shall be and, until paid, shall remain, a first and prior lien on tangible personal property in which the vendor responsible to collect and remit the tax has an ownership interest, subject only to valid mortgages or other liens of record at the time of and prior to the recording of a notice of lien. Such lien may be certified and recorded as a charge against such tangible personal property and collected, along with costs of such collection, as provided by law.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-103. Recovery of unpaid taxes by action at law.

The Town Manager may treat due and unpaid lodging taxes, together with penalties and interest, as a debt owed to the Town and recover such debt in an action at law. In such case, the Town may recover, in addition to the amounts due and unpaid, the reasonable attorney fees and collection costs incurred with respect thereto. The vendor's return on the prescribed forms or the Town Manager's assessment as herein provided, as the case may be, shall be prima facie proof of amount due.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-104. Status of unpaid taxes in bankruptcy and receivership.

Whenever the business or property of a vendor subject to this Article is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all lodging taxes, penalties and interest imposed by this Article, and for which the vendor is in any way liable under the terms of this Article, shall be a prior and preferred lien against all the property of the vendor, except as to other tax liens which have attached prior to the filing of the notice. No sheriff, receiver, assignee or other officer shall sell the property of any vendor subject to this Article under process or order of any court, without first ascertaining from the Town the amount of any lodging taxes due and payable under this Article and, if there are any such lodging taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the lodging taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-105. Statute of limitations.

- (a) The lodging taxes for any period imposed by this Article, together with penalties and interest, shall not be assessed, nor shall notice of lien be filed, suit for collection be instituted or any other action to collect the same be commenced, more than three (3) years after the date on which the tax was or is due and payable. No lien shall continue after such period, except for taxes assessed before the expiration of such three-year period, a notice of lien with respect to which has been filed prior to the expiration of such period, and, in such cases, such lien shall continue only for one (1) year after the filing of notice thereof.
- (b) Notwithstanding the foregoing, in case of a false or fraudulent return with intent to evade taxation, the lodging tax, together with penalties and interest, may be assessed, or proceedings for the collection of such taxes may be commenced, at any time.
- (c) Before the expiration of such period of limitation, the taxpayer or vendor and the Town may agree in writing to an extension of the limitations period.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-106. Tax overpayments.

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town determines that, within three (3) years of the due date, a vendor overpaid the lodging tax, the Town shall process a refund or allow a credit against a future remittance from the same vendor. The Town may extend the time for good cause.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Sec. 4-107. Violations.

- (a) It shall be unlawful for any taxpayer to fail or refuse to pay the lodging tax imposed by this Article, evade the payment of the lodging tax imposed by this Article or otherwise violate or fail to comply with any other provision of this Article.

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- (b) It shall be unlawful for any vendor to refuse to make any return required by this Article, make any false or fraudulent return or any false statements in any return, fail or refuse to collect the lodging tax from a taxpayer, fail or refuse to remit any lodging taxes collected to the Town, evade the collection and remittance of the lodging taxes or otherwise violate or fail to comply with any other provision of this Article,
- (c) It shall be unlawful for any person to aid or abet another in an attempt to evade the payment of the lodging tax imposed by this Article.
- (d) Any person convicted of violating any of the provisions of this Article shall be punished as provided in Section 1-62 of the Code.

(Ord. No. 2016-141A, § 1, 3-7-2016)

Secs. 4-108—4-120. Reserved.

FOOTNOTE(S):

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Editor's note— Ord. No. 2016-141, § 1, adopted March 7, 2016, amended the Code by adding a new Article VI, insofar as there already exists an Article VI, these provisions have been included as Article VII, §§ 4-91—4-107, at the discretion of the editor. ([Back](#))

CHAPTER 5 Franchises and Communication Systems

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Secs. 5-1—5-50. Reserved.

ARTICLE II Gas and Electric Franchise

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Sec. 5-51. Definitions.

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular and words in the singular include the plural. The word *shall* is mandatory and *may* is permissive. Words not defined in this Article shall be given their common and ordinary meaning.

Company refers to Public Service Company of Colorado, d/b/a Xcel Energy, and its successors and assigns, including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

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

Electric gross revenues refers to those amounts of money which the Company receives from the sale or delivery of electricity in the Town, after adjusting for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro forma adjustments pursuant to federal or state regulation. Electric gross revenues shall exclude any revenue for the sale or delivery of electricity to the Town.

Energy conservation means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.

Energy efficiency means increases in energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices or practices that are installed or instituted at a customer facility. Energy efficiency measures can include fuel switching.

Gross revenues refers to those amounts of money which the Company receives from the sale of gas and electricity within the Town under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the Town and from the use of Company facilities in streets and other public places (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds and pro forma adjustments pursuant to federal or state regulation. Gross revenues shall exclude any revenues from the sale of gas or electricity to the Town or the transportation of gas to the Town.

Other Town property refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, that would not otherwise fall under the definition of streets.

Private project refers to any project which is not covered by the definition of public project.

Public project refers to:

- a. Any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or
- b. Any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the federal government, the State, any county, the Regional Transportation District and the Urban Drainage and Flood Control District, but excluding all other entities established under Title 32, C.R.S.

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

Public utility easement refers to any easement over, under or above public or private property, lawfully acquired by or dedicated to the use of the Company, its predecessors in interest or other public utility companies for the placement of public utility facilities, including but not limited to Company facilities. Public utility easement shall not include any easement for the use of the Company that is located within the streets.

Renewable resource refers to any facility, technology, measure, plan or action utilizing a renewable fuel source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste or hydroelectric generation of twenty (20) megawatts or less, including any eligible renewable energy resource as defined in Section 40-2-124(i)(a), C.R.S., as the same shall be amended from time to time.

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

Street lighting facilities refers to all Company facilities necessary to provide street lighting service.

Street lighting service refers to the illumination of streets and other Town property by means of Company-owned nonornamental street lights and Company-owned ornamental street lights located in the Town or along the streets adjacent to the Town limits thereof, supplied from the Company's overhead or underground electric distribution system.

Streets or *Town streets* refers to the surface, the air space above the surface and the area below the surface of any Town-dedicated streets, alleys, bridges, roads, lanes, public easements and other public rights-of-way within the Town. Streets shall not include public utility easements.

Supporting documentation refers to all information reasonably required in order to allow the Company to design and construct any work performed under the provisions of this franchise.

Tariffs refers to those tariffs of the Company on file and in effect with the PUC.

Town refers to the Town of Johnstown, a home rule municipal corporation of the State of Colorado.

Town Council or *Council* refers to the legislative body of the Town.

Traffic facilities refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any streets or other Town property.

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

(Ord. 2007-795 Art. 1)

Sec. 5-52. Grant of franchise.

(a) Grant of franchise.

- (1) Grant. The Town hereby grants to the Company, subject to all conditions, limitations, terms and provisions contained in this franchise, the nonexclusive right to make reasonable use of Town streets:

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- a. To provide utility service to the Town and to its residents under tariffs on file with the PUC; and
 - b. To acquire, purchase, construct, install, locate, maintain, operate and extend into, within and through the Town all Company facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of utility service within and through the Town.
- (2) Street lighting and traffic signal lighting service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the Town, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of utility service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the Town shall be governed by tariffs on file with the PUC and pursuant to the terms set forth in a separate "Street Lighting and Traffic Signal Lighting Service Agreement" entered into between the parties concurrently with this franchise.
- (b) Conditions and limitations.
- (1) Scope of franchise. The grant of this franchise shall extend to all areas of the Town as it is now or hereafter constituted; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of utility service.
 - (2) Subject to Town usage. The right to make reasonable use of Town streets to provide utility service to the Town and its residents under the franchise is subject to and subordinate to any Town usage of said streets.
 - (3) Prior grants not revoked. This grant is not intended to revoke any prior license, grant or right to use the streets, and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.
 - (4) Franchise not exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the Town reserves the right to make or grant a franchise to any other person, firm or corporation.
- (c) Effective date and term.
- (1) Term. This franchise shall take effect on January 15, 2008, and shall supersede any prior franchise grants to the Company by the Town. This franchise shall terminate on January 14, 2028, unless extended by mutual consent.
 - (2) Execution. The Company shall execute this franchise and deliver one (1) executed original to the Town Manager within thirty (30) days following the effective date of passage by the Town of an ordinance adopting the franchise. Within two (2) weeks after the franchise has been executed by the Company and delivered to the Town, the Mayor of the Town and other necessary or proper officials of the Town are authorized and directed to sign this franchise in the name of the Town, and the Town Clerk is hereby authorized and directed to attest to the same under seal of the Town and to do all things necessary for the delivery of this franchise and for fully carrying out the franchise.
 - (3) Condition precedent. Concurrently with this franchise, the Town and the Company have agreed to terms on a "Street Lighting and Traffic Signal Lighting Service Agreement" (the "Agreement"). The Agreement shall be filed with the Town Council for approval by ordinance concurrently with this franchise. The Agreement shall be effective concurrently with this franchise and the Company shall signify its acceptance of the Agreement by executing the Agreement and delivering five (5) executed originals to the Town Manager concurrently with its delivery of the executed originals of this franchise. Failure to execute and deliver the Agreement to the Town in accordance with this Section shall render this franchise void and of no further force and effect.

(Ord. 2007-795 Art. 2)

Sec. 5-53. Town police powers.

- (a) Police powers. The Company expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact the Company's operations in the Town's streets and other Town property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's noncompliance with any applicable local requirements.
- (b) Regulation of streets or other Town property. The Company expressly acknowledges the Town's right to enforce regulations concerning the Company's access to or use of the streets, including requirements for permits.
- (c) Compliance with laws. The Company shall promptly and fully comply with all laws, regulations, permits and orders enacted by the Town.

(Ord. 2007-795 Art. 3)

Sec. 5-54. Franchise fee.

- (a) Franchise fee.
 - (1) Fee. In partial consideration for the franchise, which provides for the Company's use of Town streets, which are valuable public properties acquired and maintained by the Town at great expense to its residents, and in recognition that the grant to the Company of the use of Town streets is a valuable right, the Company shall pay the Town a sum equal to three percent (3%) of all gross revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon Town residents who are customers of the Company.
 - (2) Obligation in lieu of fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the Town streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon utility service provided to Town residents.
 - (3) Changes in utility service industries. The Town and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities and are also experiencing other changes as a result of mergers, acquisitions and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that, in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, the Company will cooperate with and assist the Town in modifying this franchise to assure that the Town receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the Town as of the date that such initiatives and changes adversely impact franchise fee revenues.
 - (4) Utility service provided to the Town. No franchise fee shall be charged to the Town for utility service provided to the Town for its own consumption, including street lighting service and traffic signal lighting service.

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- (b) Remittance of franchise fee.
- (1) Remittance schedule. Franchise fee revenues shall be remitted by the Company to the Town as directed by the Town in monthly installments not more than thirty (30) days following the close of each month.
 - (2) Correction of franchise fee payments. In the event that either the Town or the Company discovers that there has been an error in the calculation of the franchise fee payment to the Town, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Paragraph (3) below; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the Town and said overpayment is in excess of five thousand dollars (\$5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than five (5) years prior to the discovery of the Company error.
 - (3) Audit of franchise fee payments.
 - a. Every three (3) years, commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the Town Manager containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.
 - b. If the Town disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to providing the Town's auditor with all information reasonably necessary to complete the audit.
 - c. If the results of a Town audit conducted pursuant to Subparagraph b. above concludes that the Company has underpaid the Town by two percent (2%) or more, in addition to the obligation to pay such amounts to the Town, the Company shall also pay all costs of the audit.
 - (4) Fee disputes. Either party may challenge any written notification of error as provided for in Paragraph (2) above by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error. If efforts at resolution are unsuccessful, the parties agree to submit the dispute through informal means, including negotiation and mediation, but not by arbitration, prior to initiating any legal action.
 - (5) Reports. Upon written request by the Town, but not more than once per year, the Company shall supply the Town with reports, in such formats and providing such details as reasonably requested by the Town, of all suppliers of utility service that utilize Company facilities to sell or distribute utility service to residents and the names and addresses of each such supplier.
- (c) Franchise fee payment not in lieu of permit or other fees. Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the Town, including any fee for a street closure permit, an excavation permit, a street cut permit or other lawful permits hereafter required by the Town, except that the franchise fee provided for herein shall be in lieu of any occupation or similar tax for the use of Town streets.

(Ord. 2007-795 Art. 4)

Sec. 5-55. Administration of franchise.

- (a) Town designee. The Town shall designate in writing to the Company an official having full power and authority to administer the franchise. The Town may also designate one (1) or more Town representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said Town representatives. The Town may change these designations by providing written notice to the Company. The Town's designee shall have the right, at all reasonable times, to inspect any Company facilities in Town streets.
- (b) Company designee. The Company shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address and telephone number for the Company's representative under this franchise. The Company may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with the Company regarding utility service and related service needs for Town facilities.
- (c) Coordination of work.
 - (1) The Company agrees to meet with the Town's designee upon written request for the purpose of reviewing, implementing or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.
 - (2) The Company agrees to coordinate its activities in Town streets with the Town. The Town and the Company will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town streets. The Town and the Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

(Ord. 2007-795 Art. 5)

Sec. 5-56. Supply, construction and design.

- (a) Purpose. The Company acknowledges the critical nature of the municipal services performed or provided by the Town to the residents which require the Company to provide prompt and reliable utility service and the performance of related services for Town facilities. The Town and the Company wish to provide for certain terms and conditions under which the Company will provide utility service and perform related services for the Town in order to facilitate and enhance the operation of Town facilities. They also wish to provide for other processes and procedures related to the provision of utility service to the Town.
- (b) Supply. The Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to residents at the lowest reasonable cost consistent with reliable supplies.
- (c) Service to Town facilities.
 - (1) Transport gas. To the extent the Town is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the Town for use in Town facilities pursuant to separate contracts with the Town.
 - (2) Charges to Town. No charges to the Town by the Company for utility service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the PUC over the Company's regulated intrastate electric and gas rates.

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- (d) Restoration of service.
- (1) Notification. The Company shall provide to the Town daytime and nighttime telephone numbers of a designated Company representative from whom the Town designee may obtain status information from the Company on a twenty-four-hour basis concerning interruptions of utility service in any part of the Town.
 - (2) Restoration. In the event the Company's gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system.
- (e) Obligations regarding Company facilities.
- (1) Company facilities. All Company facilities within Town streets shall be maintained in good repair and condition.
 - (2) Company work within the Town. All work within Town streets performed or caused to be performed by the Company shall be done:
 - a. In a high-quality manner;
 - b. In a timely and expeditious manner;
 - c. In a manner which minimizes inconvenience to the public;
 - d. In a cost-effective manner, which may include the use of qualified contractors; and
 - e. In accordance with all applicable laws, ordinances and regulations.
 - (3) No interference with Town facilities. Company facilities shall not interfere with any Town facilities, including water facilities, sanitary or storm sewer facilities, communications facilities or other Town uses of the streets or other Town property. Company facilities shall be installed and maintained in Town streets and other Town property so as to minimize interference with other property, trees and other improvements and natural features in and adjoining the streets.
 - (4) Permit and inspection. The installation, renovation and replacement of any Company facilities in the Town streets or other Town property by or on behalf of the Company shall be subject to permit, inspection and approval by the Town. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company facilities; cutting and trimming of trees and shrubs; and disturbance of pavement, sidewalks and surfaces of Town streets or other Town property. The Company agrees to cooperate with the Town in conducting inspections and shall promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.
 - (5) Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits and standards, including but not limited to requirements of all building and zoning codes and requirements regarding curb and pavement cuts, excavating, digging and other construction activities. The Company shall assure that its contractors working in Town streets or other Town property hold the necessary licenses and permits required by law.
 - (6) Increase in voltage. The Company shall reimburse the Town for the cost of upgrading the electrical system or facility of any Town building or facility that uses utility service where such upgrading is caused or occasioned by the Company's decision to increase the voltage of delivered electrical energy.
 - (7) As-built drawings. Upon reasonable written request of the Town designee, the Company shall provide, within fourteen (14) days of the request, as-built drawings of any Company facility installed within the Town streets or contiguous to the Town streets. As used in this Section, *as-built drawings* refers to the facility drawings as maintained in the Company's geographical information system or any equivalent system. The Company shall not be required to create drawings that do not exist at the time of the request.

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- (f) Excavation and construction. The Company shall be responsible for obtaining, paying for and complying with all applicable permits, including but not limited to excavation, street closure and street cut permits, in the manner required by the laws, ordinances and regulations of the Town. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the Town under Subsection (h) below and undergrounding requested by the Town under Section 5-61 of this franchise, the Town will not require the Company to pay the fees charged for such permits.
- (g) Restoration. When the Company does any work in or affecting the Town streets, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Town streets or other Town property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete restoration required by this Section, the Company may, with the approval of the Town, temporarily restore the affected Town streets or other Town property, provided that such temporary restoration is at the Company's sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the Town, the Company shall restore the streets or other Town property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such restoration. If the Company fails to promptly restore the Town streets or other Town property as required by this Section and if, in the reasonable discretion of the Town, immediate action is required for the protection of public health and safety, the Town may, upon giving fourteen (14) days' written notice to the Company, restore such Town streets or other Town property or remove the obstruction therefrom; provided, however, that Town actions do not unreasonably interfere with Company facilities. The Company shall be responsible for the actual cost incurred by the Town to restore such Town streets or other Town property or to remove any obstructions therefrom. In the course of its restoration of Town streets or other Town property under this Section, the Town shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.
- (h) Relocation of Company facilities.
 - (1) Relocation obligation. The Company shall, at its sole cost and expense, temporarily or permanently remove, relocate, change or alter the position of any Company facility in Town streets or in other Town property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, the Company and the Town agree to cooperate on the location and relocation of the Company facilities in the Town streets or other Town property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company facility at the Town's direction, if the Town requests that the same Company facility be relocated within two (2) years, the subsequent relocation shall not be at the Company's expense.
 - (2) Private projects. The Company shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for private projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.
 - (3) Relocation performance. The relocations set forth in Paragraph (1) above shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the Town designee requests in writing that the relocation commence or the date when the Company is provided all supporting documentation. The Company shall be entitled to an extension of time to complete a relocation where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

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- (4) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
- (5) Completion. Each such relocation shall be deemed complete only when the Company actually relocates the Company facilities, restores the relocation site in accordance with Subsection (g) above, or as otherwise agreed with the Town and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.
- (6) Scope of obligation. The relocation obligation set forth in this Section shall only apply to Company facilities located in Town streets. The obligation shall not apply to Company facilities located on property owned by the Company in fee or to Company facilities located in privately owned easements or public utility easements, unless such public utility easements are on or in Town-owned property.
- (7) Underground relocation. Underground facilities shall be relocated underground. Aboveground facilities shall be placed aboveground unless the Company is paid for the incremental amount by which the underground cost would exceed the aboveground cost of relocation or the Town requests that such additional incremental cost be paid out of available funds under Section 5-61 of this franchise.
- (8) Coordination. When requested in writing by the Town designee or the Company, representatives of the Town and the Company shall meet to share information regarding anticipated projects which will require relocation of Company facilities in Town streets or other Town property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any public project.
- (9) Proposed alternatives or modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town; provided, however, that such acceptance shall not be unreasonably withheld. In the event the Town designee accepts the proposed alternative or modification, the Company agrees to promptly compensate the Town for all additional costs, expenses or delay that the Town reasonably determines resulted from the implementation of the proposed alternative.
- (i) New or modified service requested by Town. The conditions under which the Company shall install new or modified utility service to the Town as a customer shall be governed by this franchise, the Company's PUC tariffs and, to the extent applicable, Articles 4, 5, 7 and 9 of the Street Lighting and Traffic Signal Lighting Service Agreement, effective concurrently with this franchise.
- (j) Service to new areas. If the territorial boundaries of the Town are expanded during the term of this franchise, the Company shall, to the extent permitted by law, extend service to residents in the expanded area at the earliest practicable time. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees.
- (k) Town not required to advance funds. Upon receipt of the Town's authorization for billing and construction, the Company shall extend Company facilities to provide utility service to the Town as a customer, without requiring the Town to advance funds prior to construction. The Town shall pay for the extension of Company facilities once completed in accordance with the Company's extension policy on file with the PUC.
- (l) Technological improvements. The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents.

(Ord. 2007-795 Art. 6)

Sec. 5-57. Reliability.

- (a) Reliability. The Company shall operate and maintain Company facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe and reliable utility service.
- (b) Franchise performance obligations. The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical and workmanlike manner.
- (c) Reliability reports. Upon written request, the Company shall provide the Town with a report regarding the reliability of Company facilities and utility service.

(Ord. 2007-795 Art. 7)

Sec. 5-58. Company performance obligations.

- (a) New or modified service to Town facilities. In providing new or modified utility service to Town facilities, the Company agrees to perform as follows:
 - (1) Performance. The Company shall complete each project requested by the Town within a reasonable time. The parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request and provides the required supporting documentation for all Company facilities other than traffic facilities as described in this Section. The Company shall be entitled to an extension of time to complete a project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town designee may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.
 - (2) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to Town facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.
 - (3) Completion/restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.
- (b) Adjustments to Company facilities. The Company shall perform adjustments to Company facilities, including manholes and other appurtenances in streets and other Town property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such adjustments to Company facilities, the Company agrees to perform as follows:
 - (1) Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company

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reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

- (2) Completion/restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company facility to accommodate the Town operations in accordance with Town instructions and, if required, readjusts, following Town paving operations.
 - (3) Coordination. As requested by the Town or the Company, representatives of the Town and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company facilities in streets or other Town property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.
- (c) Third-party damage recovery.
- (1) Damage to Company interests. If any individual or entity damages any Company facilities that the Company is responsible to repair or replace, to the extent permitted by law the Town will notify the Company of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.
 - (2) Damage to Town interests. If any individual or entity damages any Company facilities for which the Town is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, to the extent permitted by law the Company will notify the Town of any such incident and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.
 - (3) Meeting. The Company and the Town agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company facilities.

(Ord. 2007-795 Art. 8)

Sec. 5-59. Billing and payment.

- (a) Billing for other utility services.
- (1) Unless otherwise provided in its tariffs, the rules and regulations of the PUC or the Public Utility Law, the Company shall render bills monthly to the offices of the Town for utility service and other related services for which the Company is entitled to payment and for which the Town has authorized payment.
 - (2) Billings for service rendered during the preceding month, except for billings pursuant to the Agreement, shall be sent to the person(s) designated by the Town, and payment for same shall be made as prescribed in the Agreement and the applicable tariff on file and in effect from time to time with the PUC.
 - (3) The Company shall provide all billings and any underlying support documentation reasonably requested by the Town and in an editable and manipulatable electronic format that is acceptable to the Company and the Town.
 - (4) The Company agrees to meet with the Town designee at least annually for the purpose of developing, implementing, reviewing and/or modifying mutually beneficial and acceptable billing procedures, methods and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company's current most advanced billing technology, for the efficient and cost-effective rendering and processing of such billings submitted by the Company to the Town.

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

(Ord. 2007-795 Art. 9)

Sec. 5-60. Use of Company facilities.

- (a) Town use of Company facilities. The Town shall be permitted to make use of Company facilities in the Town at no cost to the Town for the placement of Town equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose or for any other purpose consistent with the Town's police powers. The Town will notify the Company in writing in advance of its intent to use Company facilities and the nature of such use. The Town shall be responsible for costs associated with modifications to Company facilities to accommodate the Town's use of such Company facilities and for any electricity used. No such use of Company facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations.
- (b) Third-party use of Company facilities. If requested in writing by the Town, the Company may allow other companies who hold franchises, or otherwise have obtained consent from the Town to use the streets, to utilize Company facilities for the placement of their facilities upon approval by the Company and agreement upon reasonable terms and conditions, including payment of fees established by the Company. No such use shall be permitted if it would constitute a safety hazard or would interfere with the Company's use of Company facilities. The Company shall not be required to permit the use of Company facilities for the provision of utility service except as otherwise required by law.
- (c) Town use of Company transmission rights-of-way. The Company shall offer to grant to the Town use of transmission rights-of-way which it now, or in the future, owns in fee within the Town for parks and open space; provided, however, that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or would interfere with the Company's use of the transmission right-of-way.
- (d) Emergencies. Upon written request, the Company shall assist the Town in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon verbal request of the Town, make available Company facilities for emergency use during the emergency or the disaster period. Such use of Company facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company facilities.

(Ord. 2007-795 Art. 10)

Sec. 5-61. Undergrounding of overhead facilities.

- (a) Underground electrical lines in new areas. The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas underground in accordance with applicable laws, regulations and orders.
- (b) Underground conversion at expense of Company.

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- (1) Underground fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year's electric gross revenues (the "Fund"), for the purpose of undergrounding existing overhead distribution facilities in the Town, as may be requested by the Town. Except as provided in Paragraph 5-56(h)(6) of this franchise, no relocation expenses which the Company would be required to expend pursuant to Section 5-56 of this franchise shall be charged to this allocation.
 - (2) Unexpended portion and advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the Town designee, the Company agrees to expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so expended shall be credited against amounts to be expended in succeeding years. Any funds accumulated under any prior franchise shall be carried over to this Fund balance. The Town shall have no vested interest in the Fund and any monies in the Fund not expended at the expiration or termination of this Agreement shall remain the property of the Company.
 - (3) Systemwide undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a systemwide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the Town such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual electric gross revenues provided above.
 - (4) Town requirement to underground. In addition to the provisions of this Article, the Town may require any aboveground Company facilities to be moved underground at the Town's expense.
- (c) Undergrounding performance. Upon receipt of a written request from the Town, the Company shall, to the extent of monies available in the Fund and as otherwise provided herein, underground Company facilities in accordance with the procedures set forth in this Section.
- (1) Performance. The Company shall complete each undergrounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request and the date the Town provides to the Company all supporting documentation. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company's performance was delayed due to a cause that could not be reasonably anticipated by the Company or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials. Upon request of the Company, the Town may also grant the Company reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.
 - (2) Town revision of supporting documentation. Any revision by the Town of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the undergrounding project under the franchise.
 - (3) Completion/restoration. Each such undergrounding project shall be deemed complete only when the Company actually undergrounds the designated Company facilities, restores the undergrounding site in accordance with Subsection 5-56(g) of this franchise or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.
 - (4) Estimates. Promptly upon receipt of an undergrounding request from the Town and the supporting documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good-faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable, issue a project authorization. The Company will not proceed with any requested project until the Town has provided a written acceptance of the Company estimate.

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- (5) Report of actual costs. Upon completion of each undergrounding project, the Company shall submit to the Town a detailed report of the Company's actual cost to complete the project, and the Company shall reconcile this total actual cost with the accepted cost estimate.
- (6) Audit of underground projects. The Town may require that the Company undertake an independent audit of any undergrounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall reduce the amount of the Fund. The Company shall cooperate fully with any audit, and the independent auditor shall prepare and provide to the Town and the Company a final audit report showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the Fund.
- (d) Audit of Fund. Upon written request of the Town, but no more frequently than once every three (3) years, the Company shall audit the Fund for the Town. Such audits shall be limited to the previous three (3) calendar years. The Company shall provide the audit report to the Town and shall reconcile the Fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, the Company shall, at its expense, cause an independent auditor to investigate and determine the correctness of the charges to the Fund. The independent auditor shall provide a written report containing its findings to the Town and the Company. The Company shall reconcile the Fund consistent with the findings contained in the independent auditor's written report.
- (e) Cooperation with other utilities. When the Company is undertaking an undergrounding project, the Town and the Company shall coordinate with other utilities or companies that have their facilities aboveground to attempt to have all facilities undergrounded as part of the same project. When other utilities or companies are placing their facilities underground, to the extent the Company has received prior notification, the Company shall cooperate with these utilities and companies and undertake to underground Company facilities as part of the same project where financially, technically and operationally feasible. The Company shall not be required to pay for the cost of undergrounding the facilities of other companies or the Town.
- (f) Planning and coordination of undergrounding projects. The Town and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Section as a part of the review and planning for other Town and Company construction projects. In addition, the Town and the Company agree to meet, as required, to review the progress of then-current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the Town and the Company to achieve the orderly undergrounding of Company facilities. At such meetings, the parties shall review:
 - (1) Undergrounding, including conversions, public projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and
 - (2) Public projects anticipated by the Town.

(Ord. 2007-795 Art. 11)

Sec. 5-62. Purchase or condemnation.

Municipal right to purchase or condemn.

- (1) Right and privilege of Town. The right and privilege of the Town to construct, purchase or condemn any Company facilities located within the territorial boundaries of the Town, and the Company's rights in connection therewith, as set forth in applicable provisions of the Constitution and statutes of the State relating to the acquisition of public utilities, are expressly recognized. The Town shall have the right, within the time frames and using the procedures set forth in such

provisions, to purchase Company facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the Town. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

- (2) Notice of intent to purchase or condemn. The Town shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the Town's purchase or condemnation of Company facilities.

(Ord. 2007-795 Art. 12)

Sec. 5-63. Municipally produced utility service.

- (a) Town reservation. The Town expressly reserves the right to engage in the production of utility service to the extent permitted by law. The Company agrees to negotiate in good faith long-term contracts to purchase Town-generated power made available for sale, consistent with PUC requirements.
- (b) Franchise not to limit Town's rights. Nothing in this franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law.

(Ord. 2007-795 Art. 13)

Sec. 5-64. Environment and conservation.

- (a) Environmental leadership. The Company is committed to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership, support and assistance, in collaboration with the Town, to identify, develop, implement and maintain new and creative programs. The Company shall strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to the ongoing regulatory oversight of the PUC. In doing so, the Company shall consider environmental issues in its planning and decision-making and shall invest in environmentally sound technologies when such technologies are deemed prudent and feasible. The Company shall continue with its voluntary carbon reduction program to reduce greenhouse gas emissions and shall continue to explore ways to reduce water consumption at its facilities and to use recycled water, where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines.
- (b) Energy conservation and efficiency.
 - (1) Energy efficiency programs. The Town and the Company recognize and agree that energy conservation and efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. The Company recognizes and shares the Town's desire to advance the implementation of cost-effective energy conservation and efficiency programs, which direct opportunities to the Company's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs and impact on the environment. The Company shall seek authority from the PUC to develop and offer energy efficiency programs to its customers. Subject to PUC approval, the Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements, such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects and recommissioning programs to analyze existing systems to optimize performance and conserve energy. Subject to PUC approval, the Company commits to offer Demand Side Management (DSM) programs and succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, the Company recognizes

the importance of: (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective energy management programs for the various classes of the Company's customers. The Company shall advise the Town and the Company's customers of the availability of assistance that the Company makes available for investments in energy conservation through its Account Managers, Area Manager, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on the Company's website. Further, the Company's Area Manager will act as the primary liaison with the Town who will provide the Town with information on how the Town may take advantage of reducing energy consumption in Town facilities and how the Town may participate in energy conservation and energy efficiency programs sponsored by the Company.

- (2) Renewable resource programs. The Company agrees to consider renewable resource programs as an integral part of the Company's provision of utility service to its customers. The Company agrees to comply with the mandates of Colorado House Bill 1281, which doubles the renewable energy standard established by voters with the 2004 passage of Amendment 37. Unless otherwise provided by law or PUC order, the Company will obtain electricity from renewable sources equivalent to at least twenty percent (20%) of retail sales by 2020. The Company will promote a significant role for renewable resources in its future resource acquisitions, consistent with acceptable rate impacts, legislative requirements and applicable provisions of law.
- (3) The Company will continue to promote existing or new programs in its service territory to comply with applicable provisions of law relating to renewable resources. The Town actively supports the Company's compliance with the renewable resource standards required by law. The Company agrees that, in complying with this provision, it shall take the following steps to encourage participation by the Town and the Company's customers in available renewable resource programs:
 - a. Notify the Town regarding all eligible renewable resource programs;
 - b. Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and
 - c. Advise customers regarding participation in eligible renewable resource programs.
- (c) Continuing commitment. The Company agrees to maintain its commitment to sustainable development and energy conservation for the term of this franchise by continuing to provide leadership, support and assistance to identify, develop, implement and maintain new and creative programs similar to the programs identified in this franchise.
- (d) PUC approval. Nothing in this Section shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process.

(Ord. 2007-795 Art. 14)

Sec. 5-65. Transfer of franchise.

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

(Ord. 2007-795 Art. 15)

Sec. 5-66. Continuation of utility service.

In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, the Company shall have no right to remove any Company facilities pending resolution of the disposition of the system unless otherwise ordered by the PUC, and shall continue to provide utility service within the Town until the Town arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary utility services necessary to protect the public. The Town agrees that, in the circumstances of this Section, the Company shall be entitled to monetary compensation as provided in the Company's tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town's streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative utility service for residents and upon order of the PUC shall the Company be allowed to discontinue the provision of utility service to the Town and its residents.

(Ord. 2007-795 Art. 16)

Sec. 5-67. Indemnification and immunity.

- (a) Town held harmless. The Company shall indemnify, defend and hold the Town harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or arising from the grant of this franchise, the exercise by the Company of the related rights or from the operations of the Company within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall: (1) give prompt written notice to the Company of any claim, demand or lien with respect to which the Town seeks indemnification hereunder; and (2) unless in the Town's judgment a conflict of interest may exist between the Town and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand or lien with counsel satisfactory to the Town. If such defense is assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent. If such defense is not assumed by the Company or if the Town determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the Town or any of its officers or employees.
- (b) Immunity. Nothing in this Section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado Governmental Immunity Act, Section 4-10-101, C.R.S., et. seq., or of any other defenses, immunities or limitations of liability available to the Town by law.

(Ord. 2007-795 Art. 17)

Sec. 5-68. Breach.

- (a) Noncontestability. The Town and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed, and neither will take any legal action to secure modification of this franchise. However, the Company reserves the right to seek a change in its rates, charges, terms and conditions imposed upon customers of providing utility service to the Town and its residents.
- (b) Breach.

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- (1) Notice; cure; remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:
 - a. Specific performance of the applicable term or condition; and
 - b. Recovery of actual damages from the date of such breach incurred by the nonbreaching party in connection with the breach, but excluding any consequential damages.
- (2) Termination of franchise by Town. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the Town may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the Town and its residents until the Town makes alternative arrangements for such service and until otherwise ordered by the PUC, and the Company shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Town streets.
- (3) Company shall not terminate franchise. In no event does the Company have the right to terminate this franchise.
- (4) No limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.
- (5) Costs and attorneys' fees. If the Town initiates any legal action seeking damages for any alleged violation of this franchise, or to seek enforcement of any of the provisions hereof, then the prevailing party in any such action shall recover from the other party all of its reasonable costs and attorneys' fees incurred in connection with the matter, regardless of whether such costs and/or fees were incurred prior to, during or subsequent to the legal action filed by the Town.

(Ord. 2007-795 Art. 18)

Sec. 5-69. Amendments.

- (a) Proposed amendments. At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendments desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendments. However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party.
- (b) Effective amendments. No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

(Ord. 2007-795 Art. 19)

Sec. 5-70. Equal opportunity.

- (a) Economic development. The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other underrepresented groups within the Company and in the local business community. The Company believes that increased participation and representation of underrepresented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders.
- (b) Employment.
 - (1) The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other underrepresented groups for positions at all skill and management levels within the Company.
 - (2) The Company recognizes that the Town and the business community in the Town, including women- and minority-owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of underrepresented communities into management positions, and agrees to keep the Town regularly advised of the Company's progress by providing to the Town a copy of the Company's annual affirmative action report upon the Town's written request.
 - (3) In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity specific media to advertise employment opportunities, internships and engaging recruiting firms with diversity specific expertise.
 - (4) The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of underrepresented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training and leadership programs.
 - (5) The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.
 - (6) The Company shall identify and consider women, persons of color and other underrepresented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the shareholders, customers and employees of the Company.
- (c) Contracting.
 - (1) It is the Company's policy to make available to minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.

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- (2) The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the participation of minority- and women-owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the Town regularly advised of the Company's programs.
- (3) The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority-owned, women-owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority-owned, women-owned and disadvantaged businesses to contract with the Company.
- (d) Coordination. Town agencies provide collaborative leadership and mutual opportunities or programs relating to Town-based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Section with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation.

(Ord. 2007-795 Art. 20)

Sec. 5-71. Miscellaneous.

- (a) No waiver. Neither the Town nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees or agents, upon any one (1) or more occasions, to insist upon or to seek compliance with any such terms and conditions.
- (b) Successors and assigns. The rights, privileges and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Section 5-65 of this franchise.
- (c) Third parties. Nothing contained in this franchise shall be construed to provide rights to third parties.
- (d) Notice. Both parties shall designate from time to time in writing representatives for the Company and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:

To the Town:

Mayor of Johnstown
P.O. Box 609
Johnstown, Colorado 80534

Town Manager
Town of Johnstown
101 Charlotte
P.O. Box 609
Johnstown, Colorado 80534

With a copy to:

Town Attorney
Town of Johnstown

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P.O. Box 336155
Greeley, Colorado 80633

To the Company:

Regional Vice President
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

(e) Examination of records.

- (1) The parties agree that a duly authorized representative of the Town shall have the right to examine any books, documents, papers and records of the Company reasonably related to the Company's compliance with the terms and conditions of this franchise. Information shall be provided within thirty (30) days of any written request. Any books, documents, papers and records of the Company in any form that are requested by the Town that contain confidential information shall be conspicuously identified as "confidential" or "proprietary" by the Company. In no case shall any privileged communication be subject to examination by the Town pursuant to the terms of this Subsection. *Privileged communication* means any communication that would not be discoverable due to the attorney-client privilege or any other privilege that is generally recognized in the State, including but not limited to the work product privilege. The work product privilege shall include information developed by the Company in preparation for PUC proceedings.
- (2) With respect to any information requested by the Town which the Company identifies as "confidential" or "proprietary":
 - a. The Town will maintain the confidentiality of the information by keeping it under seal and segregated from information and documents that are available to the public;
 - b. The information shall be used solely for the purpose of determining the Company's compliance with the terms and conditions of this franchise;
 - c. The information shall only be made available to Town employees and consultants who represent in writing that they agree to be bound by the provisions of this Paragraph; and
 - d. The information shall be held by the Town for such time as is reasonably necessary for the Town to address the franchise issues that generated the request, and shall be returned to the Company when the Town has concluded its use of the information. The parties agree that, in most cases, the information should be returned within one hundred twenty (120) days. However, in the event that the information is needed in connection with any action that requires more time, including but not necessarily limited to litigation, administrative proceedings and/ or other disputes, the Town may maintain the information until such issues are fully and finally concluded.
- (3) If an Open Records Act request is made by any third party for confidential or proprietary information that the Company has provided to the Town pursuant to this franchise, the Town will promptly notify the Company of the request and shall allow the Company to defend such request at its sole expense, including filing a legal action in any court of competent jurisdiction to prevent disclosure of such information. In any such legal action, the Company shall join the person requesting the information and the Town. In no circumstance shall the Town provide to any third party confidential information provided by the Company pursuant to this franchise without first

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conferring with the Company. The Company shall defend, indemnify and hold the Town harmless from any claim, judgment, costs or attorney fees incurred in participating in such proceeding.

- (4) Unless otherwise agreed between the parties, the following information shall not be provided by the Company: confidential employment matters, specific information regarding any of the Company's customers, information related to the compromise and settlement of disputed claims, including but not limited to PUC dockets, and information provided to the Company which is declared by the provider to be confidential and which would be considered confidential to the provider under applicable law.
- (5) The Company shall provide to the Town, upon request, not more than every two (2) years a list of utility related property owned or leased by the Company within the Town. All such records must be kept for a minimum of four (4) years.
- (6) PUC filings. Upon written request, the Company shall provide to the Town copies of all applications, advice letters and periodic reports, together with any accompanying nonconfidential testimony and exhibits, filed by the Company with the Public Utilities Commission.
- (7) Information. Upon written request, the Company shall provide the Town Manager or the Town Manager's designee with:
 - a. A copy of the Company's or its parent company's consolidated annual financial report or, alternatively, a URL link to a location where the same information is available on the Company's website;
 - b. Maps or schematics indicating the location of specific Company facilities, including gas or electric lines, located within the Town, to the extent those maps or schematics are in existence at the time of the request; and
 - c. A copy of any report required to be prepared for a federal or state agency detailing the Company's efforts to comply with federal and state air and water pollution laws.
- (f) Payment of taxes and fees.
 - (1) The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, including all governmental charges of whatsoever name, nature or kind, which may be levied, assessed, charged or imposed or which may become a lien or charge against this franchise ("impositions"), provided that the Company shall have the right to contest any such impositions and shall not be in breach of this Subsection so long as it is actively contesting such impositions.
 - (2) The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC.
- (g) Conflict of interest. The parties agree that no official, officer or employee of the Town shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the Town to the extent prohibited by law, including ordinances and regulations of the Town.
- (h) Certificate of convenience and necessity. The Town agrees to support any application the Company may file with the PUC to obtain a certificate of public convenience and necessity to exercise the rights and obligations granted under this franchise.
- (i) Authority. Each party represents and warrants that, except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The Town acknowledges that, notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

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- (j) Severability. Should any one (1) or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, that the parties shall forthwith enter into good-faith negotiations and proceed with due diligence to draft one (1) or more substitute provisions that will achieve the original intent of the parties hereunder.
- (k) Force majeure. Neither the Town nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to uncontrollable forces, which shall include, but not be limited to: accidents, breakdown of equipment, shortage of materials, shortage of labor, acts of God, floods, storms, fires, sabotage, terrorist attacks, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government and other causes or contingencies of whatever nature beyond the reasonable control of the party affected, which could not reasonably have been anticipated and avoided.
- (l) Earlier franchises superseded. This franchise shall constitute the only franchise between the Town and the Company for the furnishing of utility service, street lighting service and traffic signal lighting service, and it supersedes and cancels all former franchises between the parties hereto, including all extensions.
- (m) Titles not controlling. Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise.
- (n) Applicable law. State law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Weld County, State of Colorado.
- (o) Payment of expenses incurred by relation to franchise agreement. The Company shall pay for expenses incurred for the publication of notices, publication of ordinances and photocopying of documents related to the adoption of this franchise.

(Ord. 2007-795 Art. 21)

Secs. 5-72—5-90. Reserved.

ARTICLE III Telephone Occupation Tax

[Sec. 5-91. Levy of tax; amount.](#)

[Sec. 5-92. Time payment of tax.](#)

[Sec. 5-93. Filing statement.](#)

[Sec. 5-94. Failure to pay.](#)

[Sec. 5-95. Inspection of records.](#)

[Sec. 5-96. Local purpose.](#)

[Sec. 5-97. Tax in lieu of other business and occupation taxes, etc.](#)

[Sec. 5-98. Certain offenses and liabilities to continue.](#)

[Secs. 5-99—5-110. Reserved.](#)

Sec. 5-91. Levy of tax; amount.

There is hereby levied on and against each telephone utility company operating within the Town a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith

in the Town, and of supplying local exchange telephone service to the inhabitants of the Town. The amount of tax levied hereby shall be:

- (1) For the portion of 1979 remaining after the date on which the tax begins to accrue as provided in Section 5-92, thirty cents (\$0.30) per telephone account per month for which local exchange telephone service is provided within the corporate limits of the Town, on said date; and
- (2) For each subsequent calendar year, thirty cents (\$0.30) per telephone account per month for which local telephone service is provided within the corporate limits of the Town, on the anniversary of the date on which the tax begins to accrue as provided in Section 5-92.

(Prior code 23-34)

Sec. 5-92. Time payment of tax.

The tax levied by this Article shall begin to accrue on November 1, 1979, and shall be due and payable in two (2) equal monthly installments for the remaining portion of the year 1979. The tax shall then be payable in quarterly paid installments due by February 29, May 31, August 31, and November 30 for all the years subsequent to 1980.

(Prior code 23-35)

Sec. 5-93. Filing statement.

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 5-92, each telephone utility company subject to this Article shall file with the Town Clerk, in such form as the Town Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on said date. Such statement shall be filed within thirty (30) days after each anniversary of the date on which the tax begins to accrue, showing such accounts on the anniversary date.

(Prior code 23-36)

Sec. 5-94. Failure to pay.

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney upon direction of the Town Council shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt.

(Prior code 23-37)

Sec. 5-95. Inspection of records.

The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Article and to make copies of the entries or contents thereof.

(Prior code 23-39)

Sec. 5-96. Local purpose.

The tax herein provided is upon occupations and businesses in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Article will be construed to mean that any telephone utility company is issued a franchise by the Town.

(Prior code 23-40)

Sec. 5-97. Tax in lieu of other business and occupation taxes, etc.

The tax herein provided shall be in lieu of all other occupation taxes or taxes on the privilege of doing business in the Town on any telephone utility company subject to the provisions of this Article and in addition shall be in lieu of any free service furnished the Town by any such telephone utility.

(Prior code 23-41)

Sec. 5-98. Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of this Article shall be treated as though all prior applicable ordinances and amendments thereto were in full force and effect for the purpose of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities. All taxes, the liability for which has been accrued under the terms and provisions of Ordinance No. 235 on or before the effective date of this Article shall be and remain unconditionally due and payable, and shall constitute a debt to the Town, payable in conformity with the terms and provisions of said Ordinance No. 235 prior to the adoption of this Article; and all of said terms and provisions of Ordinance No. 235 shall be and remain in full force and effect for the purpose of the collection and payment of any and all such taxes due and payable thereunder, notwithstanding the provisions of this Article.

(Prior code 23-42)

Secs. 5-99—5-110. Reserved.

ARTICLE IV Franchise Expenses

[Sec. 5-111. Application.](#)

[Sec. 5-112. Town expenses for franchises.](#)

[Sec. 5-113. Payment of Town expenses.](#)

[Sec. 5-114. Failure to pay Town expenses.](#)

[Sec. 5-115. Review of expenses.](#)

[Sec. 5-116. No surcharge of expenses.](#)

[Secs. 5-117—5-130. Reserved.](#)

Sec. 5-111. Application.

At the time of making an application for a franchise within the Town or at the time of application for a transfer or renewal of an existing franchise, the franchisee shall make a partial payment of the franchise expenses of the Town in the form of a deposit to the Town in the amount of five thousand dollars (\$5,000.00).

(Ord. 2007-785 §1)

Sec. 5-112. Town expenses for franchises.

The Town shall maintain accurate records of all expenses incurred, including but not limited to staff time, expert consultant fees, studies, publication fees, legal fees, election fees, administrative expenses and all out-of-pocket processing expenses and expenses related to the franchise application, renewal or transfer. The franchisee shall have access to books, accounts or supporting records of the Town related to any item appearing on a billing statement, excluding any confidential materials as defined in the Open Records Act.

(Ord. 2007-785 §1)

Sec. 5-113. Payment of Town expenses.

Within thirty (30) days after receipt by the Town of any expenses listed in Section 5-112 above or thirty (30) days after the termination of franchise negotiations, the Town shall send to the franchisee an accounting which shall contain an itemization of all expenses incurred by the Town to date, as set forth above.

- (1) In the event that the expenses incurred by the Town, as set forth above, are less than the franchisee's initial five thousand dollar (\$5,000.00) deposit, the Town shall deduct the expenses incurred and provide an accounting of the remaining deposit.
- (2) In the event the expenses incurred by the Town exceed the initial deposit made by the franchisee, the franchisee shall be required to pay the difference to the Town within thirty (30) days of receipt of the accounting from the Town. If any required payments are not timely paid, the Town may suspend development, negotiation or transfer of a franchise. No payments made hereunder by the franchisee are refundable at any time, except as may be determined by the Town Manager.

(Ord. 2007-785 §1)

Sec. 5-114. Failure to pay Town expenses.

Any franchise agreement entered into by the Town shall contain a provision acknowledging that a franchisee's failure to pay the franchise deposit or any expenses associated with the franchise, as set forth in this Article, shall constitute a material breach of the terms of the franchise agreement.

(Ord. 2007-785 §1)

Sec. 5-115. Review of expenses.

- (a) If the franchisee disputes the reasonableness of the Town's expenses, it may pay periodic and final billings under protest and seek review of billing statements by filing a protest with the Town Manager or designee. Such protest shall be filed no sooner than the completion of the franchise agreement or

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the termination of negotiations and, in any event, no later than thirty (30) days following the same. Billings must be paid in accordance with Section 5-113 above but may be done so under protest so as to preserve any ongoing negotiations. If such a protest is filed, the franchisee shall appear before the Town Manager or designee on a date specified. The franchisee shall be notified of the hearing date by certified mail, return receipt requested. Notice must be mailed no less than twenty (20) days prior to the hearing date. At the hearing, the franchisee shall bear the burden of proving that any charges are unreasonable and may present evidence regarding the reasonableness of the charges.

- (b) The hearing shall be held for the sole purpose of determining the reasonableness of the Town's expenses in the franchising process. Evidence may be received in the form of documents, exhibits and witness testimony. The Town Manager or designee shall not be bound by the Colorado Rules of Evidence.
- (c) The Town Manager or designee shall either approve, reject or modify the Town's charges to the franchisee. The decision of the Town Manager or designee is final and any payment determined to be due shall be made to the Town within ten (10) days thereafter. Nonpayment by the franchisee shall constitute a material breach of the franchise.

(Ord. 2007-785 §1)

Sec. 5-116. No surcharge of expenses.

Neither the franchisee's nor the Town's expenses shall be surcharged directly against or otherwise charged solely to the Town or residents of the Town, except where Section 40-3-106(4), C.R.S., applies.

(Ord. 2007-785 §1; Ord. 2007-789 §1)

Secs. 5-117—5-130. Reserved.

CHAPTER 6 Business Licenses and Regulations

ARTICLE I - Licenses and Permits Generally

ARTICLE II - Fireworks Permit

ARTICLE III - Fireworks Public Display Permit

ARTICLE IV - Auctions and Auctioneers

ARTICLE V - Skating Rinks, Merry-Go-Rounds, Shows and Exhibitions

ARTICLE VI - Coin-Operated Game Machines

ARTICLE VII - Peddlers and Solicitors

ARTICLE VIII - Tree Trimmers

ARTICLE IX - Liquor Licensing

ARTICLE X - Contractor Licenses

ARTICLE I Licenses and Permits Generally

[Sec. 6-1. Applications.](#)

[Sec. 6-2. Persons subject to license.](#)

[Sec. 6-3. Forms to be prepared and kept by Town Clerk.](#)

[Sec. 6-4. Signatures required; form proscribed.](#)

[Sec. 6-5. Investigations.](#)

[Sec. 6-6. Fees.](#)

[Sec. 6-7. Termination of licenses; renewal.](#)

[Sec. 6-8. Compliance with requirements for buildings, premises and zoning required prior to issuance.](#)

[Sec. 6-9. Change of location.](#)

[Sec. 6-10. Inspections.](#)

[Sec. 6-11. Revocation.](#)

[Sec. 6-12. Return of fees in case of refusal or revocation.](#)

[Sec. 6-13. Posting.](#)

[Secs. 6-14—6-20. Reserved.](#)

Sec. 6-1. Applications.

Applications for all licenses and permits required by any provision of this Code or any code adopted herein shall be made in writing to the Town Clerk in the absence of a specific provision to the contrary. Each application shall state the name of the applicant, the permit or license desired, the location to be

used, if any, the time covered and the fee to be paid; and each application shall contain such additional information as may be needed for the proper guidance of the Town officials in the issuing of the permit or license applied for.

(Prior code 14-1)

Sec. 6-2. Persons subject to license.

Whenever in this Code or in any code adopted herein a license or permit is required for the maintenance, operation or conduct of any business or establishment, or for doing business or engaging in any activity or occupation, any person shall be subject to the requirement if by himself or herself or through an agent, employee or partner, he or she holds himself or herself forth as being engaged in the business or occupation, or solicits patronage therefor, actively or passively, or performs or attempts to perform any part of such business or occupation in the Town.

(Prior code 14-2)

Sec. 6-3. Forms to be prepared and kept by Town Clerk.

Forms for all licenses and permits, and applications therefor, shall be prepared and kept on file by the Town Clerk.

(Prior code 14-3)

Sec. 6-4. Signatures required; form proscribed.

Each license or permit issued shall bear the signatures of the Mayor and the Town Clerk, in the absence of any specific provision to the contrary. The Mayor may authorize in writing that his or her signature may be affixed by the Town Clerk by facsimile, rubber stamp or other method. Such license or permit shall be in substantially the following form:

No. _____

STATE OF COLORADO
By Authority of
THE TOWN OF JOHNSTOWN
LICENSE \$ _____

Permission is hereby given to _____ to maintain and carry on the following described business of _____ for the term of _____ months, being from the _____ day of _____ A.D. 19____ to the _____ day of _____ A.D. 19____, both days inclusive.

IN TESTIMONY WHEREOF the signature of the Mayor and Clerk is hereunto affixed this _____ day of _____ A.D. 19____.

(SEAL)

Mayor

ATTEST:

Town Clerk

(Prior code 14-4)

Sec. 6-5. Investigations.

Upon the receipt of an application for a license or permit where any provision of this Code or of any code adopted herein necessitates an inspection or investigation before the issuance of such permit or license, the Town Clerk shall refer such application to the proper officer, Board of Trustees or commission for making such investigation within forty-eight (48) hours of the time of such receipt. The officer, Board of Trustees or commission charged with the duty of making the investigation or inspection shall make a report thereon, favorable or otherwise, within ten (10) days after receiving the application or a copy thereof. The Health Officer or such other officer as is delegated by the Board of Trustees shall make or cause to be made an inspection in regard to such licenses in connection with the care and handling of food and the preventing of nuisances and the spread of disease, for the protection of health. The Building Inspector shall make or cause to be made any such inspections relative to the construction of buildings or other structures. All other investigations, except where otherwise specifically provided, shall be made by the Chief of Police or by another officer designated by the Board of Trustees.

(Prior code 14-5)

Sec. 6-6. Fees.

In the absence of any specific provision to the contrary, all fees and charges for licenses or permits shall be paid in advance at the time application therefor is made to the Town Clerk. When an applicant has not engaged in the business until after the expiration of part of the current license year, the license or permit fee shall be prorated by quarters in the absence of any specific provision to the contrary and the fee paid for each quarter or fraction thereof during which the business has been or will be conducted. Except as otherwise provided, all license or permit fees shall become a part of the General Fund.

(Prior code 14-6)

Sec. 6-7. Termination of licenses; renewal.

In the absence of any specific provision to the contrary, all annual licenses shall terminate on the last day of the fiscal year. Unless specifically otherwise stated, all annual licenses may be renewed upon payment of the annual license fee to the Town Clerk without further examination or investigation.

(Prior code 14-7)

Sec. 6-8. Compliance with requirements for buildings, premises and zoning required prior to issuance.

No license shall be issued for the conduct of any business, and no permit shall be issued for any thing or act, if the premises and building to be used for the purpose do not fully comply with the requirements of this Code and any code adopted hereby. No such license or permit shall be issued for the conduct of any business or performance of any act which would involve a violation of Chapter 16 of this Code.

(Prior code 14-8)

Sec. 6-9. Change of location.

The location of any licensed business, occupation or permitted act may be changed, provided that ten (10) days' notice thereof is given to the Town Clerk, in the absence of any provision to the contrary; provided that the building and zoning requirements of this Code and any code adopted hereby are complied with.

(Prior code 14-9)

Sec. 6-10. Inspections.

- (a) Whenever inspections of the premises used for or in connection with the operation of a licensed or permitted business or occupation are provided for or required by this Code or by any code adopted herein, or are reasonably necessary to secure compliance with any provision of this Code or any code adopted herein or to detect violation thereof, it shall be the duty of the licensee or holder of the permit, or the person in charge of the premises to be inspected, to admit thereto for the purpose of making the inspection any officer or employee of the Town who is authorized or directed to make such inspection at any reasonable time that admission is requested, and it shall be unlawful for such person to fail or refuse to admit such officer or employee for such purpose.
- (b) Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with any provision of this Code or any code adopted herein or to detect violations thereof, it shall be the duty of the licensee of the municipality whose business is governed by such provision to give to any authorized officer or employee of the Town requesting the same sufficient samples of such material or commodity for such analysis upon request, and it shall be unlawful for such licensee to fail or refuse to give such samples to such officer or employee.
- (c) Conviction of a violation of any provision of this Section shall automatically forfeit and revoke any license issued under this Chapter; provided that there shall be no violation of this Section unless written demand is made upon the licensee or person in charge of the premises, in the name of the Town, stating that such inspection or sample is desired at the time it is sought to make the inspection of or obtain the sample.

(Prior code 14-10)

Sec. 6-11. Revocation.

The Board of Trustees may, upon seven (7) days' written notice to a licensee or holder of a permit stating the contemplated action and in general the grounds therefor, and after a reasonable opportunity to be heard, revoke any license or permit issued by the Town if it finds that:

- (1) The licensee or holder of a permit has failed to pay the annual license fee;
- (2) The licensee or holder of a permit has failed to file any reports or furnish any other information that may be required by the provisions relating to the specific license;
- (3) The licensee or holder of a permit has violated any of the terms of the provisions pertaining to his or her license or permit or any regulation or order lawfully made relating thereto; or
- (4) Any fact or condition exists which, if it had existed or had been known to exist at the time of the application for such license or permit, would have warranted the refusal of the issuance of such license or permit.

(Prior code 14-11)

Sec. 6-12. Return of fees in case of refusal or revocation.

Upon refusal of any license or permit, the fee therefor paid in advance shall be returned to the applicant. In the event that any license or permit is revoked, all monies paid therefor shall be and remain the monies of the Town and no refund shall be made to any licensee or holder of a permit.

(Prior code 14-12)

Sec. 6-13. Posting.

It shall be the duty of any person conducting a licensed or permitted business in the Town to keep his or her license posted in a prominent place on the premises used for such business at all times.

(Prior code 14-13)

Secs. 6-14—6-20. Reserved.

ARTICLE II Fireworks Permit

[Sec. 6-41. Sales permit; required.](#)

[Sec. 6-42. Application.](#)

[Sec. 6-43. Investigation; issuance.](#)

[Sec. 6-44. Validity, transferability, assignability, renewability.](#)

[Sec. 6-45. Filing deadline.](#)

[Sec. 6-46. Cleanup bond.](#)

[Sec. 6-47. Liability insurance.](#)

[Sec. 6-48. Building permits.](#)

[Sec. 6-49. Regulations.](#)

[Sec. 6-50. Revocation.](#)

[Sec. 6-51. Discharge of fireworks in or near stand.](#)

[Secs. 6-52—6-60. Reserved.](#)

Sec. 6-41. Sales permit; required.

No person, partnership, association or corporation shall import, export, offer to sell at retail, or possess for the purpose of sale at retail, any pyrotechnic displays for any use or purpose without first having received a pyrotechnic display sale permit therefor.

(Prior code 12.5-11)

Sec. 6-42. Application.

Any person, partnership, association or corporation desiring to obtain a pyrotechnic display sale permit shall file an application therefor with the Fire Chief, which application shall be accompanied by an application fee of ten dollars (\$10.00), shall be signed by at least one (1) person twenty-one (21) years of age or older who shall be responsible for the operation under this permit, and which application shall contain the following:

- (1) The name and address of the applicant;
- (2) The names and addresses of the officers, if any, of the applicant;
- (3) The location where the applicant will sell fireworks;
- (4) The date when the applicant was organized and established if the applicant is an association, partnership or corporation;
- (5) The names and addresses of all wholesalers or distributors from whom the applicant proposes to purchase pyrotechnic displays for resale;
- (6) The applicant's state sales tax permit number;
- (7) The manner, method and times when and how the applicant proposes to sell pyrotechnic displays;
- (8) Such other information as the Fire Chief may require in order to complete the investigation required by Section 6-43;
- (9) A statement that the applicant has been licensed by the Secretary of State to make such sale.

(Prior code 12.5-12)

Sec. 6-43. Investigation; issuance.

The Fire Chief shall cause an investigation to be made of the applicant and of the location which is named in the application, and if he or she concludes that the applicant can safely engage in the sale of fireworks at the location named in the application, and that the applicant has been licensed by the Secretary of State to make such sale, the Fire Chief shall forward his or her written consent to the Town Clerk that the application be granted. Upon receipt of the written consent of the Fire Chief by the Town Clerk and upon receipt of the bond required in Section 6-46 and the policy of public liability insurance required by Section 6-47, and upon receipt of the building permit required by Section 6-48, the Town Clerk shall issue a pyrotechnic display sale permit to the applicant. If any application is denied, the applicant shall have his or her application fee returned.

(Prior code 12.5-13)

Sec. 6-44. Validity, transferability, assignability, renewability.

A pyrotechnic display sale permit is valid only within the calendar year in which it is issued. Such permit or permits are valid for only the premises or location for which it is issued. No permit is transferable, assignable or renewable.

(Prior code 12.5-14)

Sec. 6-45. Filing deadline.

Each application for a permit to sell pyrotechnic displays shall be filed with the Fire Chief on or before June 1 of the calendar year for which the permit is sought.

(Prior code 12.5-15)

Sec. 6-46. Cleanup bond.

Every person granted a pyrotechnic display sale permit shall post, with the Town Clerk, a cash bond in an amount of not less than two hundred dollars (\$200.00) or an approved letter of credit or guaranty from a banking institution authorized to do business in the State of an amount equal to two hundred dollars (\$200.00) to guarantee the prompt removal of any temporary pyrotechnic display sale stand and the cleaning up of the debris from the site of any temporary pyrotechnic display sale stand, which bond shall be returned to the permit holder only in the event he or she removes the temporary stand and cleans up all of the debris to the satisfaction of the Fire Chief. In the event that the permit holder shall fail to so remove the stand and the debris, the cash bond or the money guaranteed by the letter of credit or letter of guaranty shall be forfeited to the Town. In no event shall the permit holder be entitled to the return of the cash bond if he or she fails to remove the temporary pyrotechnic display sale stand and clean up all of the debris therefrom by noon on July 7 of the year in which the permit is granted.

(Prior code 12.5-16)

Sec. 6-47. Liability insurance.

Each applicant for a pyrotechnic display sale permit shall file with the Town Clerk, prior to the issuance of any permit, a policy of public liability insurance with coverage of at least two hundred fifty thousand dollars (\$250,000.00) per person, five hundred thousand dollars (\$500,000.00) per accident, and property damage insurance coverage of at least twenty-five thousand dollars (\$25,000.00) and a products liability policy of at least three hundred thousand dollars (\$300,000.00). Each applicant shall be responsible for the procuring of necessary insurance and the inclusion therein of coverage to protect the applicant, the manufacturer, the supplier, the seller, the buyer, the user and the Town.

(Prior code 12.5-17)

Sec. 6-48. Building permits.

Each applicant shall obtain and present a building permit for the temporary stand to be erected on the location set forth in the application from the Building Department to the Town Clerk before the permit is issued. (See Chapter 18)

(Prior code 12.5-18)

Sec. 6-49. Regulations.

All sales of pyrotechnic displays, pursuant to a pyrotechnic display sale permit issued under this Section, shall be made only in accordance with the following regulations:

- (1) All sales shall be at retail by the applicant at the location set forth in the permit.
- (2) No pyrotechnic displays shall be sold, or offered for sale, except from 12:00 noon on June 15 to midnight on July 4 of each year.

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- (3) All retail sales of pyrotechnic displays shall be permitted only from within a temporary stand, and the sale from any other building or structure is prohibited. Temporary stands are subject to the following provisions:
- a. No temporary stand shall be located within twenty-five (25) feet of any other building; nor within one hundred (100) feet of any gasoline station; nor within three hundred (300) feet of any such other temporary stand at which pyrotechnic displays are sold.
 - b. All temporary stands shall meet the structural stability requirements and the requirements for electrical circuits and equipment as required by the Building Code of the Town.
 - c. The exterior of the stand shall be covered with noncombustible fire-resistant material as approved by the Fire Chief.
 - d. Each stand shall have exit doors at least thirty (30) inches wide at both ends of the structure and one (1) door in the rear of the structure for each twenty-five (25) feet of length of the rear wall. All doors shall open outward from the stand and all doorways shall be kept free and clear from all supplies and materials at all times.
 - e. Each stand shall be provided with two (2) fire extinguishers, as approved by the Fire Chief. Each fire extinguisher shall be filled with a fire-combating substance as approved by the Fire Chief, shall be in good working order and shall be easily accessible for use in case of fire.
 - f. There shall be at least one (1) individual twenty-one (21) years of age or older available to supervise the operations at all times. No person under sixteen (16) years of age shall be allowed inside any stand at any time, nor shall any person under sixteen (16) years of age work at or about any premises where pyrotechnic displays are sold or offered for sale.
 - g. No person employed as a watchman shall be permitted to remain inside of any stand when it is not open for business.
 - h. "NO SMOKING" signs shall be prominently displayed, both inside and outside the stand. No smoking shall be permitted within the stand or within fifteen (15) feet of the stand.
 - i. No stand shall be erected before June 10 of any year. The premises on which the stand is erected shall be cleared of all structures and debris not later than noon of July 7 in the year in which the license is granted.
 - j. No person shall allow any rubbish to accumulate in or around any stand or permit a fire nuisance to exist.
 - k. No pyrotechnic displays shall remain unattended at any time regardless of whether the stand is open for business or not. If any pyrotechnic displays are stored, they shall only be stored at such places as are approved for storage of pyrotechnic displays by the Fire Chief.

(Prior code 12.5-19; Ord. 2006-768 §1)

Sec. 6-50. Revocation.

Should any licensee fail to comply with any provision of this Article, the Fire Chief shall forthwith and summarily revoke the pyrotechnic display sale permit, in which event the permit holder shall immediately cease the sale of pyrotechnic displays and shall immediately dismantle and remove the temporary stand, cleaning up all debris therefrom.

(Prior code 12.5-20)

Sec. 6-51. Discharge of fireworks in or near stand.

It is unlawful for any person to set fire to, activate or discharge any pyrotechnic display in, or within twenty-five (25) feet of, any stand where pyrotechnic displays are offered for sale.

(Prior code 12.5-21)

Secs. 6-52—6-60. Reserved.

ARTICLE III Fireworks Public Display Permit

[Sec. 6-61. Possession, use unlawful.](#)

[Sec. 6-62. Required.](#)

[Sec. 6-63. Application; contents.](#)

[Sec. 6-64. Investigation of site.](#)

[Sec. 6-65. Operator's responsibilities.](#)

[Sec. 6-66. Spectators.](#)

[Secs. 6-67—6-80. Reserved.](#)

Sec. 6-61. Possession, use unlawful.

Subject to the provisions wherein a license for a public fireworks display permit has been validly issued by the Town and is in force, no person, partnership, association or corporation shall possess, store, keep, sell, use or permit the storing, sale, possession, keeping or use of any fireworks.

(Prior code 12.5-31)

Sec. 6-62. Required.

Public displays of either fireworks or pyrotechnic displays may be conducted only if the person, partnership, association or corporation desiring to conduct the same applies for, and is granted, a public fireworks display permit.

(Prior code 12.5-32)

Sec. 6-63. Application; contents.

Any person desiring to conduct a public display of fireworks or pyrotechnic display shall submit an application therefor to the Fire Chief, together with an application fee of ten dollars (\$10.00), which application shall contain the following information:

- (1) The name of the organization sponsoring the display, together with the names of the persons to actually be in charge of the display;
- (2) The date, time and exact location on which the display is to be held;
- (3) The name of the pyrotechnic operator who is to supervise the discharge of the fireworks;

- (4) The class of fireworks to be discharged, the number of set pieces and shells (specifying single or multiple break), and other items including experimental or model rockets or missiles, which shall be activated at such display;
- (5) The manner and place of storage of such fireworks prior to and during the display;
- (6) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways and other lines of communication, the lines behind which the audience will be restrained, the location of all nearby trees, telegraph and telephone lines, or other overhead obstructions;
- (7) Proof that satisfactory compensation insurance is carried for all employees;
- (8) Proof of public liability insurance in an amount of not less than fifty thousand dollars (\$50,000.00);
- (9) Proof that the applicant has signed a performance bond in a sum of not less than one thousand dollars (\$1,000.00) conditioned on compliance with the provisions of Section 12-28-101 *et seq*, C.R.S., and with the provisions of this Article; provided that the Town shall not be required to file such bond.

(Prior code 12.5-33)

Sec. 6-64. Investigation of site.

The Fire Chief shall make, or cause to be made, an investigation of the proposed site for the display of fireworks for the purpose of determining if the fireworks will be of such character, or so located, as to be hazardous to property or person. He or she shall, in the exercise of reasonable discretion, grant or deny the application, and he or she shall have the authority to require and prescribe conditions which must be met for the display. No permit for public display may be granted where the discharge, failure to fire, faulty firing or fallout of any fireworks or other objects would endanger persons, buildings, structures, forests, brush, grass or other objects.

(Prior code 12.5-34)

Sec. 6-65. Operator's responsibilities.

No public fireworks display permit shall be granted unless at least two (2) experienced pyrotechnic operators are provided. Both operators shall:

- (1) Be responsible for, and have charge of, the display with respect to preparation for transporting, unloading, storing, preparing special effects, setting, arming, firing and disposing of all fireworks or other items used in the display.
- (2) Be responsible for activating and setting off all fireworks used in the display at locations designated and approved in the application, and take into account wind direction and velocity in setting the firing angles. Shells, rockets and missiles shall not be permitted to cross or burst above areas occupied by persons.
- (3) Be held responsible for acts of all persons employed in connection with fireworks for the display. The operators shall have authority to dismiss or discharge any employee or person, whether remunerated or not, at any time.

(Prior code 12.5-35)

Sec. 6-66. Spectators.

Spectators at public displays of fireworks shall be restrained behind lines or barriers as designated by the Fire Chief. Only authorized persons and those in actual charge of the display shall be allowed inside these lines or barriers during the unloading, preparation, firing and disposal of fireworks.

(Prior code 12.5-36)

Secs. 6-67—6-80. Reserved.

ARTICLE IV Auctions and Auctioneers

[Sec. 6-81. Definition.](#)

[Sec. 6-82. License required.](#)

[Sec. 6-83. Fee.](#)

[Secs. 6-84—6-100. Reserved.](#)

Sec. 6-81. Definition.

For purposes of this Chapter, an *auctioneer* is herewith defined to be any person who sells at public auction or conducts any auction sale within the corporate limits.

(Prior code 7-1)

Sec. 6-82. License required.

No person shall carry on or engage in an auction sale within the Town limits without having obtained a license therefor.

(Prior code 7-17)

Sec. 6-83. Fee.

The license fee for each license required by this Article shall be the sum of five dollars (\$5.00) per day; except that an auctioneer who operates an auction in his or her own auction house or business establishment on a regular weekly or monthly schedule shall pay an annual fee of five dollars (\$5.00).

(Prior code 7-18)

Secs. 6-84—6-100. Reserved.

ARTICLE V Skating Rinks, Merry-Go-Rounds, Shows and Exhibitions

[Sec. 6-101. License required; exception.](#)

[Sec. 6-102. Fees.](#)

[Secs. 6-103—6-110. Reserved.](#)

Sec. 6-101. License required; exception.

It shall be unlawful for any person to operate any skating rink, merry-go-round, circus, carnival, shows or exhibitions of any kind within the corporate limits of the Town unless such person shall first have obtained a license therefor as hereinafter provided, except that for exhibitions given or made by the citizens of the Town, no license shall be required.

(Prior code 4-40)

Sec. 6-102. Fees.

For all shows, exhibitions, performances or events described in Section 6-101, the fee shall be such as is affixed by resolution of the Board of Trustees.

(Prior code 4-41)

Secs. 6-103—6-110. Reserved.

ARTICLE VI Coin-Operated Game Machines

[Sec. 6-111. License fee; when payable.](#)

[Sec. 6-112. Evidence of license; display; records.](#)

[Sec. 6-113. Transfer of license.](#)

[Sec. 6-114. Inspection of machines.](#)

Sec. 6-111. License fee; when payable.

There shall be an annual license fee of twenty dollars (\$20.00) per each coin-operated game machine within the Town. This fee shall be paid by the operator of the business to the Town on March 1 of each year.

(Prior code 4-51)

Sec. 6-112. Evidence of license; display; records.

The license shall be evidenced by a document issued by the Town, and issued for and displayed in the establishment. A record must be kept by the operator of the business of all of the machines, including make, type, serial number and name of owner of the machine and operator of the business.

(Prior code 4-52)

Sec. 6-113. Transfer of license.

Following a written request from the owner or operators to the Town, said license may be transferable during the year from machine to machine. Upon reasonable cause being shown, the transfer may be approved by the Town Clerk.

(Prior code 4-53)

Sec. 6-114. Inspection of machines.

The Police Department, or a representative of the Police Department, shall have the authority to inspect at any time the machine to ensure compliance herewith.

(Prior code 4-55)Secs. 6-115—6-130. Reserved.

ARTICLE VII Peddlers and Solicitors

[Sec. 6-131. Definitions.](#)

[Sec. 6-132. License required.](#)

[Sec. 6-133. Application; application fee.](#)

[Sec. 6-134. Investigation; qualifications; issuance; contents.](#)

[Sec. 6-135. License fee.](#)

[Sec. 6-136. Exhibition of license.](#)

[Sec. 6-137. Revocation.](#)

[Sec. 6-138. Appeal.](#)

[Sec. 6-139. Expiration.](#)

[Sec. 6-140. Exemptions.](#)

[Sec. 6-141. Observance ofNo Peddlers/Solicitors signs required.](#)

[Secs. 6-142—6-160. Reserved.](#)

Sec. 6-131. Definitions.

For purposes of this Article, the following terms shall have the meanings ascribed to them:

- (1) *Peddler* means any person, whether resident of the Town or not, who shall sell and deliver or offer for sale to consumers any goods, wares, merchandise, fruits, vegetables or country produce, traveling from place to place, from house to house, or from street to street, who shall sell or offer for sale and delivery any goods or other such articles while traveling on foot or by vehicle or any other type of conveyance.
- (2) *Solicitor* means any person, whether resident of the Town or not, traveling either by foot or vehicle or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payment on such sales or not.

(Prior code 20-1)

Sec. 6-132. License required.

It shall be unlawful for any person to engage in the business of solicitor or peddler, as defined in this Article, within the corporate limits of the Town without first obtaining a license therefor in compliance with the provisions of this Article.

(Prior code 20-18)

Sec. 6-133. Application; application fee.

- (a) Applicants for a solicitor's or peddler's license shall file with the Town Clerk, at least five (5) days prior to the date upon which the applicant desires to begin his or her business, a sworn application in writing on a form to be furnished by the Town Clerk, which shall give the following information:
- (1) Name and description of the applicant;
 - (2) The permanent home address and full local address of the applicant;
 - (3) A brief description of the nature of the business and goods shown for sale or for future delivery;
 - (4) If employed, the name, address and phone number of the employer, together with credentials establishing the exact relationship between the employer and employee;
 - (5) The length of time for which the right to do business is desired;
 - (6) Two (2) identical photographs of the applicant which reasonably identify the applicant, such photographs to measure two (2) inches by two (2) inches;
 - (7) The fingerprints of the applicant; and
 - (8) A sworn statement taken by the Town Clerk or Chief of Police as to whether the applicant or the company or firm he or she proposes to represent in the Town has ever been convicted of any crime or misdemeanor, or has been adjudged by any court of competent jurisdiction or any administrative agency or tribunal in any regulatory or civil proceeding to have violated any of the criminal or other statutes set forth in Section 6-134(b) and, if so, a statement as to the nature of the offense or violation.
- (b) At the time of the filing of the application, a fee of ten dollars (\$10.00) shall be paid to the Town Clerk to cover the cost of investigating the facts stated herein.

(Prior code 20-19)

Sec. 6-134. Investigation; qualifications; issuance; contents.

- (a) Upon receipt of the application provided for in Section 6-133, an investigation shall be conducted at the direction of the Town Clerk to determine the applicant's qualifications for a license as set forth herein.
- (b) No license under this Article shall issue to any person who within the five (5) years next preceding the date of his or her application hereunder has been convicted of theft, burglary, assault (menacing), battery or sexual assault, or has been adjudged by any court of competent jurisdiction or any administrative agency or tribunal in any administrative, regulatory or civil proceeding to have violated any of the following:
- (1) Article 2 (concerning credit sales) or Article 4 (concerning credit insurance) of the Colorado Uniform Consumer Credit Code (Title 5, C.R.S.);

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- (2) The Colorado Consumer Protection Act (Title 6, Article 1, C.R.S.);
 - (3) Colorado Unfair Practices Act (Title 6, Article 2, C.R.S.);
 - (4) Colorado Fair Trade Act (Title 6, Article 3, C.R.S.);
 - (5) Any law of any other state or of the United States containing substantially the same provisions as any of the above named acts.
- (c) No license shall issue hereunder to any person who represents, proposes or intends to represent as a peddler or solicitor in the Town any company or firm which has been adjudged by any court of competent jurisdiction or any administrative agency or tribunal in any administrative, regulatory or civil proceeding to have violated any of the statutes set forth in paragraphs (1) through (5) of Subsection (b) above.
- (d) If no disqualifying factors set forth herein appear from the investigation, upon receipt of the necessary fees as set forth hereafter, the Town Clerk shall execute and deliver to the applicant a license to carry on his or her business within the corporate limits of the Town within a period of time not exceeding thirty (30) days, except as hereinafter set forth.
- (e) The license issued shall contain the signature and seal of the issuing officer, the type of license or permit issued, the kind of goods to be sold thereunder, the date of issuance, the expiration date thereof, and a two (2) inch by two (2) inch photograph of the applicant.

(Prior code 20-20)

Sec. 6-135. License fee.

- (a) The license fee which shall be charged in advance by the Town Clerk for any such license shall be two dollars and fifty cents (\$2.50) per day, ten dollars (\$10.00) per each seven (7) day week, or twenty-five dollars (\$25.00) per each thirty (30) day month.
- (b) An annual license and permit may be obtained by paying to the Town Clerk the sum of fifty dollars (\$50.00) per year in advance. This license shall be kept in full force and effect by submitting to the Town Clerk, after each thirty (30) day period during which the annual license is in force, a sworn statement setting forth that the facts as contained in the original application still remain the same as set forth therein. If such written statement is not filed at the end of every thirty (30) day period during which the annual license is to be in full force and effect, the Town Clerk can suspend the license and any such business carried on after the suspension of the license shall be deemed a violation of this Article.
- (c) None of the license fees provided for herein shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a license fee is believed by the licensee or applicant for a license to place an undue burden upon such commerce, he or she may apply to the Board of Trustees for an adjustment of the fees so they will not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his or her method of business and the gross volume of business and such other information as the Board of Trustees may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Board of Trustees shall then conduct an investigation, comparing the applicant's business with other businesses of like nature and shall make findings of fact from which it shall determine whether the fee fixed by this Section is unfair, unreasonable or discriminatory as to the applicant's business, and shall fix as the license fee for the applicant an amount that is fair, reasonable and not discriminatory, or, if the fee has already been paid, a refund shall be ordered of the amount over and above the fee so fixed.

(Prior code 20-21)

Sec. 6-136. Exhibition of license.

Solicitors and peddlers are required to exhibit their licenses at the request of any citizen of the Town.

(Prior code 20-22)

Sec. 6-137. Revocation.

- (a) Licenses issued under this Article may be revoked by the Board of Trustees after notice and hearing for any of the following causes:
- (1) Fraud, misrepresentation or false statement contained in the application of the license;
 - (2) Fraud, misrepresentation or false statement made in the course of carrying on his or her business as solicitor or as peddler;
 - (3) Any violation of this Code or other ordinance of the Town;
 - (4) Conviction of any crime or misdemeanor involving moral turpitude; or
 - (5) Conducting the business of soliciting or of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety or general welfare of the public.
- (b) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his or her local address as set forth in the application, at least five (5) days prior to the date set for the hearing.

(Prior code 20-23)

Sec. 6-138. Appeal.

Any person aggrieved by the action of the police or the Town Clerk in the denial of a license required by this Article or the suspension of the same shall have the right of appeal to the Board of Trustees. Such appeal shall be filed within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, by means of a written statement setting forth fully the grounds for the appeal. The Board of Trustees shall set a time and place for the hearing and shall give notice to the appellant in the same manner as provided in Section 6-137. The decision of the Board of Trustees shall be final and conclusive, except as provided by the laws of the State.

(Prior code 20-24)

Sec. 6-139. Expiration.

All licenses issued under the provisions of this Article shall expire on the date as set forth thereon.

(Prior code 20-25)

Sec. 6-140. Exemptions.

Organizations organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of whose net earnings inures to the benefit of any private shareholder or individual, and

all duly accredited representatives of such organizations, are exempt from the provisions or requirements of Subsections 6-133(a)(6), (7) and (8), and the fee requirement in Sections 6-133(b) and 6-135.

(Prior code 20-26)

Sec. 6-141. Observance of *No Peddlers/Solicitors* signs required.

It shall be unlawful for any person engaged as a peddler or solicitor in the Town to call on or attempt to contact any person at, or knock at or ring the doorbell of premises bearing or displaying a *No Solicitors* or *No Peddlers* sign or any other sign or notice which conveys said message with reasonable clarity.

(Prior code 20-3)

Secs. 6-142—6-160. Reserved.

ARTICLE VIII Tree Trimmers

[Sec. 6-161. Application and licensing required for tree trimmers.](#)

[Sec. 6-162. Suspension or revocation of license; hearing.](#)

[Secs. 6-163—6-170. Reserved.](#)

Sec. 6-161. Application and licensing required for tree trimmers.

- (a) It shall be unlawful for any person to engage in the business of cutting, trimming, pruning or removing trees, shrubs or other plants within the Town without a license therefor from the Town.
- (b) Any person desiring a license pursuant to this Article shall make application therefor at the office of the Town Clerk on forms to be provided by the Town. The Town Clerk shall examine the applicant's qualifications and references to engage in the business applied for. No license shall be issued or renewed without the approval of the Town Clerk.
- (c) No such license shall be issued until the applicant therefor has presented to the Town Clerk a satisfactory liability insurance policy in the sum of at least one hundred thousand dollars (\$100,000.00) for the injury or death of any one (1) person; three hundred thousand dollars (\$300,000.00) for the injury or death of any number of persons in any one (1) accident; and twenty-five thousand dollars (\$25,000.00) for damage to property. Said policy coverage is to extend to all operations of the licensee and shall be written according to local custom and practice for the benefit and protection of the Town and the people therein. Such insurance policy shall require at least thirty (30) days' advance notice to the Town before cancellation. In the event of the cancellation or termination of any such required insurance policy during the license term, the license shall be terminated and the holder thereof shall surrender the same to the Town Clerk unless the licensee presents to the Town Clerk a substitute insurance policy meeting the requirements of this Section.
- (d) No license shall be issued hereunder until the applicant has paid a license fee of five dollars (\$5.00) for the original license. Every license issued hereunder shall expire one (1) year after the date of its issuance. Renewal applications may be submitted at the office of the Town Clerk within thirty (30) days of the date the license will expire.

(Ord. 460, § 16-150, 1991)

Sec. 6-162. Suspension or revocation of license; hearing.

- (a) Upon the verified complaint in writing by any person, the Board of Trustees may suspend or revoke any license issued hereunder for violation of this Article. The complaint shall be submitted in writing to the Board of Trustees and shall state the date, time and place of violation. Before suspending or revoking any licensee pursuant to this Section, the Board of Trustees shall first mail, by certified mail, a copy of the complaint to the license holder and give notice of a date, not less than five (5) days after the date of mailing, on which the Board of Trustees will hold a hearing to determine whether or not such license shall be suspended or revoked.

(Ord. 460, § 16-152, 1991)

Secs. 6-163—6-170. Reserved.

ARTICLE IX Liquor Licensing

[Sec. 6-171. Local licensing authority.](#)

[Sec. 6-172. Definitions.](#)

[Sec. 6-173. Applicability.](#)

[Sec. 6-174. Application for liquor license; fee.](#)

[Sec. 6-175. Administrative application and delegation of authority to Town Clerk.](#)

[Sec. 6-176. Local licensing authority actions and determinations.](#)

[Secs. 6-177—6-180. Reserved.](#)

Sec. 6-171. Local licensing authority.

The Town Council shall be known as the Local Licensing Authority. The Local Licensing Authority shall have all the power and authority granted to local licensing authorities by the state liquor laws.

(Ord. No. 2017-146, § 1, 5-1-2017)

Sec. 6-172. Definitions.

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

Administrative application means an application for a local liquor license or permit that may be granted or denied administratively by the Town Clerk pursuant to Section 16-175 of this Article.

Applicant means a person or entity applying for a local liquor license or permit.

- (1) If an individual, the person making the application.
- (2) If a partnership, the partnership and each partner owning ten percent (10%) or more of the partnership.
- (3) If a corporation or other legal entity licensed by the Colorado Secretary of State, the corporation and each and every officer, director, manager or stockholder holding ten percent (10%) or more of the stock therein.

Licensee means an applicant that has been issued a liquor license pursuant to the state liquor laws.

Liquor license means any license or permit required by the state liquor laws.

State liquor laws means Title 12, Articles 46, 47 and 48, C.R.S., and the rules and regulations adopted thereunder by the Colorado Liquor Licensing Authority and the Colorado Department of Revenue.

Town Clerk means the Town Clerk for the Town or such person as may be assigned by the Town Clerk to perform the functions or duties required under this Article.

(Ord. No. 2017-146, § 1, 5-1-2017)

Sec. 6-173. Applicability.

In addition to any state liquor laws, the provisions contained in this Article shall govern matters related to liquor licensing. If any of the provisions contained herein conflict with any provision of the state liquor laws, the state liquor laws shall govern.

(Ord. No. 2017-146, § 1, 5-1-2017)

Sec. 6-174. Application for liquor license; fee.

- (a) *Applications.* All applications for liquor licenses shall be filed with the Town Clerk. The application shall be submitted on the state license application form and shall be filled out and completed in all material details. Incomplete application forms shall be rejected.
- (b) *Fees.*
 - (1) *License fees.* At the time of submitting the application, the applicant shall pay a license fee to the Town in the amount set by the state liquor laws.
 - (2) *Application fees.* At the time of submitting the application, the applicant shall also pay an application fee to the Town to defray the actual and necessary expenses incurred by the Town to process the application. The amount of the application fee shall be an amount equal to the maximum amount authorized by the state liquor laws, as amended from time to time.

(Ord. No. 2017-146, § 1, 5-1-2017)

Sec. 6-175. Administrative application and delegation of authority to Town Clerk.

- (a) *Town Clerk Administrative Authority.* Subject to the applicant's right of appeal to the Local Licensing Authority, the Town Clerk is authorized to act as the local licensing authority and process and issue the following administrative applications:
 - (1) Annual license renewals required by the state liquor laws, provided that the licensee has no pending actions, is not the subject of any official investigation and has not had any adjudicated violations or stipulations within the preceding year;
 - (2) Changes in shareholders, officers, directors or trade names of a licensee, provided that any investigation conducted by the Town does not reveal information that may reasonably form the basis of a determination that the applicant is not qualified to hold the respective license;
 - (3) Changes in the registered manager of a licensee, provided that any investigation conducted by the Town does not reveal information that may reasonably form the basis of a determination that the proposed manager is not qualified to hold the position;
 - (4) Modification of premises pursuant to and in compliance with Colorado Liquor Regulation Section 47-302, as amended, provided that any investigation conducted by the Town does not reveal

information that may reasonably form the basis of a determination that the premises should not be modified;

- (5) Issuance of special events permits to applicants who have not previously been granted a special event permit pursuant to Article 48 of Title 12, C.R.S., provided that there are no persons filing a written objection to said permit;
 - (6) Issuance of temporary permits pursuant to and in compliance with the provisions of Section 12-47-303, C.R.S.; and
 - (7) Issuance and renewal of tastings permits as authorized by and pursuant to Article 47, Title 12, C.R.S.
- (b) *Town Clerk discretion.* In the Town Clerk's discretion, the Town Clerk may refer any licensing determination authorized under Section (a) to the Local Licensing Authority.
- (c) *Appeals to Local Licensing Authority.* Within thirty (30) days of the Town Clerk's final determination of an administrative application, the applicant may file a written appeal to the Local Licensing Authority.

(Ord. No. 2017-146, § 1, 5-1-2017)

Sec. 6-176. Local licensing authority actions and determinations.

- (a) *Public hearings and determinations.* The Local Licensing Authority shall conduct public hearings as required by the state liquor laws and determine all matters not authorized to be determined pursuant to an administrative application.
- (b) *Appeals.* The Local Licensing Authority shall determine all appeals of administrative applications
- (c) *Public notice.* The Local Licensing Authority shall cause to be posted and published public notice of any hearing as required by the state liquor laws.
- (d) *Local Licensing Authority powers.* The Local Licensing Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any matter subject to a public hearing. It shall be unlawful for any person to fail to comply with any subpoena issued by the Local Licensing Authority in the proper conduct of its hearings. The Municipal Court may enforce the subpoenas of the Local Licensing Authority.
- (e) *Deliberations.* The Local Licensing Authority may continue any hearing from time to time as may be required to gather necessary facts and evidence and to permit witnesses to testify. Before entering any decision on any matter before it, the Local Licensing Authority shall consider the facts and evidence adduced as a result of the investigation and adduced during the public hearing.
- (f) *Decisions.* The Local Licensing Authority shall render its decision no later than thirty (30) days following the conclusion of a public hearing.
- (g) *Written order.* The Town Clerk shall send a written copy of the Local Licensing Authority's decision and the reasons for the decision to the applicant at the address shown on the application, and to any other party in interest upon written request.

(Ord. No. 2017-146, § 1, 5-1-2017)

Secs. 6-177—6-180. Reserved.

ARTICLE X Contractor Licenses

[Sec. 6-181. Intent.](#)

[Sec. 6-182. General.](#)

[Sec. 6-183. Definitions.](#)

[Sec. 6-184. License required.](#)

[Sec. 6-184. Exemptions.](#)

[Sec. 6-185. Building Official issuance of contractor license; variance by Town Manager.](#)

[Sec. 6-186. Forms; fees; validity.](#)

[Sec. 6-187. Application for contractor's license.](#)

[Sec. 6-188. Responsibilities of contractor.](#)

[Sec. 6-189. Disciplinary procedures, violations and penalties.](#)

[Secs. 6-190—6-199 Reserved.](#)

Sec. 6-181. Intent.

The intent and purpose of this Article is to ensure that contractors doing business within the Town have the minimum qualifications and maintain adequate liability insurance to perform construction by issuance of a contractor's license as set forth herein.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-182. General.

Except as delegated to the Town Manager herein, the Building Official shall administer the provisions of this Article. The Building Official may, with approval of the Town Manager, adopt reasonable rules and procedures for such purposes.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-183. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Building Code means the International Building Code and all related uniform codes, including, but not limited to, the International Fire Code, International Plumbing Code and National Electrical Code as adopted by the Town in Chapter 18 of this Code and amended from time to time.

Building Official means the Building Official appointed by the Town Manager or, upon approval of the Town Manager, the Building Official's designee.

Building permit means the permit required by the Building Code adopted in Article II of Chapter 18 of this Code.

Code means the Johnstown Municipal Code.

Construction means the work, including the erection, alteration, demolition, movement, repair or remodeling, of any building or structure, or portion thereof, requiring a building permit pursuant to the Building Code and any work within the public ways or on any public facility in the Town.

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Contractor means any person, firm, partnership, corporation, association, other organization or any combination thereof that performs construction work within the Town, unless otherwise specified in this Article.

Contractor's license means the license issued to a contractor performing construction work within the Town.

Employee means a person who is employed by a contractor to perform construction work that is paid a wage or salary and is eligible for Colorado workers' compensation insurance and unemployment insurance benefits. A worker who qualifies as an independent contractor under Colorado law is not considered an employee of a contractor.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-184. License required.

- (a) Prior to performing construction work in the Town, a contractor shall obtain a contractor's license, except as otherwise permitted in this Article.
- (b) For any construction requiring a contractor's license, building permits shall only be issued to a property owner or to a contractor holding a contractor's license.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-184. Exemptions.

A contractor's license shall not be required for the following:

- (a) Construction that does not require a building permit.
- (b) Construction undertaken by the owner of a detached single-family dwelling and associated accessory buildings who personally performs construction on the dwelling and associated accessory buildings; provided that the owner may only commence construction on buildings located on a single parcel of real property in a 24-month period.
- (c) Construction undertaken by a person performing work as a contractor's employee on behalf of and in the name of the contractor holding a contractor's license.
- (d) Construction undertaken by a person performing work without pay or compensation of any kind who is supervised directly by a contractor holding a contractor's license.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-185. Building Official issuance of contractor license; variance by Town Manager.

- (a) The Building Official shall have the authority to issue contractor's licenses and, except as otherwise set forth herein, determine all matters related to the suspension or revocation of any contractor's license.
- (b) The Town Manager, in his or her discretion, is authorized to grant a variance from the terms of this Article in specific cases where the strict application of any provision of this Article would result in extraordinary practical difficulties or cause undue hardship or where, upon any other substantial reasonable basis, the Town Manager determines that a variance is warranted.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-186. Forms; fees; validity.

- (a) The Building Official shall prepare a contractor licensing application, which shall contain, among other potential requirements, the items required in Section 6-187, and is subject to approval of the Town Manager. The Building Official shall prepare any and all other forms necessary to satisfy the provisions of this Article, which are subject to approval of the Town Manager.
- (b) Prior to issuance of a contractor's license, the applicant shall complete the contractor licensing application.
- (c) The contractor shall pay a non-refundable fee of \$100.00, due and payable with the submission of the contractor licensing application, which fee shall be applied to offset the Town's costs associated with regulating the Building Code and administering the contractor licensing program.
- (d) A contractor's license is valid for a period of one year from the date of issuance, and may be renewed by payment of a renewal fee in the amount of one hundred dollars (\$100.00).
- (e) A contractor who performs construction prior to obtaining a contractor's license shall, in addition to the other remedies set forth in this Article, be required to pay an investigation fee in an amount equal to, and in addition to, the license fee, which fee shall be paid before a contractor's license may be issued.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-187. Application for contractor's license.

Prior to being issued any contractor's license, the applicant shall complete a contractor licensing application containing, among other potential requirements, the following information:

- (a) The applicant's business name, the names of all principals of the contractor, a current mailing address and telephone number.
- (b) A written summary documenting the applicant's relevant experience and identifying the last three (3) construction projects. The Building Official may request references.
- (c) A copy of all licenses issued to the applicant by the State of Colorado.
- (d) Certificates of insurance setting forth the insurance maintained by the applicant for work performed within the Town, including, but not limited to, workers' compensation, builder's risk insurance, if any, and general liability coverage.
- (e) A signed statement by the applicant acknowledging the obligations associated with the contractor's license.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-188. Responsibilities of contractor.

The contractor shall observe the following standards:

- (a) The contractor shall obey all notices and orders issued by the Town Manager or the Building Official.
- (b) The contractor shall observe generally accepted safety standards.
- (c) The contractor shall maintain liability insurance and workers' compensation insurance as set forth in the contractor's application. Upon request, proof of insurance shall be provided to the Building Official.

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- (d) Upon request, the contractor shall identify all subcontractors performing construction and contracting with the contractor.
- (e) The contractor shall maintain a current address and contact telephone number with the Building Official.
- (f) The contractor shall not proceed with construction until after the issuance of a building permit, and any other required permits, and shall obtain the required inspections and authorizations to proceed with the work authorized under the permit(s).
- (g) If a contractor is released from or abandons construction, the contractor shall immediately notify the Building Official in writing. No further work shall be done on a construction project until the Building Official is notified in writing of the intended resumption by an owner or a different contractor entitled to obtain a building permit and a contractor's license.

(Ord. No. 2019-156, § 1, 3-4-2019)

Sec. 6-189. Disciplinary procedures, violations and penalties.

- (a) *Building Official.* When the Building Official determines that a contractor has committed a violation of this Article, the Building Code or the Code, the Building Official may order a suspension or revocation of the contractor's license. Notification of the suspension or revocation shall be in writing and shall be delivered to the contractor by certified mail to the contractor's last known address, as contained on the contractor's application or as set forth in a written notice submitted subsequent to submission of the contractor's application, or by personal delivery to the contractor or to the contractor's representative at a construction project, and shall be effective within three (3) days of mailing or upon personal delivery. The notification shall state in reasonable detail the essential facts and reasons for said action and shall advise the contractor of the right to submit a written appeal to the Town Manager within fifteen (15) days, setting forth in detail the basis of the appeal.
- (b) *Town Manager.* The Town Manager may, in his or her discretion, conduct a hearing or take any reasonable action to investigate the facts and circumstances giving rise to the Building Official's suspension or revocation of the contractor's license. The Town Manager shall have the power to affirm the suspension or revocation and take any other disciplinary action when the Town Manager determines that the contractor has committed any of the following:
 - (1) Knowing or deliberate disregard of this Article, the Building Code or the Code;
 - (2) Failure to comply with any lawful requirement of the Building Official;
 - (3) Misrepresentation of a material fact in obtaining a building permit or a contractor's license;
 - (4) Employing subcontractors to perform construction for which a contractor's license is required under this Article when such workers are neither employees nor exempt as defined under this Article; or
 - (5) Requesting repeated inspections when such inspections reveal that the work performed by the contractor fails to comply with the Building Code and such repeated noncompliance occurs in a manner or to an extent that demonstrates that the contractor either is negligent, not providing adequate supervision or not qualified to perform or supervise the work.

Within thirty (30) days of receipt of an appeal, the Town Manager shall provide notification to the contractor of the Town Manager's order. The notification shall be in writing and shall be delivered to the contractor by certified mail to the contractor's last known address, as contained on the contractor's application or as set forth in a written notice submitted subsequent to submission of the contractor's application, or by personal delivery to the contractor or to the contractor's representative, and shall be effective within three (3) days of mailing or upon personal delivery. If the Town Manager affirms the suspension or revocations of the contractor's license, the notification shall state in reasonable detail the essential facts and reasons for said action and shall advise the contractor of the right to submit a written appeal to the Town Council within fifteen (15) days, setting forth in detail the basis of the appeal.

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- (c) *Town Council.* An appeal to the Town Council shall be in writing, filed with the Town Clerk and allege with particularity the errors and omissions contained in the Town Manager's order. The contractor shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of the hearing shall be given to the contractor and to any other parties concerned at least five (5) days prior to the hearing. The contractor shall have the burden of proof on appeal. Within thirty (30) days of the hearing, the Town Council shall make its final determination and affirm, modify or reverse the Town Manager's order. The decision of the Town Council shall be final and conclusive, except as provided by the laws of the State of Colorado.
- (d) *Effect of revocation.* When the contractor's license is revoked as set forth herein, the contractor shall not be granted another contractor's license without approval of the Town Manager. The Town Manager, in deciding whether to approve a new contractor's license, shall determine whether the contractor has demonstrated that any previous governmental disciplinary action has resulted in the rehabilitation of the contractor to good and disciplined character for lawful conduct as a contractor.
- (e) *Enforcement.* In addition to the suspension or revocation of a contractor's license as provided herein, any person violating any of the provisions of this Article shall be subject to the penalties set forth in Section 1-62 of the Code.

(Ord. No. 2019-156, § 1, 3-4-2019)

Secs. 6-190—6-199 Reserved.

CHAPTER 7 Health, Sanitation and Animals

ARTICLE I - Nuisances Generally

ARTICLE II - Specific Nuisances

ARTICLE III - Garbage and Refuse

ARTICLE IV - Waste Collection

ARTICLE V - Weeds

ARTICLE VI - Trees

ARTICLE VII - Animal Control

ARTICLE I Nuisances Generally

[Sec. 7-1. Nuisance defined.](#)

[Sec. 7-2. Notice to abate; separate offenses.](#)

[Sec. 7-3. Declaration of nuisance by Board of Trustees; abatement by Chief of Police.](#)

[Sec. 7-4. Abatement without notice.](#)

[Sec. 7-5. Assistance to abate authorized. _](#)

[Sec. 7-6. Recovery of expenses in abatement.](#)

[Sec. 7-7. Authority to enter on property.](#)

[Sec. 7-8. Specific offenses; construction of Article.](#)

[Sec. 7-9. Littering prohibited.](#)

[Sec. 7-10. Violations.](#)

[Secs. 7-11—7-20. Reserved.](#)

Sec. 7-1. Nuisance defined.

Anything which is injurious to the health or morals, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, including those things specifically declared as nuisances within this Chapter, is declared a nuisance and as such shall be abated.

(Prior code 18-1)

Sec. 7-2. Notice to abate; separate offenses.

Any state of things prohibited by Section 7-1 shall be deemed a nuisance, and any person who shall hereafter make or cause such nuisance to exist shall be deemed the author thereof. Any person who shall have possession or control of any private ground or premises, whether he or she is the owner thereof or not, in or upon which any such nuisance shall exist or may be found, shall be deemed guilty of

a separate offense, as the author of a nuisance, for every period of forty-eight (48) hours' continuance of such nuisance after due notice is given to abate the same. The written notice of forty-eight (48) hours may be given and served by the Chief of Police or other officer as he or she may designate.

(Prior code 18-2)

Sec. 7-3. Declaration of nuisance by Board of Trustees; abatement by Chief of Police.

In the event that any nuisance within or upon any private premises or grounds is not abated forthwith after the notice provided for in Section 7-2 shall be given, the Board of Trustees may declare the same to be a nuisance and order the Chief of Police to abate the same, which order shall be executed without delay. The Chief of Police shall have the authority to call for the necessary assistance therefor.

(Prior code 18-3)

Sec. 7-4. Abatement without notice.

In case of any nuisance as defined in Section 7-1 in or upon any street, avenue, alley, sidewalk, highway or public grounds in the Town, the Chief of Police may abate the same forthwith without such notice given.

(Prior code 18-4)

Sec. 7-5. Assistance to abate authorized.

Any officer who shall be duly authorized to abate any nuisance specified in this Chapter shall have authority to engage the necessary assistance and incur the necessary expenses thereof.

(Prior code 18-5)

Sec. 7-6. Recovery of expenses in abatement.

The expense incurred by the Town in abating any nuisance may be recovered back by proper action from the creator thereof.

(Prior code 18-6)

Sec. 7-7. Authority to enter on property.

The Mayor, Chief of Police, Trustees or any other persons who may be directed or deputized by the Board of Trustees may enter upon or into any lot, house or other building or premises, with proper respect for the occupant's constitutional rights, to examine the same and ascertain whether any nuisance exists as defined in this Chapter, and shall be free from any action or liability on account thereof.

(Prior code 18-7)

Sec. 7-8. Specific offenses; construction of Article.

The enumerated provisions of this Chapter are in no way deemed to be exclusive, and anything declared a nuisance in this Chapter shall be abated in accordance with the provisions contained in this Chapter and in addition, subject to the penalties provided for in Section 1-62.

(Prior code 18-18)

Sec. 7-9. Littering prohibited.

- (a) It shall be unlawful for any person to litter as provided in this Article. For purposes of this Article, any person who deposits, throws or leaves any litter on any public or private property or in any waters commits littering, unless:
 - (1) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property;
 - (2) The litter is placed in a receptacle or container installed on such property for such purpose; or
 - (3) Such person is the owner or tenant in lawful possession of such property, or has first obtained written consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said owner or tenant.
- (b) The term *litter*, as used in this Article, means all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.
- (c) The phrase *public or private property*, as used in this Article includes, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas thereof or the shores or beaches thereof, any park, playground or building, any refuge, conservation or recreation area, and any residential, farm or ranch properties or timberlands.
- (d) It is in the discretion of the court, upon the conviction of any person and the imposition of a fine under this Section, to suspend such fine upon the condition that the convicted person gather and remove from specified public property or specified private property, with prior permission of the owner or tenant in lawful possession thereof, any litter found thereon.
- (e) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Article, the operator of said motor vehicle is presumed to have caused or permitted such litter to have been so thrown, deposited, dropped or dumped therefrom.

(Prior code 13-6)

Sec. 7-10. Violations.

Whenever in any section of this Chapter or rule or regulation promulgated hereunder, the doing of any act is required, prohibited or declared to be unlawful and no definite fine or penalty is provided for, a violation of any such section shall, for each offense, be penalized as provided in Section 1-62.

(Prior code 18-19)

Secs. 7-11—7-20. Reserved.

ARTICLE II Specific Nuisances

[Sec. 7-21. Junkyards and dumping grounds.](#)

[Sec. 7-22. Discharge of nauseous liquids.](#)

[Sec. 7-23. Collection of stale, putrid or stinking fat or grease.](#)

[Sec. 7-24. Offensive deposits in sewers, sewer inlets or privy vaults.](#)

[Sec. 7-25. Slaughterhouses.](#)

[Sec. 7-26. Dead animals.](#)

[Sec. 7-27. Stagnant ponds.](#)

[Sec. 7-28. Open wells, cisterns or excavations.](#)

[Sec. 7-29. Unauthorized posting of handbills, posters and placards.](#)

[Sec. 7-30. Building materials to be removed from construction sites.](#)

[Sec. 7-31. Accumulation and use of manure.](#)

[Secs. 7-32—7-40. Reserved.](#)

Sec. 7-21. Junkyards and dumping grounds.

All places used or maintained as junkyards or dumping grounds, or for the wrecking or disassembling of automobiles, trucks, tractors or machinery of any kind, or for the storing or leaving of worn out, wrecked or abandoned automobiles, trucks, tractors, trailers, boats and house trailers or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept in such manner as to essentially interfere with the comfortable enjoyment of life or property by others, are hereby declared to be a nuisance and may be abated as provided in this Chapter.

(Prior code 18-21)

Sec. 7-22. Discharge of nauseous liquids.

It shall be unlawful to discharge out of or from, or permit to flow from, any house or place foul or nauseous liquid or substance of any kind whatsoever, into or upon any adjacent ground or lot, or into any street, alley or public place in the Town. Such discharge is hereby declared a nuisance and may be abated as provided in this Chapter.

(Prior code 18-22)

Sec. 7-23. Collection of stale, putrid or stinking fat or grease.

It shall be unlawful to keep, collect or use or cause to be kept, collected or used in this Town any stale, putrid or stinking fat, grease or other matter. Such conditions are hereby declared a nuisance and may be abated as provided in this Chapter.

(Prior code 18-23)

Sec. 7-24. Offensive deposits in sewers, sewer inlets or privy vaults.

It shall be unlawful to deposit in or throw into any sewer, sewer inlet or privy vault that shall have a sewer connection any article whatsoever that might cause such sewer, sewer inlet or privy vault to

become nauseous or offensive to others or injurious to public health. Such deposits are hereby declared a nuisance and may be abated as provided in this Chapter.

(Prior code 18-24)

Sec. 7-25. Slaughterhouses.

No slaughterhouse or other place for slaughtering animals shall be kept within the Town. Such places are hereby declared to be nuisances and may be abated as such.

(Prior code 18-25)

Sec. 7-26. Dead animals.

When any animal shall die in the Town, it shall be the duty of the owner or keeper thereof to remove the body of such animal forthwith beyond the limits of the Town. If such body shall not forthwith be removed, the same shall be deemed a nuisance, such owner or keeper shall be deemed to have caused a nuisance to exist, and such nuisance may be abated as provided in this Chapter. When the body of any such dead animal shall be in any street, highway or public grounds in the Town, it shall be the duty of the Chief of Police to cause such body to be removed forthwith beyond the limits of the Town.

(Prior code 18-26)

Sec. 7-27. Stagnant ponds.

Any cellar, vault, drain, sewer, pond of water or other place upon or within any private premises or grounds, in the Town, that shall be nauseous or offensive to others or injurious to public health, through an accumulation or deposit of nauseous, offensive or foul water or other substances, shall be deemed a nuisance and may be abated as provided in this Article. This applies in all cases for which no other specific provisions are made in this Article or any other ordinance of the Town.

(Prior code 18-27)

Sec. 7-28. Open wells, cisterns or excavations.

It is hereby declared that excavations exceeding five (5) feet in depth, cisterns and wells or an excavation used for storage of water are public nuisances unless the same are adequately covered with a locked lid or other covering weighing at least sixty (60) pounds or are securely fenced with a solid fence to a height of at least five (5) feet, and may be abated as provided in this Article. It shall be unlawful for any person to permit such nuisance to remain on premises owned or occupied by him or her.

(Prior code 18-28)

Sec. 7-29. Unauthorized posting of handbills, posters and placards.

Any handbill, poster, placard, or painted or printed matter which shall be stuck, posted or pasted upon any public or private house, store, or other buildings, or upon any fence, power pole, telephone pole or other structure without the permission of the owner, agent or occupant of the house, shall be deemed a nuisance and may be abated as provided in this Chapter.

(Prior code 18-29)

Sec. 7-30. Building materials to be removed from construction sites.

All plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose, discarded or unused material of any kind resulting from the wrecking, constructing or reconstructing of any room, basement, wall, fence, sidewalk or building shall be promptly removed or discarded in such a manner as not to be scattered about by the wind or otherwise, and as soon as possible be removed by the person responsible for such work. Such person shall be held liable for any scattering of such refuse upon adjacent property.

(Prior code 13-7)

Sec. 7-31. Accumulation and use of manure.

Other than a light spread of manure which may be applied on lawns or gardens for fertilizing purposes, manure shall not be kept on any property for any purpose, or kept in any place for later use, but shall be either plowed under or removed by the owner, occupant or agent.

(Prior code 13-9)

Secs. 7-32—7-40. Reserved.

ARTICLE III Garbage and Refuse

[Sec. 7-41. General, definitions.](#)

[Sec. 7-42. Accumulation of refuse prohibited and declared nuisance.](#)

[Sec. 7-43. Accumulation of refuse; abatement.](#)

[Sec. 7-44. Responsibility of owners and lessees for refuse on premises.](#)

[Sec. 7-45. Removal of refuse from business required.](#)

[Secs. 7-46—7-60. Reserved.](#)

Sec. 7-41. General, definitions.

For the purposes of this Article, the word *refuse* shall mean and include any grass clippings, leaves, hay, straw, manure, shavings, excelsior, paper, ashes, rubbish containers, boxes, glass, cans, bottles, garbage, waste and discarded building and construction materials, including but not limited to plaster, broken concrete, bricks, cinder blocks, stones, wood, roofing material, wire or metal binding, sacks or loose discarded or unused material; all rubbish of any kind or nature whatsoever; and any other materials commonly known as rubbish or refuse of any kind or character or by any means known.

(Prior code 13-1)

Sec. 7-42. Accumulation of refuse prohibited and declared nuisance.

Any accumulation of refuse or other material on any premises, improved or unimproved, in the Town is prohibited and is hereby declared to be a nuisance.

(Prior code 13-3)

Sec. 7-43. Accumulation of refuse; abatement.

Whenever the Board of Trustees shall direct, the Town Clerk shall immediately thereafter notify any owner of property, his or her agent or any person having charge of such property, in writing, that an order has been made by the Board of Trustees requiring the removal of any accumulated refuse from such property or premises within thirty (30) days after service of notice. If such property owner, agent or person having charge of such property shall not remove such refuse in accordance with the requirement of such order, the Board of Trustees may order that such refuse be removed by the Town Clerk or other agent of the Board of Trustees and assess the cost thereof against the property or premises. The amount so assessed shall be a lien upon such property until the same is paid; provided that, in case of failure to pay such assessment within ten (10) days after the same shall be made, the Town Clerk shall cause a notice of such assessment to be given to the owner of such property by publishing in a newspaper in the Town for two (2) successive weeks, which publication shall contain a notice to such property owner of the amount assessed against his or her property, and shall designate a time and place when the Board of Trustees will hear any objections as to the adjustment and correctness of the amount so assessed. If such assessment is not paid within ten (10) days after the time fixed for hearing such objections, and unless the same are sustained, the Town Clerk shall certify such assessment to the County Treasurer to be placed by him or her on the tax list for the current year, to be collected in the same manner as other taxes are collected, with ten percent (10%) penalty to defray the cost of collection, as provided by state law.

(Prior code 13-4)

Sec. 7-44. Responsibility of owners and lessees for refuse on premises.

It shall be the duty of every person, whether owner, lessee or renter of any vacant lot, building or premises, including any place of business, hotel, restaurant, dwelling house, apartment, tenement or any other establishment, at all times to maintain the premises in a clean and orderly condition, permitting no deposit or accumulation of refuse or materials other than those ordinarily attendant upon the use for which such premises are legally intended.

(Prior code 13-5)

Sec. 7-45. Removal of refuse from business required.

Discarded automobile parts, stoves, furniture, wool, hides, junkyard refuse and packing house or slaughterhouse refuse shall be removed periodically from such respective establishments by the proprietor so that the premises are clean and orderly at all times. Silt and similar deposits from automobile wash racks shall be removed to the Town dump by the establishment creating such deposit. Any accumulation of refuse that is highly explosive or inflammable which might endanger life or property shall be removed to such places as approved by the Chief of Police or the Fire Chief. Such removal shall be handled by the establishments responsible therefor.

(Prior code 13-8)

Secs. 7-46—7-60. Reserved.

ARTICLE IV Waste Collection

[Sec. 7-61. Collection; duty of Town to contract with third parties.](#)

[Sec. 7-62. Persons served by water taps to receive service and pay the costs and billing.](#)

[Sec. 7-63. Specifications for containers.](#)

[Sec. 7-64. Lien and collection of unpaid bills; cessation of service.](#)

[Secs. 7-65—7-80. Reserved.](#)

Sec. 7-61. Collection; duty of Town to contract with third parties.

- (a) The Town shall provide, by contract with third parties, for the collection and removal of garbage, ashes, trash and other waste material of every character collected or accumulated within the Town, except tree limbs (unless cut in three [3] to four [4] foot lengths and bundled), and other items of unusual size, hot ashes, explosive materials, radioactive materials and other similar types of hazardous material within the corporate limits of the Town.
- (b) If any person or business desires to cancel the services of the Town as provided by the third party, then and in that event the person or business shall notify the Town Clerk, in writing, within ten (10) days before the first day of the next month of his, her or its desire to cancel said service. Said person or business using a private party for his or her trash removal shall still be bound by all other parts of the ordinances of the Town concerning or pertaining to trash removal.

(Prior code 13-20)

Sec. 7-62. Persons served by water taps to receive service and pay the costs and billing.

- (a) All persons and businesses receiving collection and removal for garbage, ashes, trash and other waste materials, shall be billed and shall pay said charges, monthly with their water bill, a sum not to exceed the actual cost to the Town for providing such service, including the incidental costs assessed thereto.
- (b) The assessments for trash collection shall be determined by the individual water tap billings, except in the instance where more than one (1) single family is living in the unit served by one (1) water tap; then and in that event, an additional charge shall be made for each single-family unit.
- (c) Each trailer or mobile unit served with water facilities by the Town shall be classified an individual single-family unit, except a trailer or mobile home park operation, as a whole, may deal directly with the third party on a commercial basis for the trash service. Notification of this arrangement must be made to the Town Clerk per Section 7-61(b).

(Prior code 13-21)

Sec. 7-63. Specifications for containers.

- (a) All ashes, trash, garbage and other waste materials shall be placed in suitable and approved receptacles or containers. Said receptacles and containers shall be furnished by each resident or business establishment at the expense of each resident or business establishment.
- (b) Waste materials shall not include refrigerators, washers, dryers and other large or bulky items.
- (c) The receptacles or containers to be provided by each resident or business establishment shall be placed by said resident, occupant or business establishment in a readily accessible location for handling by the contractor of the Town, and each receptacle or container shall be limited to not more than thirty (30) gallons in volume capacity and not more than seventy (70) pounds in weight per container. Each business establishment shall be further limited to no more than three (3) thirty-gallon (30) containers with weight not to exceed seventy (70) pounds per container per week.

(Prior code 13-22)

Sec. 7-64. Lien and collection of unpaid bills; cessation of service.

- (a) The assessment provided in Section 7-62 shall be a lien against each lot or tract of land where said water tap serves until fully paid and shall have priority over all other liens except general taxes and prior special assessments. In case such assessments are not paid, the Town Clerk may certify the assessments to the County Treasurer who shall collect the assessments, together with a ten percent (10%) penalty for the cost of collection as provided by law.
- (b) In addition thereto, the Town may proceed to collect any unpaid assessments in any other manner allowed by law, including the cessation of the collection and removal of garbage, ashes, trash and other waste material service.

(Prior code 13-24)

Secs. 7-65—7-80. Reserved.

ARTICLE V Weeds

[Sec. 7-81. Growth and accumulation on premises and adjoining sidewalks and alleys prohibited.](#)

[Sec. 7-82. Abatement by Town; assessment of costs.](#)

[Sec. 7-83. Collection of costs of abatement by Town.](#)

[Secs. 7-84—7-100. Reserved.](#)

Sec. 7-81. Growth and accumulation on premises and adjoining sidewalks and alleys prohibited.

No owner of any lot, block or parcel of ground within the Town, nor any tenant or agent in charge thereof, shall allow or permit weeds to grow, or remain when grown, on such lot, block or parcel of ground, or on or along any sidewalk adjoining the same, or in the alley behind the same, but such weeds shall be cut close to the ground and kept so cut.

(Prior code 13-35)

Sec. 7-82. Abatement by Town; assessment of costs.

If any owner, tenant or agent in charge shall fail to cut weeds, as required by this Article, within five (5) days after being notified to do so by the Town Clerk, the Town Administrator may direct that the weeds be cut by an employee, agent or contractor of the Town and charge the cost thereof to such owner, tenant or agent in charge, together with five percent (5%) for inspection and other incidentals.

(Prior code 13-36; Ord. 463, § 1, 1991; Ord. 658, § 1, 2001)

Sec. 7-83. Collection of costs of abatement by Town.

- (a) In the event the weeds on any lot, block or parcel of ground, or along the sidewalk adjoining the same or the alley behind the same, are cut by direction of the Town Administrator, the whole cost of cutting such weeds, together with five percent (5%) for inspection and other incidentals, shall be paid to the Town Clerk within thirty (30) days after mailing by the Town Clerk to the owner of such lot, block or parcel of ground, by certified mail, notice of the assessment of such cost.
- (b) Failure to pay such assessment within such period of thirty (30) days shall cause such assessment to become a lien against such lot, block or parcel of land and shall have priority over all liens, except general taxes and prior special assessments, and the same may be certified at any time after such failure to so pay the same, within thirty (30) days, by the Town Clerk to the County Treasurer to be placed upon the tax list for the current year and to be collected in the same manner as other taxes are collected, with ten percent (10%) penalty to defray the cost of collection.

(Prior code 13-37; Ord. 658, § 2, 2001)

Secs. 7-84—7-100. Reserved.

ARTICLE VI Trees

[Sec. 7-101. Tree planting, maintenance and removal.](#)

[Sec. 7-102. Control of Dutch elm disease; entire Town to be considered area in which elm trees protected; removal, destruction of dead or dying trees.](#)

[Sec. 7-103. Inspection of trees for signs of breeding of elm bark beetles.](#)

[Sec. 7-104. Maintenance of trees, storage of wood furnishing breeding places for elm bark beetles prohibited.](#)

[Sec. 7-105. Trees on private property.](#)

[Sec. 7-106. Failure to remove trees upon notice; removal by Town; costs to be charged to owner.](#)

[Sec. 7-107. Cost for removal of trees on lots or blocks along sidewalk or street.](#)

[Sec. 7-108. Failure to pay assessment; lien created.](#)

[Secs. 7-109—7-120. Reserved.](#)

Sec. 7-101. Tree planting, maintenance and removal.

It shall be unlawful to sell or import into the Town or to plant or cause to be planted within the Town limits any of the following trees:

- (1) Any cotton-bearing cottonwood tree (*genus populus*);
- (2) Any box elder tree (*Acer negundo*); or
- (3) Any Chinese or Siberian elm tree (*Ulmus pumila*).

(Ord. 460, § 16-153, 1991)

Sec. 7-102. Control of Dutch elm disease; entire Town to be considered area in which elm trees protected; removal, destruction of dead or dying trees.

The entire Town shall be considered as the specific area or zone within which elm trees are to be protected. Trees or parts thereof, if elm in a dead or dying condition that are or may serve as breeding places for the European elm bark beetle, shall be considered a public nuisance and shall be removed and destroyed or buried by the owner of the tree or trees.

(Prior code 16-141)

Sec. 7-103. Inspection of trees for signs of breeding of elm bark beetles.

The Town shall, or allow a representative of the State Department of Agriculture to, examine and inspect all trees within the Town on public or private property for signs of breeding of elm bark beetles.

(Prior code 16-142)

Sec. 7-104. Maintenance of trees, storage of wood furnishing breeding places for elm bark beetles prohibited.

It shall be unlawful for any owner or occupant of any premises within his or her control to maintain trees or store wood furnishing breeding places for the elm bark beetles. Such trees or wood shall include the following:

- (1) Dead or dying or obviously weakened elm trees, regardless of species or variety;
- (2) Dead or dying or obviously weakened branches in otherwise healthy elms;
- (3) Stumps of cut trees on which the bark remains;
- (4) Elm wood cut from trees, whether or not they were diseased, that is cut and piled for fireplace wood, whether stored indoors or out.

(Prior code 16-143)

Sec. 7-105. Trees on private property.

- (a) The Town shall at once cause written notice to be served upon the owner of the property upon which is situated:
 - (1) Any tree, shrub or plant discovered to have any destructive or communicable disease or other pestilence which endangers the growth or health of trees;
 - (2) Any tree, shrub or plant deemed to be a public nuisance or hazard, such as any plant that obstructs street lights, traffic signs or the free passage of pedestrians or vehicles; or
 - (3) Any dead or dying trees or any trees that pose a threat to safety.

- (b) Such notice shall require said property owner to eradicate, remove or otherwise control such condition within thirty (30) days.

(Ord. 460, § 16-154, 1991)

Sec. 7-106. Failure to remove trees upon notice; removal by Town; costs to be charged to owner.

If any owner, tenant or agent in charge shall fail to cut and remove trees, as required by this Article, within thirty (30) days after being notified to do so by the Town or agent of the State Department of Agriculture, the Town may direct that the tree or trees be cut by an employee of the Town and charge the costs thereof to such owner, tenant or agent in charge, together with five percent (5%) additional for inspection and other incidentals.

(Prior code 16-144)

Sec. 7-107. Cost for removal of trees on lots or blocks along sidewalk or street.

In the event the trees and any parts thereof on any lot, block or parcel of ground or along the sidewalk or street adjoining the same, or the alley behind the same, are cut by order of the Town, the whole cost of cutting such trees, together with five percent (5%) for inspection and other incidentals, shall be paid to the Town Clerk within thirty (30) days after mailing by the Town Clerk to the owner of such lot, block or parcel of ground, by certified mail, notice of the assessment of such cost.

(Prior code 16-145)

Sec. 7-108. Failure to pay assessment; lien created.

Failure to pay such assessment within such period of thirty (30) days shall cause such assessment to become a lien against such lot, block or parcel of land and shall have priority over all liens, except general taxes and prior special assessments, and the same may be certified at any time after such failure to so pay the same, within thirty (30) days, by the Town Clerk to the County Treasurer to be placed upon the tax list for the current year, to be collected in the same manner as other taxes are collected, with a ten percent (10%) penalty to defray the cost of collection, as provided by state law.

(Prior code 16-146)

Secs. 7-109—7-120. Reserved.

ARTICLE VII Animal Control

[Sec. 7-121. Definitions.](#)

[Sec. 7-122. Control required; running at large prohibited when.](#)

[Sec. 7-123. Dog and cat licenses required.](#)

[Sec. 7-124. Licensing requirements and standards for possession of raptors.](#)

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[Sec. 7-131. License; duplicate tags; ownership changes.](#)

[Sec. 7-132. Rabies control.](#)

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[Sec. 7-134. Animal defecation; owner responsibility.](#)

[Sec. 7-135. Nuisance animals designated.](#)

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[Sec. 7-137. Animal bites; report and animal quarantine requirements.](#)

[Sec. 7-138. Certain animals prohibited.](#)

[Sec. 7-139. Vicious animals.](#)

[Sec. 7-140. Disposal of animals by court order; conditions.](#)

[Sec. 7-141. Accidents injuring animals; report required.](#)

[Sec. 7-142. Dead or injured animals.](#)

[Sec. 7-143. Impoundment authorized when; prosecution for violations.](#)

[Sec. 7-144. Redemption of impounded animals; conditions.](#)

[Sec. 7-145. Livestock; impoundment conditions.](#)

[Sec. 7-146. Livestock; holding following impoundment.](#)

[Sec. 7-147. Impoundment; disposition of unredeemed animals.](#)

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[Sec. 7-149. Fees; amendment authorized when.](#)

[Sec. 7-150. Animal care; unlawful activities designated.](#)

[Sec. 7-151. Protective custody for animals receiving inhumane treatment.](#)

[Sec. 7-152. Enforcement; obstructing an officer prohibited.](#)

[Sec. 7-153. Damaging impoundment facility prohibited.](#)

[Sec. 7-154. Violation; penalty.](#)

[Secs. 7-155—7-170. Reserved.](#)

Sec. 7-121. Definitions.

As used in this Article, the following words have the following meanings:

- (1) *Animal* means any live, vertebrate creature, domestic or wild, except human primate.
- (2) *Animal shelter* or *impoundment facility* means a facility in which to impound animals held by the Town, including a humane society or animal league, pursuant to agreement or contract, acting for the Town.

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- (3) *At large* means off the premises of the owner and not under the control of the owner.
- (4) *Code enforcement officer* means a peace officer so designated by law, the ordinances of the Town or by written order of the Chief of Police to enforce the provisions of this Article.
- (5) *Control* is defined in Section 7-122.
- (6) *Exotic animal* means nonhuman primate, skunk, fox, raccoon, wild/exotic cat and similar animals.
- (7) *Farm animal* means horse, mule, ass, sheep, goat (excluding pygmy goat), llama, swine (excluding pot belly pig), cow or other cloven hoofed animals commonly known as livestock.
- (8) *Fowl animal* means chicken, turkey, goose, duck, guinea, household bird, pigeon and similar animals provided they are for the enjoyment of the occupants of the lot and are not kept primarily for the purpose of sale or commercial endeavor. Commercial activities must comply with all other ordinances and zoning regulations.
- (9) *Household* means a dwelling unit and surrounding property customarily used by a single family for living purposes.
- (10) *Kennel operation* means any activity which includes boarding, breeding or care and treatment of animals for compensation or profit. *Kennel operations* must comply with all other ordinances and zoning regulations.
- (11) *Leash* or *lead* means a thong, cord, rope, chain or similar device which holds an animal in restraint, and which is not more than ten (10) feet long.
- (12) *Litter* means offspring of one (1) of the adult animals being harbored which is commonly considered to be too young to wean.
- (13) *Livestock* means any bovine animal, horse, mule, ass, sheep or goat (except pygmy goat).
- (14) *Neighborhood* means the area within five hundred (500) feet of the exterior boundaries or the premises where the animal is kept.
- (15) *Open area* means space on a lot or parcel of ground which is used exclusively for the containment of animals and which is not covered with any structures, paving, buildings or similar appurtenances, i.e. corrals.
- (16) *Owner* means any person, partnership or corporation owning any animal or animals, or having the same in his or her or its care, custody or control, or who causes, encourages or suffers the same to remain upon their premises for a period of three (3) consecutive days or more.
- (17) *Pet animals* means domestic dog, domestic cat, rabbit, guinea pig, hamster, mouse, snake, iguana, turtle, pot belly pig, pygmy goat, ferret and similar animals provided they are for the enjoyment of the occupants of the lot and are not kept primarily for the purpose of sale or commercial endeavor.
- (18) *Pet shop* means the premises of any person, partnership or corporation, whether operated separately or in connection with another business enterprise that buys or sells animals on a regular basis.
- (19) *Premises* means real property owned, rented, leased, used, kept or occupied by a person or persons, a partnership, a corporation or governmental unit, howsoever described.
- (20) *Public nuisance* means any animal that:
 - a. Menaces or attacks persons or vehicles;
 - b. Menaces or attacks other animals;
 - c. Goes upon school premises without the permission of the person in charge thereof;
 - d. Is at large;
 - e. Damages private or public property;

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- e. Barks, howls, yelps, bawls or makes other loud, persistent noise in a manner which, under nonmitigating circumstances, could be considered by reasonable persons of ordinary sensibilities as excessive or continuous;
 - f. Being a female in heat, because of the nature of its confinement, or lack of the same, has attracted other animals and caused them to congregate or remain on or about any premises;
 - g. Is in a public park or lake with the exception of controlled dogs, service dogs, seeing-eye dogs, dogs trained as ears for the deaf, government-owned dogs or animals participating in shows or exhibits that are conducted in compliance with officially sanctioned activities;
 - h. Any other act or condition in this Article designated as a public nuisance.
- (21) *Rabies vaccination* means the inoculation of an animal with a rabies vaccine approved by the Colorado Department of Health.
- (22) *Raptor* means any migratory bird that is a member of falconiformes or strigiformes and, specifically, but not by way of limitation, means falcons, hawks, owls and eagles.
- (23) *Town* means the Town of Johnstown, Colorado.
- (24) *Trap* means any device used to contain or capture an animal.
- a. *Humane trap* means any trap which does not cause injury to the animal trapped.
 - b. *Inhumane trap* means any trap which causes injury to the animal trapped.
- (25) *Veterinary hospital* means any premises upon which a licensed veterinarian performs surgery, makes diagnoses and treats diseases or the injuries to animals.
- (26) *Vicious animal* means any animal that constitutes a threat to the well-being or safety of human beings or other animals.
- (27) *Wild animal* means any monkey (nonhuman primate), raccoon, skunk, poisonous snake or reptile, jaguar, cheetah, mountain lion, wildcat, panther, margay or any other species of cats other than ordinarily domesticated house cats, any bear, any nonpoisonous snake longer than six (6) feet, any crocodile or alligator longer than one (1) foot, any badger, prairie dog, beaver, muskrat or bat, or any wolf, coyote, fox or other species of canine other than ordinarily domesticated dogs.

(Ord. 99-603 §1)

Sec. 7-122. Control required; running at large prohibited when.

- (a) All animals, except domestic cats, shall be kept under control. No owner shall permit such animals to run at large within the Town. If any animal is found at any place within the Town other than upon the premises of its owner, the owner is presumed to have violated this Section.
- (b) Dogs. A dog shall be considered running at large when it is neither on the premises of the owner nor on a leash ten (10) feet or less in length, attached to the dog and held by or tied to a person.
- (c) Livestock. No horses, asses, mules, cattle, sheep, swine or goats shall be herded or picketed upon any street, alley, ditch-bank or public ground in the Town.
- (d) Exclusions. This Section shall not apply to seeing-eye dogs accompanied by their masters, nor dogs participating in dog shows, dog exhibits or dog training activities to the extent that such shows, exhibits and activities are conducted in compliance with the requirements of this Code.

(Ord. 99-603 §1)

Sec. 7-123. Dog and cat licenses required.

The owner, keeper, harbinger or any other person who has assumed the responsibility for any dog or cat within the Town shall secure a license for such dog or cat from the Town Clerk.

(Ord. 99-603 §1)

Sec. 7-124. Licensing requirements and standards for possession of raptors.

- (a) Persons who possess and maintain falconry licenses, as required by state and federal agencies may keep birds of prey on their premises; provided that such birds of prey are maintained according to state and federal laws and regulations.
- (b) No person may keep, maintain, harbor or possess in or at any one (1) household, a combined total of more than three (3) raptors.
- (c) Raptors shall be permitted provided they are for the enjoyment of the occupants of the lot and are not kept primarily for the purpose of sale or commercial endeavor.
- (d) Nothing in this Section will be interpreted to waive any requirements or Town ordinances related to building codes and zoning regulations.

(Ord. 99-603 §1)

Sec. 7-125. License exemptions.

No license shall be required for any dog or cat under the age of six (6) months. A license may be issued to a dog/cat under six (6) months without rabies vaccination proof. No license shall be required for any dog or cat held for sale by any kennel or pet shop authorized to carry on business in the Town. No license shall be required for seeing-eye dogs. No license shall be required for dogs or cats brought into the Town for less than a thirty-day period and if licensed by another municipality.

(Ord. 99-603 §1)

Sec. 7-126. License; term and time for licensing.

Licenses issued for dogs and cats shall be good for one (1) year only. The license period shall be from May 1 of the first year to April 30 of the next year. Dog and cat licenses shall be obtained prior to May 1 of the year following expiration. Dogs and cats brought into the Town shall be licensed no later than thirty (30) days from the date they are brought into the Town.

(Ord. 99-603 §1)

Sec. 7-127. Rabies vaccination certificate required.

In order to entitle any applicant to a license under the provisions of this Article, such applicant shall produce and display to the Town Clerk a certificate issued by a licensed doctor of veterinary medicine certifying that the dog or cat has been vaccinated for rabies, and that such vaccination will not expire prior to April 30 of the year of the licensing period.

(Ord. 99-603 §1)

Sec. 7-128. License fee.

Each applicant for a license shall be required to pay a fee of four dollars (\$4.00) for each dog or cat which has been neutered or spayed, and a fee of ten dollars (\$10.00) for each dog or cat which has not been neutered or spayed. The owner must be able to provide bona fide proof of such spaying or neutering.

(Ord. 99-603 §1)

Sec. 7-129. License issuance conditions.

The Town Clerk shall issue to each person making proper application and payment of fees, as provided in this Article, a license for each dog or cat. The Town Clerk shall keep a suitable book for the registration of dogs and cats, and shall register therein all dogs and cats whose owners, keepers or harborers have paid the license fee herein provided, and shall keep a record of the date of registration, the name, sex, breed and color of each dog and cat and the place where the same shall be kept.

(Ord. 99-603 §1)

Sec. 7-130. Dog and cat license; tag requirements.

- (a) The Town Clerk shall furnish to the person causing the dog or cat to be registered a suitable tag bearing a number corresponding to that of the license issued for such dog or cat, and the year for which such tag is issued. Each dog or cat so licensed shall be provided by its owner, keeper or harborer with a collar or harness of suitable material, to which such license tag shall be securely fastened, and its owner shall keep such collar or harness with such tag fastened thereto on such dog or cat.
- (b) It is unlawful for any owner, keeper, harborer or any other person who has assumed the responsibility for a dog or cat to permit such dog or cat to wear any license tag other than the one issued by the Town for the dog or cat.

(Ord. 99-603 §1)

Sec. 7-131. License; duplicate tags; ownership changes.

- (a) In the event a tag issued pursuant to this Article is lost or destroyed, a new or duplicate tag may be obtained from the Town Clerk upon payment of a fee of one dollar (\$1.00).
- (b) In the event the ownership of a licensed dog or cat is changed, the new owner must license such dog or cat within thirty (30) days of purchase, and in accordance with the provisions of this Article, and pay to the Town Clerk a license fee of four dollars (\$4.00) for each dog or cat which has been neutered or spayed and a fee of ten dollars (\$10.00) for each dog or cat which has not been neutered or spayed.

(Ord. 99-603 §1)

Sec. 7-132. Rabies control.

The owner of every dog or cat over the age of six (6) months shall cause such dog or cat to be inoculated against rabies, and such owner shall obtain from a licensed veterinarian a rabies vaccination certificate and tag. The tag shall be required to be attached to the collar or harness, as required in Subsection (a) of Section 7-130.

(Ord. 99-603 §1)

Sec. 7-133. Confinement of female dogs and cats in heat.

The code enforcement officer may order any unspayed female dog or cat that is in a stage of estrous (heat) and is not properly confined, or is creating a public nuisance, to be removed to a boarding facility or a veterinary hospital until the period of estrous is finished. All expenses incurred as a result of such order shall be paid by the animal's owner. Failure to comply with such an order is a violation of this Section, and the animal may be impounded at the owner's expense.

(Ord. 99-603 §1)

Sec. 7-134. Animal defecation; owner responsibility.

- (a) Any owner, taking the animal upon any public way or other public property in the Town, shall immediately remove or cause to be removed and lawfully dispose of all fecal matter left on such property by the animal.
- (b) Any owner, taking any animal upon any private property other than his or her own, shall immediately remove or cause to be removed and lawfully dispose of all fecal matter left on such property by the animal.

(Ord. 99-603 §1)

Sec. 7-135. Nuisance animals designated.

- (a) Any animal that menaces or attacks persons, vehicles or other animals, goes upon school premises without the permission of the person in charge thereof, damages, destroys or injures any shrubbery, plants, flowers, lawn, fence or other property, either private or public, or is found upon a public park, is declared to be a public nuisance, and the owner shall be deemed responsible for the actions of the animal.
- (b) Areas in which animals are kept shall be maintained in a manner which does not create odors, dust, noise or drainage offensive to the senses of smell, hearing or sight, thereby constituting a hazard of nuisance to the use or enjoyment of adjoining properties.

(Ord. 99-603 §1)

Sec. 7-136. Noisy animals.

- (a) It is unlawful for the owner, keeper, harbinger or any other person who has assumed the responsibility for an animal to permit such animal kept in any yard, house or other place to bark, howl, yelp, bawl or make other loud and persistent noise, in a manner which, under nonmitigating circumstances, could be considered by reasonable persons of ordinary sensibilities as excessive or continuous.
- (b) The code enforcement officer, police officer or other designated officer of the Town shall have authority, without liability, to use all reasonable means to abate such nuisance, including the authority to impound such animal, upon receipt of a signed complaint, where the owner is absent from the premises; provided, however, that this authority does not extend to entering the owner's dwelling or other building upon the owner's premises.
- (c) Upon impoundment of an animal for violation of this Section, such officer, or any of them, shall attempt to notify the absent owner by reasonable means as soon as possible, and such animal may not be

destroyed until the owner is notified and has had the opportunity to reclaim the animal from impoundment.

(Ord. 99-603 §1)

Sec. 7-137. Animal bites; report and animal quarantine requirements.

- (a) The owner of any animal that bites a human being shall report the occurrence to the code enforcement officer when known to him or her or reported to him or her, and shall deliver the animal to the code enforcement officer, and shall provide such further information requested by the code enforcement officer.
- (b) Any animal that bites a human being shall be quarantined pursuant to one (1) of the following procedures for a period of not less than ten (10) days:
 - (1) The code enforcement officer in his or her discretion may allow the animal to be quarantined on the owner's premises. Otherwise, the animal shall be quarantined in the animal shelter or a veterinary hospital at the expense of the owner. If the animal is quarantined in the animal shelter, the owner shall be assessed the fee required by the shelter for each day the animal remains at the shelter.
 - (2) Every person having knowledge thereof shall report to the code enforcement officer any suspected or positively diagnosed occurrence of rabies, and any biting by any suspected or confirmed rabid animal.
 - (3) No person shall kill any suspected or confirmed rabid animal except in defense of a human being or other animal, or to prevent the escape of such suspected or confirmed rabid animal.
 - (4) No person shall remove the dead body of any suspected or confirmed rabid animal from where the animal was killed or found.
 - (5) If rabies has been diagnosed by a veterinarian or medical doctor in any animal, such animal shall be summarily destroyed, and its brain sent immediately to the State Health Department in Denver for positive verification at the owner's expense; or the animal or its body may be disposed of according to law, regulation or order of the Department of Health.
 - (6) If a standard rabies incubation period has not been established for a particular species of animal, and any animal of that species has been diagnosed as rabid, or is reasonably suspected of being rabid, it shall be summarily destroyed, and if involved with another animal or human, a necropsy shall be performed to determine if the other animal is contaminated by rabies.
 - (7) When there has been a positive diagnosis of rabies within the Town, the Chief of Police may declare a Town-wide quarantine for a reasonable period of time. During the period of such quarantine, every owner of animals shall confine his or her animals within the premises of the owner, and shall not transport, take or remove his or her animal from the Town without the prior written consent of the code enforcement officer.

(Ord. 99-603 §1)

Sec. 7-138. Certain animals prohibited.

It shall be unlawful for any person to keep, harbor, care for or possess the following animals within the Town:

- (1) Any animal having poisonous bites.
- (2) Any farm animal, as defined in this Article, on properties with less than five thousand (5,000) square feet of open area designated to be used by the animals. Furthermore, an additional two

thousand five hundred (2,500) square feet of open area is required for each animal in excess of three (3). This open area must be located at least fifty (50) feet from any residence, business or other building intended for human habitation.

- (3) Any wild or exotic animal, as defined in this Article.

(Ord. 99-603 §1)

Sec. 7-139. Vicious animals.

(a) *Vicious animal* means:

- (1) Any animal with a known propensity, tendency or disposition to attack unprovoked, to cause injury to or otherwise threaten the safety of human beings or domestic animals;
- (2) Any animal which because of its size, physical nature or vicious propensity is capable of inflicting serious physical harm or death to humans and which would constitute a danger to human life or property if it were not kept in the manner required by this Article;
- (3) Any animal which, without provocation, attacks or bites, or has attacked or bitten, a human being or domestic animal; or
- (4) Any animal owned or harbored primarily or in part for the purpose of fighting, or any animal trained for fighting.

(b) No person shall own, keep, harbor or possess any vicious animal in the Town; provided, however, that an animal shall not be deemed a vicious animal because it has attacked or bitten any of the following persons:

- (1) Any person engaged in the unlawful entry into or upon the animal owner's property where such animal is kept;
- (2) Any person engaged in the unlawful entry into the animal owner's automobile or other vehicle wherein such animal is confined;
- (3) Any person engaged in attempting to stop a fight between such animal and another animal;
- (4) Any person engaged in attempting to aid such animal when it is injured.

(c) For the purpose of this Section, a person is lawfully upon the private property of such owner when he or she is on the property in the performance of any duty imposed upon him or her by the laws of the State or Town, or the laws or postal regulations of the United States, or when he or she is on such property at the invitation, expressed or implied, of the owner thereof.

(d) It is the duty of the code enforcement officer, police officer or other designated officer of the Town to investigate all complaints concerning vicious or dangerous animals. After such investigation, the officer shall determine whether such animal is vicious or dangerous.

(e) If the code enforcement officer, or any police officer of the Town, deems an animal to be vicious, he or she may issue a written warning to the owner of such animal, stating his or her determination that such animal is vicious, and shall request the owner to comply with the requirements of Subsection (f) through (i) below for vicious animals; and he or she may cause charges to be filed in Municipal Court against the owner, alleging the vicious propensities of such animal.

(f) **Confinement.** The owner of a vicious animal shall not suffer or permit the animal to go unconfined. A vicious animal is "unconfined" if the animal is not securely confined indoors or confined in a securely enclosed and locked pen or structure upon the premises of the owner of the animal. The pen or structure must have secure sides and a secure top attached to the sides. If the pen or structure has no bottom secured to the sides, the sides must be embedded into the ground not less than one (1) foot. All such pens or structures must be adequately lighted and kept in a clean and sanitary condition.

- (g) Leash and muzzle. The owner of a vicious animal shall not suffer or permit the animal to go beyond the premises of the owner unless the animal is securely muzzled and restrained by a chain or leash, and under the physical restraint of a person. The muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or other animal.
- (h) Signs. The owner of a vicious animal shall display in a prominent place on his or her premises a clearly visible warning sign indicating that there is a vicious animal on the premises. A similar sign is required to be posted on the pen or kennel of the animal.
- (i) Insurance. Owners of a vicious animal must provide proof to the Town Clerk of public liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00), insuring the owner for any personal injuries inflicted by his or her vicious animal.

(Ord. 99-603 §1)

Sec. 7-140. Disposal of animals by court order; conditions.

If a complaint has been filed in the Municipal Court against the owner, keeper, harbinger or any other person who has assumed responsibility for any animal within the Town for violation of this Article, the Municipal Court Judge shall have the authority, upon making the finding that such animal constitutes a nuisance or that such animal is a vicious animal, and further, that such animal, as a result, constitutes a real and present danger to the citizens of the Town, to order that the animal be destroyed in a humane fashion.

(Ord. 99-603 §1)

Sec. 7-141. Accidents injuring animals; report required.

Any person who, while driving a motor vehicle, strikes or injures any domestic animal shall stop immediately and report the incident to the police.

(Ord. 99-603 §1)

Sec. 7-142. Dead or injured animals.

Animals killed or injured on or along public streets are considered to have been running at large, and the code enforcement officer, police officer or other designated officer of the Town may remove such animals therefrom and, in his or her discretion, may take those animals needing medical attention to the animal shelter or a veterinarian. The owner of any animal receiving such medical attention shall be responsible for any cost incurred. The Town is not and will not be liable for the costs of treatment of such animals.

(Ord. 99-603 §1)

Sec. 7-143. Impoundment authorized when; prosecution for violations.

- (a) It shall be lawful for the code enforcement officer, police officer or other designated officer of the Town to impound dogs and cats which have been found running at large, or to return the dog or cat to the owner, keeper, harbinger or any other person who has assumed the responsibility of the dog or cat, and issue to such person a penalty assessment citation or summons and complaint citation for the violation of this Article.

- (b) It shall be no defense to a prosecution under Subsection (a) of Section 7-122 that the dog or cat alleged to have run at large was impounded in connection to the incident, nor shall the payment of a redemption fee protect the owner, keeper, harbinger or other person who has assumed responsibility for the dog or cat from prosecution for a violation of the provisions of this Article.

(Ord. 99-603 §1)

Sec. 7-144. Redemption of impounded animals; conditions.

- (a) The owner or other person having a legal right to the possession of any animal which has been impounded pursuant to this Article shall have the right to redeem the animal from the impoundment facility during the time that the animal is kept there, and until the animal is disposed of pursuant to this Article. The person seeking to redeem the animal shall satisfy the code enforcement officer or other person lawfully in charge of the redemption that such person is in fact the owner of the animal, or is the person having the lawful right to the possession of the animal.
- (b) The person desiring to redeem any animal shall be obligated to pay the redemption fee required by the impoundment facility.
- (c) As an additional condition to the right to redeem, the owner, keeper, harbinger or other person who has assumed the responsibility for a dog or cat not licensed must, within seven (7) days of the date of redemption, have produced a vaccination certificate for the dog or cat, obtain an animal license and pay the fee required by this Article for such license. Noncompliance may subject such person to receive another summons or penalty assessment for violations of this Article.

(Ord. 99-603 §1)

Sec. 7-145. Livestock; impoundment conditions.

Any livestock found running at large in the Town shall be impounded by the code enforcement officer, police officer or other designated officer of the Town.

(Ord. 99-603 §1)

Sec. 7-146. Livestock; holding following impoundment.

- (a) All livestock so impounded by the officer under Section 7-145 shall be kept and controlled by the officer until the owner, or such other person who shall be legally entitled to possession of such livestock, shall call for the same and take control thereof.
- (b) In the event no authorized person takes possession of the impounded livestock within twenty-four (24) hours after the same shall have been impounded by such officer, then the State Board of Livestock Inspection Commissioners, or an authorized brand inspector representing said board having authority to move such livestock to a safe and practical place within the immediate vicinity, to be held during a legal advertising period, will be notified, and the livestock will be released to such authority.

(Ord. 99-603 §1)

Sec. 7-147. Impoundment; disposition of unredeemed animals.

Any animal which has been impounded at the impoundment facility and not redeemed may be disposed of in a humane manner by the Town or by the Animal League, seventy-two (72) hours after 12:00 midnight of the day the animal was impounded, or as soon thereafter as possible.

(Ord. 99-603 §1)

Sec. 7-148. Impoundment; records required.

The code enforcement officer, or other person lawfully in charge of the impounding, shall make or cause to be made a written record of all circumstances pertaining to the impounding and redemption of animals. Such records shall be in sufficient detail so that the provisions of this Article for multiple violations because of multiple redemptions can be enforced.

(Ord. 99-603 §1)

Sec. 7-149. Fees; amendment authorized when.

Whenever this Article imposes or requires that a fee be paid, as distinguished from any penalty that may be imposed pursuant to Section 7-154, the Board of Trustees may amend the amount of such fees from time to time by resolution.

(Ord. 99-603 §1)

Sec. 7-150. Animal care; unlawful activities designated.

It is unlawful for any owner, keeper, harborer or any other person to:

- (1) Fail to provide adequate food and water, proper shelter, veterinary services and humane care or treatment necessary to maintain the good health of the animal and to prevent suffering by the animal, when such animal is in his or her custody for more than twelve (12) consecutive hours;
- (2) Commit or cause to be committed any act of cruelty, harassment or torture to any animal, or cause such animal to be wounded, mutilated, strangled or inhumanely killed, unless such act is necessary to defend a person or other animal from immediate attack;
- (3) Abandon an animal; in this context, *abandon* means to leave the animal unattended for more than seventy-two (72) consecutive hours;
- (4) Confine any animal within a parked, closed vehicle, without allowing cross-ventilation to prevent the animal from suffering heat exhaustion, heat stroke or death. Any code enforcement officer, police officer or other designated officer of the Town observing any animal suffering from a violation of this Subsection may enter the vehicle, leaving written notice in the vehicle, and shall impound such animal to protect its own well-being. Any such officer making entry into any vehicle for the purpose of this Subsection is immune from suit or liability, criminal or civil, for, caused by or arising out of such entry;
- (5) Take and deliver to the animal shelter or elsewhere an animal, not his or her own, from any enclosed lot, premises or other building, not his or her own, unless he or she shall have first received permission from the owner of such animal, as well as otherwise authorized by this Article;
- (6) Without the consent of the owner, release any dog from restraint, except when necessary to preserve the life of such animal; provided, however, that when an animal has been released under such necessity, the person making such release shall immediately inform the code enforcement officer that he or she has done so or, in the alternative, shall immediately return the animal to the custody of its owner;
- (7) Tie or otherwise physically fasten any animal to any object on a public way, or so near to a public way that the animal may go upon the same, and leave the animal and depart the immediate vicinity thereof;

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- (8) Tie or otherwise physically fasten any animal in such a manner as to create an immediate physical danger to the well-being of the animal;
- (9) Expose any known poisonous substance, whether mixed with food or not, so that a reasonable person would know or should know that such substance would probably cause animals to be attracted thereto, eat thereof and be poisoned thereby; provided, however, that this Subsection does not make unlawful the poisoning of rats or mice with commercial rat poison mixed with vegetable substances;
- (10) Set any type of steel-jaw trap, or any other inhumane trap which, by its nature, may kill or maim any animal, including a human; provided, however, that this Subsection does not prohibit the use of common rat and mouse traps;
- (11) Keep, maintain, harbor or possess in any one (1) household, a combined total of more than four (4) pet or fowl animals within the Town. A litter of the pet animals or fowl animals lawfully harbored may be kept until such time that a natural weaning period, as determined by the Town, has expired. A household located on one (1) acre or more of land may have a total of twelve (12) fowl animals, provided that an open area of at least one hundred (100) square feet per animal is provided and such open area is located at least fifty (50) feet from any residence, business or other building intended for human habitation;
- (12) Cause, instigate, encourage or permit any dogfight, cockfight, bullfight or other combat between animals, or between animals and humans;
- (13) At any time within the corporate limits of the Town, frighten, shoot at, wound, kill, capture, ensnare, trap, net, poison or in any other manner kill, injure or molest any wild birds, or injure the nest, eggs or young of such birds; provided, however, that this Section does not apply to English or European house sparrows or starlings; and provided further, the Chief of Police has authority to grant a permit for when, in his or her opinion, they have become a threat to the health and safety of the neighborhood.

(Ord. 99-603 §1)

Sec. 7-151. Protective custody for animals receiving inhumane treatment.

- (a) Any animal found receiving inhumane treatment, as described in Section 7-150 of this Article, may be removed and impounded at the expense of the owner by the code enforcement officer, police officer or other designated officer of the Town.
- (b) Any animal whose life reasonably appears to be endangered may be so removed and impounded, whether or not in the presence of its owner.

(Ord. 99-603 §1)

Sec. 7-152. Enforcement; obstructing an officer prohibited.

No person shall knowingly resist, oppose, obstruct or interfere with any officer from enforcing the provisions of this Article, or by threats or otherwise intimidate or attempt to intimidate any such officer in the discharge of his or her official duty.

(Ord. 99-603 §1)

Sec. 7-153. Damaging impoundment facility prohibited.

It is unlawful for any person to break open, destroy or damage any door, gate, fence or enclosure used by the Town as an animal shelter or impoundment facility, or to take or attempt to take therefrom any animal impounded therein without having paid the fees provided in this Article.

(Ord. 99-603 §1)

Sec. 7-154. Violation; penalty.

The violation of or failure to comply with the provisions of this Article shall constitute an offense against the Town, and subject the offender to punishment as follows:

	<u>Minimum</u>	<u>Maximum</u>
First Offense	\$25.00	\$1,000.00
Second Offense	50.00	1,000.00
Third Offense	75.00	1,000.00

The minimum fines set forth shall be mandatory and shall not be suspended for any reason. Each day any violation continues shall constitute a separate offense and is punishable accordingly. Any person charged with a fourth offense shall be required to appear in Municipal Court.

(Ord. 99-603 §1)

Secs. 7-155—7-170. Reserved.

CHAPTER 8 Vehicles and Traffic

ARTICLE I - Traffic

ARTICLE II - Model Traffic Code

ARTICLE III - Parking Regulations

ARTICLE IV - Abandoned and Junked Vehicles

ARTICLE V - Traffic Safety Regulations

ARTICLE VI - Golf Cars

ARTICLE I Traffic

[Sec. 8-1. Certain traffic ordinances and provisions not affected by Code.](#)

[Sec. 8-2. Title.](#)

[Secs. 8-3—8-20. Reserved.](#)

Sec. 8-1. Certain traffic ordinances and provisions not affected by Code.

- (a) Nothing in this Code or the ordinance adopting this Code shall affect:
- (1) Any ordinance or provision by the Town Council prescribing traffic regulations on specific streets or highways in the Town, such as, but not limited to, ordinances or provisions prescribing speed limits, establishing areas or spaces where parking is prohibited or limited, or designating one-way streets or alleys or intersections for the control of traffic by signs or signals; and
 - (2) Ordinance No. 114, adopted on May 5, 1968, and Ordinance No. 133, adopted on February 14, 1966, amending Ordinance No. 114, both related to state highways, particularly State Highway 60;
- (b) All such ordinances or provisions are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Prior code 24-1)

Sec. 8-2. Title.

This Chapter may be known and cited as the Municipal Traffic Ordinance.

(Prior code 24-2)

Secs. 8-3—8-20. Reserved.

ARTICLE II Model Traffic Code

[Sec. 8-21. Adoption.](#)

[Sec. 8-22. Deletions.](#)

[Sec. 8-23. Amendments.](#)

[Sec. 8-24. Application.](#)

[Sec. 8-25. Interpretation.](#)

[Sec. 8-26. Penalties.](#)

[Secs. 8-27—8-40. Reserved.](#)

Sec. 8-21. Adoption.

Pursuant to Parts 1 and 2 of Article 16 of Title 31, C.R.S., there is hereby adopted by reference Articles I and II, inclusive, of the 2003 edition of the *Model Traffic Code for Colorado*, promulgated and published as such by the Colorado Department of Transportation, Staff Traffic and Safety Projects Branch, 4201 East Arkansas Avenue, Denver, CO 80222. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town. The purpose of this Article and the code adopted herein is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the State and the nation. Three (3) copies of the Model Traffic Code adopted herein are now filed in the office of the Town Clerk, and may be inspected during regular business hours.

(Ord. 2004-711 §1)

Sec. 8-22. Deletions.

The 2003 edition of the Model Traffic Code is adopted as if set out at length save and except the following articles and/or sections, which are declared to be inapplicable to this municipality and are therefore expressly deleted:

- (1) Section 511;
- (2) Section 1705.

(Ord. 2004-711 §1)

Sec. 8-23. Amendments.

The said adopted code is subject to the following additions or modifications:

- (1) Section 604(1)(c)(I)(A) is hereby amended to read as follows:

"(A) Such vehicular traffic, after coming to a stop and yielding the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection, may make a right turn, unless state or local road authorities within their respective jurisdictions have prohibited any such right turn by erecting an official sign at each intersection where such right turn is prohibited."

- (2) Section 1415 is hereby added to read as follows:

"Section 1415. **Driving while license denied, suspended, or revoked.**

"(1) It shall be unlawful for any person to drive a motor vehicle or off-highway vehicle upon any street or roadway in this Town with knowledge that such person's license or privilege to drive, either as a resident or a nonresident, is under restraint for any reason.

"(2) For the purpose of this section, the following definitions shall apply:

"(a) 'Knowledge' means actual knowledge of any restraint from whatever source or knowledge of circumstances sufficient to cause a reasonable person to be aware that such person's license or privilege to drive was under restraint. "Knowledge" does not mean knowledge of a particular restraint or knowledge of the duration of restraint.

"(b) 'Restraint' or 'restrained' means any denial, revocation, or suspension of a person's license or privilege to drive a motor vehicle in this State, or any combination of denials, revocations, or suspensions.

"(3) In any trial for a violation of this section, a duly authenticated copy of the record of the defendant's former convictions and judgments and alcohol-related driving offenses pursuant to Section 42-4-1301(1) or (2), C.R.S., from any court of record or certified copy of the record of any denial or revocation of a defendant's driving privilege under Section 42-2-126(2)(a), C.R.S., from the State of Colorado Department of Motor Vehicles shall be prima facie evidence of such convictions, judgments, denial, or revocations and may be used in evidence against such defendant.

"(4) In any prosecution for a violation of this Section, the fact of the restraint may be established by certification that a notice was mailed by first-class mail pursuant to Section 42-2-119(2), C.R.S., to the known address of the defendant, or by delivery of such notice to the last known address of the defendant, or by personal service of such notice upon the defendant."

(3) Section 1416 is hereby added to read as follows:

"Section 1416. Permitting unauthorized person to drive.

"(1) No person shall authorize or knowingly permit a motor vehicle owned by such person or under such person's hire or control to be driven upon any street or highway within the Town by any person who has not been issued a current valid driver's, minor driver's, or provisional driver's license or an instruction permit or shall cause or knowingly permit such a person to drive a motor vehicle upon any street or highway in violation of the conditions or restrictions contained in a license or permit which has been issued to such other person."

(4) Section 1417 is hereby added to read as follows:

"Section 1417. Expired license plates/registrations/temporary permit.

"(1) Pursuant to state law (Section 42-3-124, C.R.S.), every vehicle registration issued by the State of Colorado shall expire on the last day of the month at the end of each twelve-month registration period and shall be renewed, upon application by the owner, by the payment of the fees required by law, not later than thirty days after the date of expiration. No license plates other than those of the registration period to which they pertain shall be displayed on a motor vehicle operating on any street or highway within the Town.

"(2) No person shall lend to or knowingly permit the use by one not entitled thereto any certificate of title, registration card, or registration number plate issued to the person so lending or permitting the use thereof.

"(3) A temporary vehicle registration may not be used on any vehicle after the expiration of the period for which the permit was issued."

(Ord. 2004-711 §1)

Sec. 8-24. Application.

This Article shall apply to every street, alley, sidewalk area, driveway, park and every other public way, public place or public parking area, either within or outside the corporate limits of the Town, the use of which the Town has jurisdiction and authority to regulate. The provisions of Sections 1401, 1402 and

1413 and Part 16 of the adopted Model Traffic Code, respectively, concerning reckless driving, careless driving, eluding a police officer and accidents and accident reports shall apply not only to public places and ways but also throughout the Town.

(Ord. 2004-711 §1)

Sec. 8-25. Interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to conform with the State's uniform system for the regulation of vehicles and traffic. Article and section headings of this Article and adopted Model Traffic Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

(Ord. 2004-711 §1)

Sec. 8-26. Penalties.

The following penalties, herewith set forth in full, shall apply to this Chapter:

- (1) It is unlawful for any person to violate any of the provisions adopted in this Chapter.
- (2) Every person convicted of a violation of any of the provisions stated or adopted in this Chapter shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), with the exception that the following sections of the Model Traffic Code may be punishable by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding one (1) year or by both such fine and imprisonment:
 - a. Section 1105, Speed contest;
 - b. Section 1401, Reckless driving;
 - c. Section 1413, Eluding or attempting to elude a police officer.

(Ord. 2004-711 §1; Ord. 2006-760 §1)

Secs. 8-27—8-40. Reserved.

ARTICLE III Parking Regulations

[Sec. 8-41. Purpose.](#)

[Sec. 8-42. Parking restricted.](#)

[Sec. 8-43. Reserved.](#)

[Sec. 8-44. Idling.](#)

[Sec. 8-45. Exemptions.](#)

[Sec. 8-46. Violation: penalty.](#)

[Sec. 8-47. Restricted parking of trailers, campers and boats on streets.](#)

[Secs. 8-48—8-60. Reserved.](#)

Sec. 8-41. Purpose.

The purpose of this Article is to impose restrictions on the parking of certain vehicles within the Town limits.

(Prior code 24-4)

Sec. 8-42. Parking restricted.

No person shall park or allow to be parked any truck-tractor/semitrailer vehicle or combination vehicle with a length of thirty-five (35) feet or more and/or a weight of twenty thousand (20,000) pounds or more on any property, streets or alleys located within the SF-1, SF-2, PD-M or CBD zoning districts, except when such parking is reasonably necessary to actively render services to the property where parked.

(Prior code 24-4)

Sec. 8-43. Reserved.

Sec. 8-44. Idling.

Motor vehicles that weigh more than ten thousand (10,000) pounds (mostly trucks) are hereby forbidden from idling longer than fifteen (15) minutes in any hour unless stopped due to traffic congestion. Moreover, said vehicles shall not idle within one hundred (100) feet of a residential area from 10:00 p.m. to 7:00 a.m. unless parked in the designated area.

(Prior code 24-4)

Sec. 8-45. Exemptions.

The restrictions hereby shall not be applicable to pickup trucks with campers, camper trailers or recreational vehicles.

(Prior code 24-4)

Sec. 8-46. Violation; penalty.

Failure to comply with the provisions hereof shall be unlawful, and any person who shall be convicted of a violation hereunder shall be penalized for each offense as provided in Section 1-62 of this Code.

(Prior code 24-4)

Sec. 8-47. Restricted parking of trailers, campers and boats on streets.

(a) Detached trailers, pickup campers and boats. For purposes of this Section, *trailer* means any wheeled vehicle without motive power and designed to be drawn by a motor vehicle. A *pickup camper* means a camper body capable of being loaded or unloaded from or to the bed of a pickup truck.

(1) No trailer shall be detached from a towing vehicle and left standing in any public right-of-way.

- (2) No pickup camper shall be unloaded from a pickup truck and left standing in any public right-of-way.
 - (3) No boat, whether standing on a trailer or standing by itself, shall be left standing on any public right-of-way unless attached physically to a motor vehicle.
- (b) Parking of oversized vehicles. For the purpose of this Section, *oversized private vehicle* means any vehicle registered, licensed or used for private purposes including but not limited to buses, motorized mobile homes and motorized recreational coaches, and exceeding thirty-four (34) feet in length or eight (8) feet or more in width. Oversized vehicles are prohibited from parking in any area of the Town, either on the street, traveled road or public right-of-way, except:
- (1) Temporary parking of vehicles used for loading or unloading of personal goods or property for a period not to exceed twenty-four (24) hours;
 - (2) Temporary parking of passenger vehicles, such as automobiles and pickup trucks, with attached trailers, campers or boats for a period not to exceed forty-eight (48) hours;
 - (3) Temporary parking of oversized private vehicles by nonresident visitors pursuant to a permit issued by the Chief of Police. Such permits shall be issued only to the owner or regular driver of such vehicle and shall not be transferred or assigned to another owner, driver or location. Such permits shall not exceed fourteen (14) days and may be renewed for not to exceed fourteen (14) days. Such permits shall be limited to one (1) street location.
- (c) Measurements. Measurements made in the enforcement of this Section shall be made as follows:
- (1) The height of vehicles shall be measured perpendicular to the parking surface to the uppermost portion of the vehicle, including loads or any projections attached thereto with the exception of radio antennae, exhaust pipes and vents.
 - (2) The length of vehicles shall be measured parallel to the long axis of the vehicle and shall include any projections permanently or temporarily attached thereto.
- (d) Application. This Section shall apply to every street, alley, sidewalk area, driveway, park and to every other public way, public place or public parking area, either within or outside the corporate limits of the Town, the use of which the Town has jurisdiction and authority to regulate.
- (e) Penalties. Failure to comply with the provisions hereof shall be unlawful, and any person who shall be convicted of a violation hereunder shall be penalized for each offense as provided in Section 1-62 of this Code.

(Ord. 98-579 §1; Ord. No. 2015-137, § 1, 3-16-2015)

Secs. 8-48—8-60. Reserved.

ARTICLE IV Abandoned and Junked Vehicles

[Sec. 8-61. Definitions.](#)

[Sec. 8-62. Disabled vehicles on premises prohibited; exceptions.](#)

[Sec. 8-63. Presumption that vehicle is inoperable.](#)

[Sec. 8-64. Administrative procedure for removal.](#)

[Secs. 8-65—8-80. Reserved.](#)

Sec. 8-61. Definitions.

For purposes of this Article, the following terms shall have the meanings ascribed to them:

- (1) *Inoperable* means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the functions or purpose for which it was originally constructed.
- (2) *Vehicle* means any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

(Prior code 16-46)

Sec. 8-62. Disabled vehicles on premises prohibited; exceptions.

- (a) Except as otherwise provided in this Article, it shall be unlawful for any person or his or her agent, either as owner, lessee, tenant or occupant of any lot or land within the Town, to park, store, deposit or permit to be parked, stored or deposited thereon, an inoperable vehicle unless it is enclosed in a garage or other building.
- (b) The provisions of this Article shall not apply to any person or his or her agent with one (1) vehicle inoperable for a period of thirty (30) consecutive days or less.
- (c) The provisions of this Article shall not apply to any person or his or her agent who is conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public using the streets and sidewalks and to prohibit ready access to such vehicles by children; provided, however, that nothing in this Article shall authorize the maintenance of a public nuisance.

(Prior code 16-47)

Sec. 8-63. Presumption that vehicle is inoperable.

Any of the following conditions shall raise the presumption that a vehicle is inoperable under the provisions of this Article:

- (1) Absence of an effective registration plate or current emissions sticker upon such vehicle.
- (2) Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.
- (3) Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

(Prior code 16-48)

Sec. 8-64. Administrative procedure for removal.

Whenever an informal complaint is made to the Chief of Police or to any other appropriate Town official or member of the Board of Trustees regarding an alleged violation of Section 8-62 or whenever any police officer or sanitation officer observes an apparent violation of Section 8-62, a police officer or sanitation officer shall within seven (7) days thereafter cause a written notice to be served upon the person in possession or the owner of the real property upon which such inoperable vehicle is located. Such notice shall inform such person of the violation and direct that he or she take action, within seven (7) days after receipt of such notice, to comply with Section 8-62 or prosecution will be commenced for violation thereof. If compliance is not made as directed, prosecution proceedings against the responsible person shall be commenced.

(Prior code 16-49)

Secs. 8-65—8-80. Reserved.

ARTICLE V Traffic Safety Regulations

[Sec. 8-81. Compulsory proof of insurance.](#)

[Sec. 8-82. Mandatory use of safety belt.](#)

[Sec. 8-83. Mandatory routes for overweight trucks.](#)

[Secs. 8-84—8-100. Reserved.](#)

Sec. 8-81. Compulsory proof of insurance.

- (a) Definitions. The applicable definitions set forth in Section 10-4-703, C.R.S., are incorporated herein by reference.
- (b) No person shall operate a motor vehicle on a public street or highway within the Town without possession of proof being carried on his or her person or within the motor vehicle being operated that a complying policy or certificate of self-insurance is in full force and effect as required by Title 10, Article 4, Part 7, C.R.S.
- (c) When an accident occurs, or when requested to do so following any lawful traffic contact or during any traffic investigation by a police officer, no owner or operator of a motor vehicle shall fail to present to the requesting officer immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-705 and 10-4-716, C.R.S.
- (d) Testimony of the failure of any owner or operator of a motor vehicle to present immediate evidence of a complying policy or certificate of self-insurance in full force and effect as required by Sections 10-4-705 and 10-4-716, C.R.S., when requested to do so by a police officer, shall constitute prima facie evidence, at a trial concerning a violation charged under Subsections (b) and (c) above, that such owner or operator of a motor vehicle violated Subsection (b) or (c) above.
- (e) No person charged with violating Subsection (b) or (c) above shall be convicted if he or she produces in court a bona fide complying policy or certificate of self-insurance which was in full force and effect, as required by Sections 10-4-705 and 10-4-716, C.R.S., at the time of the alleged violation of this Section.
- (f) Penalties. It shall be unlawful to violate any provision of this Section and, upon conviction, the guilty party may be sentenced to a three-hundred-dollar fine, ninety (90) days in jail or both such fine and imprisonment. The minimum fine for a conviction of the violation of this Section shall be one hundred dollars (\$100.00).

(Ord. 480, 1993)

Sec. 8-82. Mandatory use of safety belt.

- (a) As used in this Section:
 - (1) *Motor vehicle* means a self-propelled vehicle intended primarily for use and operation on the public highways, including passenger cars, station wagons, vans, taxicabs, ambulances, motor homes and pickups. The term does not include motorcycles, motorscooters, motorbicycles,

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motorized bicycles, passenger buses, school buses, and farm tractors and implements of husbandry designed primarily or exclusively for use in agricultural operations.

- (2) *Safety belt system* means a system utilizing a lap belt, a shoulder belt or any other belt or combination of belts installed in a motor vehicle to restrain drivers and passengers, which system conforms to federal motor vehicle safety standards.
- (b) Unless exempted pursuant to Subsection (c) below, every driver of and every front seat passenger in a motor vehicle equipped with a safety belt system shall wear a fastened safety belt while the motor vehicle is being operated on a street or highway within the limits of the Town.
- (c) The requirement of Subsection (b) above shall not apply to the following:
 - (1) A child required by Section 42-4-235, C.R.S., to be restrained by a child restraint system;
 - (2) A member of an ambulance team, other than the driver, while involved in patient care;
 - (3) A person with a physically or psychologically disabling condition whose physical or psychological disability prevents appropriate restraint by a safety belt system if such person possesses a written statement by a physician certifying the condition, as well as stating the reason why such restraint is inappropriate;
 - (4) A person driving or riding in a motor vehicle not equipped with a safety belt system due to the fact that federal law does not require such vehicle to be equipped with a safety belt system;
 - (5) A rural letter carrier of the United States postal service while performing duties as a rural letter carrier; and
 - (6) A person operating a motor vehicle for commercial or residential delivery or pickup service; except that such person shall be required to wear a fastened safety belt during the time period prior to the first delivery or pickup of the day and during the time period following the last delivery or pickup of the day.
- (d) It is unlawful for any person to operate a motor vehicle while he or she or any passenger is in violation of the requirements of Subsection (b) of this Section.
- (e) No driver or passenger in a motor vehicle shall be cited for a violation of Subsection (b) of this Section unless the driver was stopped by a law enforcement officer for an alleged violation of any Town ordinance other than a violation of this Section.
- (f) Testimony at a trial for a violation charged pursuant to Subsection (d) of this Section may include:
 - (1) Testimony by a law enforcement officer that he or she observed the person charged operating a motor vehicle while said operator or any passenger was in violation of the requirements of Subsection (b) of this Section; or
 - (2) Evidence that the driver removed the safety belts, or knowingly drove the vehicle from which the safety belts had been removed.
- (g) It shall be unlawful to violate any provision of this Section and, upon conviction, the guilty party may be sentenced to a three-hundred-dollar fine, ninety (90) days in jail or both such fine and imprisonment.

(Ord. 482, 1993)

Sec. 8-83. Mandatory routes for overweight trucks.

- (a) All trucks weighing over seven thousand (7,000) pounds empty weight are prohibited from traveling on all streets, alleys, viaducts, bridges or other public ways in the Town except on designated truck routes. Trucks of larger sizes may use the prohibited streets to make deliveries on such streets or nearby streets, provided that such trucks use the shortest route between an established truck route and point of delivery. Violations are subject to the penalties provided under Article IV of Chapter 1 of

this Code, except the minimum fine for a conviction of a violation of this Section shall be five hundred dollars (\$500.00).

- (b) Exceptions. The Town Council may, under appropriate circumstances for which this Article was not intended, such as the application to local farmers who have a necessity for transporting their farm products through traditional routes, provide for, by resolution, those exceptions, rules and regulations governing the same.

(Ord. 2008-807 §1)

Secs. 8-84—8-100. Reserved.

ARTICLE VI Golf Cars

[Sec. 8-84. Definition.](#)

[Sec. 8-85. Operation of golf cars.](#)

[Sec. 8-86. Insurance requirements.](#)

[Sec. 8-87. Inspection and permitting requirements.](#)

[Sec. 8-88. Traffic laws.](#)

[Sec. 8-89. Town operated golf cars.](#)

Sec. 8-84. Definition.

Golf Car shall have the meaning set forth in Section 42-1-102 (39.5), C.R.S., as amended, and shall mean, unless the state statute is otherwise amended:

A self-propelled vehicle not designed primarily for operation on roadways and that has:

- (a) A design speed of less than twenty miles per hour;
- (b) At least three wheels in contact with the ground;
- (c) An empty weight of not more than one thousand three hundred pounds; and
- (d) A carrying capacity of not more than four persons.

(Ord. No. 2019-158, § 1, 3-18-2019)

Sec. 8-85. Operation of golf cars.

- (a) No person shall operate a Golf Car on the roadway or a street within the Town, except as provided for in this Article.
- (b) An operator of a Golf Car shall have been legally issued and possess a currently valid driver's license and be twenty one (21) years of age or older.
- (c) Every Golf Car operating on a Town street or roadway as allowed herein shall be equipped, at a minimum, with the following equipment:
 - (1) Front headlamps;
 - (2) Front and rear turn signal lamps;

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- (3) Rear tail lamps and stop lamps;
 - (4) A rearview mirror or mirrors;
 - (5) A parking brake;
 - (6) A front windshield;
 - (7) Seat belts for each occupant;
 - (8) Two (2) rear reflectors as either part of the tail lamps or separately; and
 - (9) A slow moving vehicle sign, as provided for by state law, shall be attached on the rear of the Golf Car, and shall be visible in daylight and at night from all distances between six hundred feet (600') and one hundred feet (100') from the rear when directly in upper beam of headlamps.
- (d) The number of persons allowed to travel in a Golf Car shall be limited to the number of seats in the Golf Car, in accordance with the design of the Golf Car, but in no event shall there be more than four (4) persons.
 - (e) Every child passenger in a Golf Car shall be secured in a child restraint device as required by state law for children riding as passengers in a motor vehicle.
 - (f) Golf Cars shall be restricted to operation on streets and roadways within the Town of Johnstown that have a speed limit of twenty-five (25) miles per hour or less; except that a Golf Car may be operated to directly cross a roadway, including State Highway 60, that has a speed limit greater than twenty-five (25) miles per hour at an at grade crossing to continue traveling along a roadway with a speed limit equal to or less than twenty-five (25) miles per hour. Notwithstanding the foregoing, Golf Cars shall not be operated on, or be permitted to cross, the Interstate 25 Frontage Road. If the owner of the Golf Car resides at a street address where operation of a Golf Car is not allowed due to this speed restriction, the owner shall be allowed to drive the shortest route to and from the owner's residence to a street where the Golf Car is allowed to operate.
 - (g) Golf Cars shall be restricted to operation on streets and roadways within the Town of Johnstown as provided for herein. Golf Cars shall not be allowed on Town paths or trails.
 - (h) An operator of a Golf Car must carry proof of complying insurance, as described in Section 8-86, at all times while operating the Golf Car on the Town streets or roadways.
 - (i) The Town permit sticker, as described in Section 8-87, must be visible at all times when the Golf Car is being operated on the Town streets or roadways.

(Ord. No. 2019-158, § 1, 3-18-2019)

Sec. 8-86. Insurance requirements.

Prior to the operation of a Golf Car on a Town street or roadway as allowed herein, each owner shall obtain and carry a liability insurance policy for that Golf Car, which liability insurance policy shall provide coverage for all operators of the Golf Car, meeting the following minimum requirements:

- (a) The liability insurance policy shall be issued by an insurance carrier authorized to do business in the state of Colorado;
- (b) The liability insurance policy shall cover a Golf Car operating on public streets and roadways; and
- (c) The liability insurance policy shall have coverage with a minimum sum of one hundred thousand dollars (\$100,000.00) for damages to property of others, a minimum sum of one hundred thousand dollars (\$100,000.00) for damages for or on account of bodily injury or death of one (1) person as a result of any one (1) accident, and, subject to such limit as to one (1) person, a minimum sum of three hundred thousand dollars (\$300,000.00) for or on account of bodily injury to or death of all persons as a result of any one (1) accident.

(Ord. No. 2019-158, § 1, 3-18-2019)

Sec. 8-87. Inspection and permitting requirements.

The Golf Car shall be inspected for safety and for the required equipment by the Johnstown Police Department every three (3) years and issued a Town permit sticker. The Golf Car owner must show proof of a current driver's license and complying insurance at the time of inspection and permitting. The permit fee shall be twenty dollars (\$20.00) for the three (3) year permit, which fee may be modified by resolution of Town Council. A copy of the ordinance regulating the operation of Golf Cars on the Town streets and roadways and a copy of Johnstown Police Department Rules and Regulations, if any, shall be provided to the Golf Car owner at the time of inspection and permitting.

(Ord. No. 2019-158, § 1, 3-18-2019)

Sec. 8-88. Traffic laws.

Every person operating a Golf Car in the Town shall be subject to all traffic laws adopted by the Town, and may be subject to the issuance of a summons and complaint for any such traffic violation. Upon conviction of any traffic violation, penalties established in Section 8-26 of this Chapter shall apply. A traffic ticket issued to any operator of a Golf Car shall be governed by the procedures set forth in this Chapter.

(Ord. No. 2019-158, § 1, 3-18-2019)

Sec. 8-89. Town operated golf cars.

Notwithstanding any provision contained in this Article, the Town, by and through its staff, employees, contractors or agents, shall be authorized and permitted to operate Golf Cars on Town paths, trails and areas within the parks, greenbelts, open spaces and recreation facilities for public safety, upkeep and maintenance purposes.

(Ord. No. 2019-158, § 1, 3-18-2019)

CHAPTER 10 General Offenses

ARTICLE I - Criminal Code

ARTICLE II - Offenses Against the Public

ARTICLE III - Offenses Against the Person

ARTICLE IV - Offenses Against Property

ARTICLE V - Offenses Relating to Public Morals

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ARTICLE XII - Possession and Use of Tobacco Products by Minors Prohibited

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ARTICLE I Criminal Code

[Sec. 10-1. Jurisdiction.](#)

[Sec. 10-2. Interpretation.](#)

[Secs. 10-3—10-10. Reserved.](#)

Sec. 10-1. Jurisdiction.

This Chapter shall apply to conduct and occurrences within the corporate limits of the Town, the manner of which the Town has jurisdiction and authority to regulate.

(Ord. 463, § 1, 1991)

Sec. 10-2. Interpretation.

This Chapter shall be so interpreted and construed as to effectuate its general purpose. Articles and section headings of this Article and the adopted Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

(Ord. 463, § 1, 1991)

Secs. 10-3—10-10. Reserved.

ARTICLE II Offenses Against the Public

[Sec. 10-11. Resisting arrest.](#)

[Sec. 10-12. Obstructing peace officer or fireman.](#)

[Sec. 10-13. Accessory to crime.](#)

[Sec. 10-14. Refusing to aid peace officer.](#)

[Sec. 10-15. Impersonating a peace officer.](#)

[Sec. 10-16. Impersonating a public servant.](#)

[Sec. 10-17. Aiding escape.](#)

[Sec. 10-18. Inducing prisoners to absent selves.](#)

[Sec. 10-19. Aiding escape from civil process.](#)

[Sec. 10-20. Escape.](#)

[Sec. 10-21. Obstructing highway or other passageway.](#)

[Sec. 10-22. False alarms.](#)

[Sec. 10-23. Desecration of venerated objects.](#)

[Sec. 10-24. Loitering.](#)

[Secs. 10-25—10-40. Reserved.](#)

Sec. 10-11. Resisting arrest.

- (a) It shall be unlawful for any person to resist arrest. For purposes of this Section, a person commits resisting arrest if he or she intentionally prevents or attempts to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, by:
- (1) Using or threatening to use physical force or violence against the peace officer or another; or
 - (2) Using any other means which creates a substantial risk of causing physical injury to the peace officer or another.
- (b) It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest which in fact was unlawful, if he or she was acting under color of his or her official authority and in attempting to make the arrest he or she was not resorting to unreasonable or excessive force giving rise to the right of self-defense. A peace officer acts under color of his or her official authority when, in the regular course of assigned duties, he or she is called upon to make, and does make, a judgment in good faith based upon surrounding facts and circumstances that an arrest should be made by him or her.
- (c) The term *peace officer*, as used in this Section and Section 10-12, means a police officer in uniform, or if out of uniform, who has identified himself or herself by exhibiting his or her credentials as such peace officer to the person whose arrest is attempted.

(Prior code 16-2)

Sec. 10-12. Obstructing peace officer or fireman.

- (a) It shall be unlawful for any person to obstruct a peace officer or fireman. For purposes of this Section, a person commits obstructing a peace officer or fireman when, by using or threatening to use violence, force or physical interference or obstacle, he or she intentionally obstructs, impairs or hinders the enforcement of the penal law or the preservation of the peace by a peace officer acting under color of his or her official authority, or intentionally obstructs, impairs or hinders the prevention, control or abatement of fire by a fireman acting under color of his or her official authority.
- (b) It is no defense to a prosecution under this Section that the peace officer was acting in an illegal manner if he or she was acting under color of his or her official authority as defined in Section 10-11(b).
- (c) This Section does not apply to obstruction, impairment or hindrance of the making of an arrest.

(Prior code 16-3)

Sec. 10-13. Accessory to crime.

- (a) It shall be unlawful for a person to be an accessory to a crime. For purposes of this Section, a person is an accessory to a crime if, with intent to hinder, delay or prevent the discovery, detection, apprehension, prosecution, conviction or punishment of another for the commission of a crime, he or she renders assistance to such person, as provided in this Section.
- (b) *Render assistance* means to:
 - (1) Harbor or conceal the other;
 - (2) Warn such person of impending discovery or apprehension, except that this does not apply to a warning given in an effort to bring such person into compliance with the law;
 - (3) Provide such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
 - (4) By force, intimidation or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or
 - (5) Conceal, destroy or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.
- (c) In order to be an accessory to a crime, the offender must know that the person being assisted has committed or has been convicted of, or is charged by pending information, indictment or complaint with a crime, or is suspected of or wanted for a crime.

(Prior code 16-4)

Sec. 10-14. Refusing to aid peace officer.

It shall be unlawful for a person to refuse to aid a peace officer. For violation of this Section, a person must be eighteen (18) years of age or older and, upon command by a person known to him or her to be a peace officer, he or she unreasonably refuses or fails to aid such peace officer in effecting or securing an arrest or preventing the commission by another of any offense.

(Prior code 16-5)

Sec. 10-15. Impersonating a peace officer.

It shall be unlawful for a person to falsely pretend to be a peace officer and perform an act in that pretended capacity.

(Prior code 16-6)

Sec. 10-16. Impersonating a public servant.

- (a) It shall be unlawful for any person to impersonate a public servant. For purposes of this Article, a person commits impersonating a public servant if he or she falsely pretends to be a public servant other than a peace officer and performs any act in that pretended capacity.
- (b) It is no defense to a prosecution under this Section that the office the actor pretended to hold did not in fact exist.

(Prior code 16-7)

Sec. 10-17. Aiding escape.

- (a) It shall be unlawful for any person to aid the escape of another as provided in this Section. For purposes of this Section, any person who aids, abets or assists another person to escape or attempt to escape from custody or confinement commits the offense of aiding escape.
- (b) *Escape* is deemed to be a continuing activity commencing with the conception of the design to escape and continuing until the escapee is returned to custody or the attempt to escape is thwarted or abandoned.
- (c) *Assist* includes any activity characterized as *rendering assistance* in Section 10-13.

(Prior code 16-8)

Sec. 10-18. Inducing prisoners to absent selves.

It shall be unlawful for any person to invite, entice, solicit or induce any prisoner in custody or confinement, to absent himself or herself from his or her work, or substantially delay or hinder such prisoner in his or her work.

(Prior code 16-9)

Sec. 10-19. Aiding escape from civil process.

It shall be unlawful for any person to aid, abet or assist the escape of a person in legal custody under civil process.

(Prior code 16-10)

Sec. 10-20. Escape.

It shall be unlawful for any person, while being in custody or confinement under a sentence following conviction, to escape from said custody or confinement.

(Prior code 16-11)

Sec. 10-21. Obstructing highway or other passageway.

- (a) It shall be unlawful for any person to obstruct a highway or other passageway, as provided in this Section. For purposes of this Section, a person commits an offense if without legal privilege he or she intentionally, knowingly or recklessly:
 - (1) Obstructs a highway, street, sidewalk, railway, waterway, building entrance, elevator, aisle, stairway or hallway to which the public or a substantial group of the public has access; or any other place used for the passage of persons, vehicles or conveyances, whether the obstruction arises from his or her acts alone or from his or her acts and the acts of others; or
 - (2) Disobeys a reasonable request or order to move issued by a person he or she knows to be a peace officer, fireman or person with authority to control the use of the premises, to prevent obstruction of a highway or passageway, or to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot or other hazard.
- (b) For purposes of this Section, *obstruct* means to render impassable or to render passage unreasonably inconvenient or hazardous.

(Prior code 16-12)

Sec. 10-22. False alarms.

Any person who shall make a false alarm of fire by outcry or by using any bell or other sounding instrument, or shall make any false alarm of any kind calculated to disturb the peace, shall be deemed guilty of an offense.

(Prior code 12-1)

Sec. 10-23. Desecration of venerated objects.

- (a) It shall be unlawful for any person to intentionally desecrate any public monument, structure or place of worship or burial or desecrate in a public place any other object of veneration by the public or a substantial segment thereof.
- (b) The term *desecrate* means defacing, damaging, polluting or otherwise physically mistreating in a way that the defendant knows will outrage the sensibilities of persons likely to observe or discover his or her action or its result.

(Prior code 16-19)

Sec. 10-24. Loitering.

- (a) For purposes of this Section, the word *loiter* shall mean to be dilatory, to stand idly around, to linger, delay or wander about, to remain, abide or tarry in a public place.
- (b) It shall be unlawful for any person to:
 - (1) Loiter for the purpose of unlawful gambling with cards, dice or other gambling paraphernalia;
 - (2) Loiter for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual intercourse;

- (3) Loiter in or about a school building or grounds, not having any reason or relationship involving custody or responsibility for, a pupil or any other specific, legitimate reason for being there and not having written permission from a school administrator; or
- (4) Loiter with one (1) or more persons for the purpose of unlawfully using or possessing a narcotic or dangerous drug.
- (c) Lawful acts in the course of lawful assembly as a part of peaceful and orderly petition for the redress of grievances, either in the course of labor disputes or otherwise, shall not be held to be in violation of this Section.

(Prior code 16-20; Ord. No. 2016-144, §§ 1, 2, 10-3-2016)

Secs. 10-25—10-40. Reserved.

ARTICLE III Offenses Against the Person

[Sec. 10-41. Assault.](#)

[Sec. 10-42. Criminal intimidation.](#)

[Sec. 10-43. Reckless endangerment.](#)

[Sec. 10-44. Harassment.](#)

[Sec. 10-45. Disorderly conduct.](#)

[Secs. 10-46—10-60. Reserved.](#)

Sec. 10-41. Assault.

It shall be unlawful for any person to commit the offense of assault as provided in this Section. For purposes of this Section, a person commits the crime of assault if he or she intentionally, knowingly or recklessly causes bodily injury to another person.

(Prior code 16-14)

Sec. 10-42. Criminal intimidation.

It shall be unlawful for any person to commit the offense of criminal intimidation as provided in this Article. For purposes of this Article, whoever without legal authority threatens to confine, restrain or cause bodily harm to the threatened person or another, or to damage the property or reputation of the threatened person or another with intent thereby to induce the threatened person or another against his or her will to do an act or refrain from doing a lawful act commits criminal intimidation.

(Prior code 16-15)

Sec. 10-43. Reckless endangerment.

It shall be unlawful for any person to commit the offense of reckless endangerment as provided in this Section. For purposes of this Section, a person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment.

(Prior code 16-16)

Sec. 10-44. Harassment.

- (a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:
 - (1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact;
 - (2) In a public place directs obscene language or makes an obscene gesture to or at another person;
 - (3) Follows a person in or about a public place;
 - (4) Initiates communication with a person, anonymously or otherwise by telephone, in a manner intended to harass or threaten bodily injury or property damage or make any comment, request, suggestion or proposal by telephone which is obscene;
 - (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation; or
 - (6) Makes repeated communications at inconvenient hours or in offensively coarse language.
- (b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.
- (c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call was either made or received.

(Prior code 16-21; Ord. 488, 1994)

Sec. 10-45. Disorderly conduct.

- (a) It shall be unlawful for any person to commit the offense of disorderly conduct as provided in this Section. For purposes of this Section, a person commits disorderly conduct if he or she intentionally, knowingly or recklessly:
 - (1) Makes a course and obviously offensive utterance, gesture or display in a public place;
 - (2) Abuses or threatens a person in a public place in an obviously offensive manner;
 - (3) Makes unreasonable noise in a public place, or near a private residence that he or she has no right to occupy;
 - (4) Fights with another in a public place; or
 - (5) Not being a peace officer, discharges a firearm in a public place other than a shooting gallery or rifle range.
- (b) It is an affirmative defense to prosecution under Subsection (a)(2) that the actor had significant provocation for his or her abusive or threatening conduct.

(Ord. 473, 1992)

Secs. 10-46—10-60. Reserved.

ARTICLE IV Offenses Against Property

[Sec. 10-61. Criminal mischief.](#)

[Sec. 10-62. Criminal trespass.](#)

[Sec. 10-63. Remaining on certain premises after request to leave prohibited.](#)

[Sec. 10-64. Criminal tampering.](#)

[Sec. 10-65. Defacing or destruction of written instruments.](#)

[Sec. 10-66. Defacing and destroying landmarks.](#)

[Sec. 10-67. Defacing or destroying historical monuments.](#)

[Sec. 10-68. Defacing or aiding in defacing public or private property.](#)

[Sec. 10-69. Defacing posted notice.](#)

[Sec. 10-70. Criminal use of a noxious substance.](#)

[Sec. 10-71. Petty theft unlawful.](#)

[Sec. 10-72. Possession of burglary tools.](#)

[Sec. 10-73. Unlawful to discard or abandon iceboxes or similar items.](#)

[Sec. 10-74. Littering of public and private property.](#)

[Sec. 10-75. Fraud by check.](#)

[Secs. 10-76—10-90. Reserved.](#)

Sec. 10-61. Criminal mischief.

It shall be unlawful for any person to intentionally damage the real or personal property of one (1) or more other persons in the course of a single criminal episode.

(Prior code 16-75)

Sec. 10-62. Criminal trespass.

It shall be unlawful for any person to commit the offense of criminal trespass, as provided in this Section. For purposes of this Section, a person commits the crime of criminal trespass if he or she unlawfully enters or remains in or upon premises, whether enclosed in a manner designed to exclude intruders or fenced or not.

(Prior code 16-76)

Sec. 10-63. Remaining on certain premises after request to leave prohibited.

- (a) It shall be unlawful for any person to congregate or remain in any place of business, school or private residence or on the grounds thereof within the Town against the will of the proprietor or the person in charge of such premises after having been requested by such person to vacate said premises.
- (b) For the purposes of this Section, the terms *grounds adjacent thereto* shall include but not be limited to any highway, street, alley or sidewalk within the Town adjacent to the property in question.

(Prior code 16-77)

Sec. 10-64. Criminal tampering.

It shall be unlawful for any person to commit the offense of criminal tampering as provided in this Section. For purposes of this Section, a person commits the crime of criminal tampering if, with intent to cause interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, he or she tampers with property of such utility or institution. In addition, a person commits the crime of criminal tampering if he or she tampers with property of another with intent to cause injury, inconvenience or annoyance to that person or to another, or if he or she makes unauthorized connections with property of a utility.

(Prior code 16-78)

Sec. 10-65. Defacing or destruction of written instruments.

Every person who defaces or destroys any written instrument evidencing a property right, whether vested or contingent, with the intent to defraud shall be deemed guilty of defacing or destruction of written instruments.

(Prior code 16-79)

Sec. 10-66. Defacing and destroying landmarks.

Anyone who intentionally cuts, fells, alters or removes any certain boundary tree, monument or other allowed landmark, to the damage of any person; or anyone who intentionally defaces, removes, pulls down, injures or destroys any location stake, side post, corner post, landmark or monument, or any other legal land boundary monument in this State, designating or intending to designate the location, boundary or name of any mining claim, lode or vein of mineral or the name of the discoverer, or date of discovery thereof, shall be deemed guilty of defacing and destroying landmarks.

(Prior code 16-80)

Sec. 10-67. Defacing or destroying historical monuments.

It shall be unlawful for any person to destroy, deface, remove or damage any historical monument.

(Prior code 16-81)

Sec. 10-68. Defacing or aiding in defacing public or private property.

- (a) It shall be unlawful for any person to deface or cause, aid in or permit the defacing of any public or private property without the consent of the owner of such property.
- (b) It shall be unlawful to mark, injure, damage, destroy or deface any public property owned by the Town, specifically but not limited to cemetery property, library property, water works property, sewer works property, Town Hall and storage buildings.

(Prior code 16-82)

Sec. 10-69. Defacing posted notice.

Any person who intentionally mars, destroys or removes any posted notice authorized by law shall be deemed guilty of defacing a posted notice.

(Prior code 16-83)

Sec. 10-70. Criminal use of a noxious substance.

Any person who deposits on the land or in the building or vehicle of another, without his or her consent, any stink-bomb or device, irritant or offensive-smelling substance, with the intent to interfere with another's use or enjoyment of the land, building or vehicle shall be deemed guilty of criminal use of a noxious substance. This Section shall not apply to the reasonable use of noxious substances by a peace officer in the performance of his or her duties.

(Prior code 16-84)

Sec. 10-71. Petty theft unlawful.

It shall be unlawful for any person knowingly to obtain or exercise control over anything, of the value of less than two hundred dollars (\$200.00), of another without authorization, by threat or deception or knowing said thing of such value to have been stolen, when the person who so obtains or exercises control over such thing of such value:

- (1) Intends to deprive such other person permanently of the use or benefit of such thing of value;
- (2) Knowingly uses, conceals or abandons such thing of value as to deprive such other person permanently of the use or benefit of the same;
- (3) Uses, conceals or abandons such thing of value, intending that such use, concealment or abandonment will deprive such other person permanently of the use or benefit of the same; or
- (4) Demands any consideration to which such person is not legally entitled, as a condition of restoring such thing of value to such other.

(Prior code 16-85)

Sec. 10-72. Possession of burglary tools.

It shall be unlawful for any person to possess burglary tools. For purposes of this Section, a person commits possession of burglary tools if he or she possesses any explosive, tool, instrument or other article adapted, designed or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking, intends to use the thing possessed, or knows that some person intends to use the thing possessed in the commission of such an offense.

(Prior code 16-1)

Sec. 10-73. Unlawful to discard or abandon iceboxes or similar items.

It shall be unlawful for any person to abandon or discard in any public or private place accessible to children any chest, closet, piece of furniture, refrigerator, icebox or other article having a compartment of a capacity of one and one-half (1½) cubic feet or more, and having a door or lid which when closed

cannot be opened easily from the inside or for any person, being the owner, lessee or manager of such place, to knowingly permit such abandoned or discarded article to remain in such condition.

(Prior code 16-13)

Sec. 10-74. Littering of public and private property.

- (a) Any person who deposits, throws or leaves any litter on any public or private property or in any waters commits littering.
- (b) The term *litter*, as used in this Section, means all rubbish, waste material, refuse, garbage, trash, debris or other foreign substances, solid or liquid, of every form, size, kind and description.
- (c) It shall be an affirmative defense that:
 - (1) Such property is an area designated by law for the disposal of such material and the person is authorized by the proper public authority to so use the property;
 - (2) The litter is placed in a receptacle or container installed on such property for that purpose; or
 - (3) Such person is the owner or tenant in lawful possession of such property, or he or she has first obtained written consent of the owner or tenant in lawful possession, or the act is done under the personal direction of said owner or tenant.
- (d) The phrase *public or private property* as used in this Section includes, but is not limited to, the right-of-way of any road or highway, any body of water or watercourse, including frozen areas or the shores or beaches thereof, any park, playground or building, any refuge, conservation or recreation area, and any residential, farm or ranch properties or timberlands.
- (e) It is in the discretion of the court, upon the conviction of any person and the imposition of a fine under this Section, to suspend any or all of the fine in excess of the minimum fine upon the condition that the convicted person gather and remove from specified property litter found thereon, or upon the condition that the convicted person pick up litter from designated property at the time prescribed by and a place within the jurisdiction of the court for not less than eight (8) hours upon a second or subsequent conviction.
- (f) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle in violation of this Section, the operator of said motor vehicle is presumed to have caused or permitted the litter to be so thrown, dropped or dumped.

(Ord. 474, 1992)

Sec. 10-75. Fraud by check.

- (a) Definitions. As used in this Section, unless the context otherwise requires:

Check means a written, unconditional order to pay a certain sum in money, drawn on a bank, payable on demand and signed by the drawer.

Drawee means the bank upon which a check is drawn.

Drawer means a person, either real or fictitious, whose name appears on a check as the primary obligor, whether the actual signature be that of himself or herself or of a person authorized to draw the check himself or herself.

Insufficient funds means not having a sufficient balance in account with a bank or other drawee for the payment of a check or order when it is presented for payment and it remains unpaid thirty (30) days after such presentment.

Issue . A person *issues* a check when he or she makes, draws, delivers or passes it or causes it to be made, delivered or passed.

- (b) A person commits a misdemeanor if he or she issues or passes a check or similar sight order for the payment of money, knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.
- (c) This Section does not relieve the prosecution from the necessity of establishing the required knowledge by evidence. However, for purposes of this Section, the issuer's knowledge of insufficient funds is presumed, except in the case of a postdated check or order, if:
 - (1) He or she has no account with the bank or other drawee at the time he or she issues the check or order; or
 - (2) He or she has insufficient funds upon deposit with the bank or other drawee to pay the check or order, on presentment within thirty (30) days after issue.

(Ord. 546, § 1, 1996)

Secs. 10-76—10-90. Reserved.

ARTICLE V Offenses Relating to Public Morals

[Sec. 10-91. Definitions.](#)

[Sec. 10-92. Promoting obscenity.](#)

[Sec. 10-93. Promoting obscenity to a minor.](#)

[Sec. 10-94. Evidence of violation of Sections 10-92 and 10-93.](#)

[Sec. 10-95. Prostitution prohibited.](#)

[Sec. 10-96. Soliciting for prostitution.](#)

[Sec. 10-97. Pandering.](#)

[Sec. 10-98. Keeping a place of prostitution.](#)

[Sec. 10-99. Patronizing a prostitute.](#)

[Sec. 10-100. Aiding prostitution prohibited.](#)

[Sec. 10-101. Promoting sexual immorality.](#)

[Sec. 10-102. Public indecency.](#)

[Secs. 10-103—10-120. Reserved.](#)

Sec. 10-91. Definitions.

As used in this Article, the following terms shall have the meanings ascribed to them:

Harmful to minors means obscenity which:

- a. Predominantly appeals to the prurient interest of minors;
- b. Goes substantially beyond customary limits of candor recognized in the adult community with respect to what is suitable for minors; and

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- c. Is utterly without redeeming social value for minors.

Knowingly means having general knowledge of, reason to know, a belief or ground for belief which warrants further inspection or inquiry concerning:

- a. The character and content of any material which is reasonably susceptible of examination by the defendant;
- b. If the offense involves conduct with respect to a minor, the age of the minor, but the defendant does not act knowingly with respect to the age of a minor if he or she shows as an affirmative defense that he or she was honestly mistaken as to such age after making a reasonable and bona fide attempt to ascertain the true age of the minor.

Material means any physical object used as a means of presenting or communicating information, knowledge, sensation, image or emotion to or through the visual, aural, tactile or olfactory senses of a human being.

Minor means a person who has not reached his or her eighteenth birthday.

Obscene means that which, considered as a whole, predominantly appeals to prurient interests, i.e., a lustful or morbid interest in nudity, sex, sexual conduct, sexual excitement, excretion, sadism, masochism or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in describing, portraying or dealing with such matters and is utterly without redeeming social value.

Owner includes any person who has a financial interest in an activity or thing entitling him or her to participate in the promotion, management or proceeds of the activity or thing. It does not include a person whose connection with the activity entitles him or her only to reasonable salary or wages for services actually rendered.

Performance means the presentation or showing to another person or for recording by any means of:

- a. Any material, including the information, knowledge, sensation, image or emotion which that material presents or communicates; or
- b. Any live physical presence or live physical activity, including vocal activity.

Predominant appeal, customary limits of candor and redeeming social value of a thing shall be judged by reference to the average adult in the community as a whole, except that where the thing appears to be designed for, or is made available to, minors, they shall be judged with reference to the average minor in the age group for which the thing appears to be designed or to which it is made available.

Promote means to produce, direct, perform in, manufacture, issue, sell, give, provide lend, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise for pecuniary gain or offer or agree to do any of these things for pecuniary gain.

(Prior code 16-107)

Sec. 10-92. Promoting obscenity.

It shall be unlawful for any person to promote obscenity as provided in this Section. For purposes of this Section, a person commits promoting obscenity if he or she knowingly:

- (1) Promotes, or possesses with intent to promote, any obscene material; or
- (2) As owner, producer, director, manager or performer, promotes any obscene performance or any portion of such a performance which contributes to the obscenity of the performance as a whole.

(Prior code 16-108)

Sec. 10-93. Promoting obscenity to a minor.

It shall be unlawful for any person to promote obscenity to a minor as provided in this Section. For purposes of this Section, a person commits promoting obscenity to a minor if he or she knowingly:

- (1) Promotes to a minor any material which, taken as a whole, is harmful to minors;
- (2) As owner, producer, director, manager or performer, promotes to a minor a performance which, taken as a whole, is harmful to minors, or admits a minor to premises where such a performance is exhibited or takes place; or
- (3) Permits a minor to participate in a performance which, taken as a whole, is harmful to minors.

(Prior code 16-109)

Sec. 10-94. Evidence of violation of Sections 10-92 and 10-93.

In prosecutions under Sections 10-92 and 10-93, evidence of the circumstances of the production, presentation, sale, dissemination, distribution, advertising or publicity connected with the material or performance which tend to show that the material or performance is being promoted for the sake of its prurient appeal shall be admitted in evidence as bearing upon the nature of the material or performance.

(Prior code 16-110)

Sec. 10-95. Prostitution prohibited.

It shall be unlawful for any person to commit the offense of prostitution as provided in this Section. For purposes of this Section, any person who performs, offers or agrees to perform any act of sexual intercourse or any act of deviate sexual intercourse with any person not his or her spouse in exchange for money or other thing of value commits prostitution.

(Prior code 16-111)

Sec. 10-96. Soliciting for prostitution.

It shall be unlawful for any person to commit the offense of soliciting for prostitution as provided in this Section. For purposes of this Section, a person commits soliciting for prostitution if he or she:

- (1) Solicits another for the purpose of prostitution;
- (2) Arranges or offers to arrange a meeting of persons for the purpose of prostitution; or
- (3) Directs another to a place knowing such direction is for the purpose of prostitution.

(Prior code 16-112)

Sec. 10-97. Pandering.

It shall be unlawful for any person to commit the offense of pandering as provided in this Section. For purposes of this Section, any person who knowingly arranges or offers to arrange for money or other thing of value a situation in which a female may practice prostitution commits pandering.

(Prior code 16-113)

Sec. 10-98. Keeping a place of prostitution.

It shall be unlawful for any person to commit the offense of keeping a place of prostitution as provided in this Section. For purposes of this Section, any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who performs any one (1) or more of the following, commits keeping a place of prostitution if he or she:

- (1) Knowingly grants or permits the use of such place for the purpose of prostitution; or
- (2) Permits the continued use of such place for the purpose of prostitution after becoming aware of acts or circumstances from which he or she should reasonably know the place is being used for purposes of prostitution.

(Prior code 16-114)

Sec. 10-99. Patronizing a prostitute.

It shall be unlawful for any person to commit the offense of patronizing a prostitute, as provided in this Section. For purposes of this Section, any person who performs any of the following with a person not his or her spouse commits patronizing a prostitute:

- (1) Engages in an act of sexual intercourse or of deviate sexual conduct with a prostitute; or
- (2) Enters or remains in a place of prostitution with intent to engage in an act of sexual intercourse or deviate sexual conduct.

(Prior code 16-115)

Sec. 10-100. Aiding prostitution prohibited.

Any person who by word, gesture or action endeavors to further the practice of prostitution in any public place or within public view commits aiding prostitution.

(Prior code 16-116)

Sec. 10-101. Promoting sexual immorality.

- (a) It shall be unlawful for any person to promote sexual immorality as provided in this Section. For purposes of this Section, any person who, for pecuniary gain, furnishes or makes available to another person any facility, knowing that the same is to be used for or in aid of sexual intercourse between persons who are not husband and wife, or for or in aid of deviate sexual intercourse, or who shall advertise in any manner that he or she furnishes or is willing to furnish or make available any such facility for such purposes, commits promoting sexual immorality.
- (b) *Facility*, as used in this Section, means any place or thing which provides seclusion, privacy, opportunity, protection, comfort or assistance to or for a person or persons engaging or intending to engage in sexual intercourse or deviate sexual intercourse.

(Prior code 16-117)

Sec. 10-102. Public indecency.

It shall be unlawful for any person to commit the offense of public indecency as provided in this Section. For purposes of this Section, any person who performs any of the following in a public place or

where the conduct may reasonably be expected to be viewed by members of the public commits public indecency:

- (1) An act of sexual intercourse;
- (2) An act of deviate sexual intercourse;
- (3) A lewd exposure of the body done with intent to arouse or to satisfy the sexual desire of any person; or
- (4) A lewd fondling or caress of the body of another person.

(Prior code 16-118)

Secs. 10-103—10-120. Reserved.

ARTICLE VI Alcoholic Beverages

[Sec. 10-121. Definitions.](#)

[Sec. 10-122. Possession in public places prohibited.](#)

[Sec. 10-123. Sales near schools.](#)

[Sec. 10-124. Restrictions concerning sales to and dispensing by minors.](#)

[Sec. 10-125. Sale to minors.](#)

[Sec. 10-126. Illegal possession or consumption of alcoholic beverages by an underage person.](#)

[Secs. 10-127—10-140. Reserved.](#)

Sec. 10-121. Definitions.

For purposes of this Code, the following words shall have the meanings ascribed hereafter:

Alcoholic beverages or alcoholic liquors means malt, vinous or spirituous liquors.

Fermented malt beverage means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (0.5%) and not more than three and two-tenths percent (3.2%) alcohol by weight.

Malt liquors includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight.

Spirituous liquors means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) alcohol and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any other liquor except malt liquors and vinous liquors shall be construed to be spirituous liquor.

Vinous liquors means wine and fortified wines which contain not less than one-half of one percent (0.5%) and not more than twenty-one percent (21%) of alcohol by volume and shall be construed to mean alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

(Ord. 463, § 1, 1991)

Sec. 10-122. Possession in public places prohibited.

- (a) It shall be unlawful for any person to serve, consume or have any open container of alcoholic, malt, vinous or spirituous liquor or fermented malt beverage when on, in or using by conveyance or otherwise, any public street, parking lot, alley, park, public place, avenue or sidewalk, within the Town limits.
- (b) Subsection (a) above is subject to and modified to the extent it is in conflict with Section 11-86 authorizing the consumption of 3.2 beer in Hays Park.
- (c) This Section shall not apply to the serving or consumption of alcoholic beverages in the Johnstown Community Center when the service or consumption of alcoholic beverages is in conjunction with an event sponsored by nonprofit organizations or authorized social gatherings (such as banquets, luncheons, wedding receptions, class reunions) held in the area specified, provided that no fee is charged for the alcoholic beverages.

(Ord. 458, 1990; Ord. 472, 1992)

Sec. 10-123. Sales near schools.

It shall be unlawful for any person to sell, offer or expose for sale or gift, beer or any vinous, spirituous or malt liquors within a distance of five hundred (500) feet from any private, public or parochial school, said distance to be computed by direct measurement from the nearest property lines. However, this prohibition shall not affect the rights of any person holding a lawful permit or license to conduct such business within the restricted area hereby established; nor shall this prohibition prevent the renewal upon the expiration thereof of any license in effect at such time authorizing such business within the restricted area hereby established.

(Prior code 3-3)

Sec. 10-124. Restrictions concerning sales to and dispensing by minors.

It shall be unlawful for any person to sell malt, vinous or spirituous liquors as defined by state law to any person under the age of twenty-one (21) years or to permit any malt or vinous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or spirituous liquors to be sold or dispensed by a person under twenty-one (21) years of age, or to permit any such person to participate in the sale or dispensing thereof.

(Prior code 3-4)

Sec. 10-125. Sale to minors.

- (a) It is unlawful to sell fermented malt beverages with an alcoholic content of three point two percent (3.2%) or less to any person under the age of twenty-one (21) years, or to any person between the hours of midnight and 5:00 a.m., or for any person under twenty-one (21) years to purchase or possess the same. It is unlawful to permit any fermented malt beverages with an alcoholic content of three point two percent (3.2%) or less to be sold or dispensed by a person under the age of twenty-one (21) years or to permit any such person to participate in the sale or dispensing thereof.

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- (b) It is unlawful for any person under the age of twenty-one (21) years to represent himself or herself to be of the age of twenty-one (21) years or more for the purpose of purchasing within the Town any fermented malt beverage with an alcoholic content of three point two percent (3.2%) or less.
- (c) It is unlawful for any person over the age of twenty-one (21) years to purchase or attempt to purchase three point two percent (3.2%) beer for a person under the age of twenty-one (21) years.
- (d) It is unlawful to fail to display at all times in a prominent place on premises licensed for retail sale a printed card with a minimum height of fourteen (14) inches and a width of eleven (11) inches, with each letter to be a minimum of one-half (½) inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL TO SELL 3.2 BEER TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE, AND IT IS ILLEGAL FOR ANY PERSON UNDER TWENTY-ONE YEARS OF AGE TO POSSESS OR TO ATTEMPT TO PURCHASE THE SAME.

IDENTIFICATION CARDS WHICH APPEAR TO BE FRAUDULENT WHEN PRESENTED BY PURCHASERS MAY BE CONFISCATED BY THE ESTABLISHMENT AND TURNED OVER TO A LAW ENFORCEMENT AGENCY.

IT IS ILLEGAL IF YOU ARE TWENTY-ONE YEARS OF AGE OR OVER FOR YOU TO PURCHASE 3.2 BEER FOR A PERSON UNDER TWENTY-ONE YEARS OF AGE.

FINES AND IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS.

(Ord. 463, § 1, 1991)

Sec. 10-126. Illegal possession or consumption of alcoholic beverages by an underage person.

- (a) As used in this Section, unless the context otherwise requires:

Establishment means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group or residence, and any real property, including buildings and improvements connected therewith, and shall also include any members, employees and occupants associated therewith.

Private property means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public, and privately owned real property which is not open to the public. Private property shall not include:

- a. Any establishment which has or is required to have a license pursuant to Article 46, 47 or 48 of Title 12, C.R.S.;
 - b. Any establishment which sells alcoholic beverages or upon which alcoholic beverages are sold; or
 - c. Any establishment which leases, rents or provides accommodations to members of the public generally.
- (b) Any person under twenty-one (21) years of age who possesses or consumes alcoholic beverages anywhere in the Town commits illegal possession or consumption of alcoholic beverages by an underage person. Illegal possession or consumption of alcoholic beverages by an underage person is a strict liability offense.
 - (c) It shall be an affirmative defense to the offense described in Subsection (b) above that the alcoholic beverages were possessed or consumed by a person under twenty-one (21) years of age under the following circumstances:

- (1) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the alcoholic beverages were possessed or consumed with the consent of his or her parent or legal guardian who was present during such possession or consumption; or
 - (2) When the existence of alcoholic beverages in a person's body was due solely to the ingestion of a confectionery which contained alcoholic beverages within the limits prescribed in Section 25-5-410(1)(i)(II), C.R.S., or the ingestion of any substance which was manufactured, designed or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed or intended solely for medicinal or hygienic purposes or solely from the ingestion of a beverage which contained less than one-half of one percent (0.5%) of alcoholic beverages by weight.
- (d) The possession or consumption of alcoholic beverages shall not constitute a violation of this Section if such possession or consumption takes place for religious purposes protected by the First Amendment to the United States Constitution.
- (e) Prima facie evidence of this violation of Subsection (b) above shall consist of:
- (1) Evidence that the defendant was under the age of twenty-one (21) years and possessed or consumed alcoholic beverages anywhere in the Town; or
 - (2) Evidence that the defendant was under the age of twenty-one (21) years and manifested any of the characteristics commonly associated with alcoholic beverages intoxication or impairment while present anywhere in the Town.
- (f) During any trial for a violation of Subsection (b) above, any bottle, can or any other container with labeling indicating the contents of such bottle, can or container shall be admissible into evidence, and the information contained on any label on such bottle, can or other container shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages. A label which identifies the contents of any bottle, can or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol" or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container were composed in whole or in part of alcoholic beverages.

(Ord. 478, 1992)

Secs. 10-127—10-140. Reserved.

ARTICLE VII Gambling

[Sec. 10-141. Definitions.](#)

[Sec. 10-142. Gambling and professional gambling.](#)

[Sec. 10-143. Seizure and destruction of gambling devices, records and proceeds.](#)

[Sec. 10-144. Possession of gambling device or record.](#)

[Sec. 10-145. Transmitting or receiving gambling information, installing or maintaining equipment for transmission or receipt of gambling information prohibited.](#)

[Sec. 10-146. Maintaining, aiding or permitting gambling premises prohibited; gambling premises declared nuisance.](#)

[Secs. 10-147—10-160. Reserved.](#)

Sec. 10-141. Definitions.

The following definitions shall have the meanings ascribed to them herein:

Gain means the direct realization of winnings; profit means any other realized or unrealized benefit, direct or indirect, including without limitation benefits from proprietorship, management or unequal advantage in a series of transactions.

Gambling means risking any money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control, but does not include:

- a. Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries;
- b. Bona fide business transactions which are valid under the law of contracts;
- c. Other acts or transactions now or hereafter expressly authorized by law;
- d. Any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only and in which no person is participating, directly or indirectly, in professional gambling.

Gambling device means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.

Gambling information means a communication with respect to any wager made in the course of, and any information intended to be used for, professional gambling. In the application of this definition, the following shall be presumed to be intended for use in professional gambling: information as to wagers, betting odds or changes in betting odds. Legitimate news reporting of an event for public dissemination is not gambling information within the meaning of this Article.

Gambling premises means any building, room, enclosure, vehicle, vessel or other place, whether open or enclosed, used or intended to be used for professional gambling. In the application of this definition, any place where a gambling device is found shall be presumed to be intended to be used for professional gambling.

Gambling proceeds means all money or other things of value at stake or displayed in or in connection with professional gambling.

Gambling record means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling.

Professional gambling means:

- a. Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or
- b. Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one (1) or more of the other participants.

(Prior code 16-30)

Sec. 10-142. Gambling and professional gambling.

- (a) It shall be unlawful for any person to engage in gambling as defined in this Article.
- (b) It shall be unlawful for any person to engage in professional gambling as defined in this Article.

(Prior code 16-31)

Sec. 10-143. Seizure and destruction of gambling devices, records and proceeds.

All gambling devices, gambling records and gambling proceeds are subject to seizure by any member of the Police Department and may be confiscated and destroyed by order of a court acquiring jurisdiction. Gambling proceeds shall be forfeited to the State and shall be transmitted by court order to the general fund of the State.

(Prior code 16-32)

Sec. 10-144. Possession of gambling device or record.

It shall be unlawful for any person to possess a gambling device or record. A person who owns, manufactures, sells, transports, possesses or engages in any transaction designed to affect the ownership, custody or use of a gambling device or gambling record, knowing that it is to be used in professional gambling, commits possession of a gambling device or record.

(Prior code 16-33)

Sec. 10-145. Transmitting or receiving gambling information, installing or maintaining equipment for transmission or receipt of gambling information prohibited.

- (a) It shall be unlawful for any person to knowingly transmit or receive gambling information by telephone, telegraph, radio, semaphore or other means, or knowingly install or maintain equipment for the transmission or receipt of gambling information.
- (b) Facilities and equipment furnished by a public utility in the regular course of business, and which remain the property of such utility while so furnished, shall not be seized except in connection with an alleged violation of this Section by such public utility, and shall be forfeited only upon conviction of such public utility therefor.

(Prior code 16-34)

Sec. 10-146. Maintaining, aiding or permitting gambling premises prohibited; gambling premises declared nuisance.

It shall be unlawful for any person, as owner, lessee, agent, employee, operator or occupant to knowingly maintain or aid or permit the maintaining of a gambling premise. All gambling premises are common nuisances which shall be subject to abatement as provided by law.

(Prior code 16-35)

Secs. 10-147—10-160. Reserved.

ARTICLE VIII Noise

[Sec. 10-161. Unnecessary noises generally prohibited and declared nuisance.](#)

[Sec. 10-162. Noise, unreasonable.](#)

[Sec. 10-163. Limitations on loudspeakers.](#)

[Sec. 10-164. Mufflers.](#)

[Sec. 10-165. Sirens, whistles, gongs and red lights.](#)

[Sec. 10-166. Noisy animals.](#)

[Sec. 10-167. Use of jake brakes prohibited.](#)

[Secs. 10-168—10-180. Reserved.](#)

Sec. 10-161. Unnecessary noises generally prohibited and declared nuisance.

The making of unnecessary noises upon, near or adjacent to the streets, highways and other public places in the Town is hereby declared to be a public nuisance. The enumeration of the particular offenses particularly defined in this Article shall not be construed as limiting the generality of this Section, or limiting the offenses hereunder to the particular offenses herein enumerated. It shall be unlawful for any person to make, continue or cause to be made or continued any unnecessary or unusual noise, whether in the operation of any machine or the exercise of any trade or calling or otherwise any noise which either annoys, injures or endangers the comfort, repose, health or safety of others, unless the making and continuing of the same is necessary for the protection or preservation of property or health, safety, life or limb of some person.

(Prior code 16-60)

Sec. 10-162. Noise, unreasonable.

No person shall make, continue or cause to be made or continued any unreasonable noise; and no person shall knowingly permit such noise upon any premises owned or possessed by such person or under such person's control. For purposes of this section, members of the Police Department are empowered to make a prima facie determination as to whether a noise is unreasonable.

(Ord. 463, § 1, 1991)

Sec. 10-163. Limitations on loudspeakers.

It shall be unlawful to play, operate or use any device known as a sound track, loudspeaker or sound amplifier, radio or phonograph with loudspeaker or sound amplifier or any instrument of any kind or character which emits loud and raucous noises and is attached to and upon any vehicle upon public places unless such person in charge of such vehicle shall have first applied to and received permission from the Mayor or Chief of Police to operate any such vehicle so equipped.

(Prior code 16-61)

Sec. 10-164. Mufflers.

It shall be unlawful for any person to operate a motor vehicle which shall not at all times be equipped with a muffler upon the exhaust thereof in good working order and in constant operation to prevent excessive or unusual noise, and it shall be unlawful for any person operating any motor vehicle to use a cutout, bypass or similar muffler elimination appliance.

(Prior code 16-62)

Sec. 10-165. Sirens, whistles, gongs and red lights.

It shall be unlawful for any person to carry or use upon any vehicle other than Police or Fire Department vehicles or emergency vehicles for public use, any gong, siren, whistle or red light similar to that used on ambulances or vehicles of the Police and Fire Departments.

(Prior code 16-63)

Sec. 10-166. Noisy animals.

It shall be unlawful for any person to own, keep, have in his or her possession or harbor any domesticated animal which, by frequent or habitual howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons in the neighborhood; provided that the provisions of this Section shall not apply to hospitals conducted for the treatment of small animals which are approved by the Town or to premises occupied or used by the Town pound.

(Prior code 16-64)

Sec. 10-167. Use of jake brakes prohibited.

It shall be unlawful for any person to use within the Town limits a device which is commonly called a jake brake, such device having been determined by the Board of Trustees to cause an unreasonable and unnecessary noise, and it is hereby declared to be a public nuisance. A jake brake is that device which is normally used on a truck or other vehicle for slowing or stopping such vehicle by reducing the engine compression and is sometimes referred to as an engine brake.

(Ord. 565 §1, 1997)

Secs. 10-168—10-180. Reserved.

ARTICLE IX Fireworks

[Sec. 10-181. Applicability of Article.](#)

[Sec. 10-182. Definitions.](#)

[Secs. 10-183—10-190. Reserved.](#)

Sec. 10-181. Applicability of Article.

The provision of this Article apply to the possession, sale or use by any person, partnership, association or corporation of any fireworks or pyrotechnic displays as those terms are defined in Section 10-182 within the Town limits; provided, however, that none of the provisions of this Article shall be construed to apply to or to prohibit any of the following:

- (1) The possession of fireworks for the sole purpose of immediate shipment or removal of the same by the person, partnership, association or corporation possessing the same to a location outside the Town;

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- (2) The sale, possession, storage or use of flashlight composition by photographers or dealers in photographic supplies;
- (3) The sale to, use by or possession of any person, association, partnership or corporation duly licensed by the Town in accordance with this Article to put on a supervised public display within the Town;
- (4) The sale to, use by or possession of any person, partnership, association or corporation employed by the school system for use solely in organized athletic events;
- (5) The manufacture, sale, use or possession of educational rockets and toy propellant device type engines used in such rockets, when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two (2) ounces of propellant when such engine or model cartridge is designed to be ignited by electrical means.
- (6) Possession and use pursuant to Articles II and III, Chapter 6 of this Code.

(Prior code 12.5-1; Ord. 463, § 1, 1991)

Sec. 10-182. Definitions.

For the purposes of this Article, the following words, terms and phrases carry the following definition or include the following:

Fireworks includes:

- a. Any article, device or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration or detonation, including, without limitation, the following articles and devices commonly known and used as fireworks: blank cartridges, toy pistols, toy cannons, toy canes, toy guns, in which explosives are used; fire balloons (balloons of the type which have a burning material of any kind attached thereto or which require fire underneath to propel them); firecrackers, torpedoes, skyrocketes, rockets, Roman candles, Day-Glow bombs, torches or other fireworks of like construction and any fireworks containing any explosive or flammable compound, any tablets or other device containing any explosive substance.
- b. The term *fireworks* does not include toy pistols, toy cannons or toy guns in which paper caps containing not more than twenty-five one-hundredths (.25) of a grain of explosive compound per cap are used whether such caps are of single roll or tape type; nor shall the term *fireworks* be construed to include sparklers, trick matches, cigarette loads, trick noise makers, toy smoke devices, novelty auto alarms, highway flares, railway fuses, ship distress signals, smoke candles or other emergency signal devices.

Pyrotechnic display refers to a public display of fireworks by persons, organizations or governmental entities permitted to make such displays under applicable state law and under the terms of this Article.

(Prior code 12.5-2)

Secs. 10-183—10-190. Reserved.

ARTICLE X Weapons

[Sec. 10-191. Definitions.](#)

[Sec. 10-192. Article not to affect duties of peace officer.](#)

[Sec. 10-193. Possessing an illegal weapon.](#)

[Sec. 10-194. Possession of a defaced firearm.](#)

[Sec. 10-195. Defacing a firearm.](#)

[Sec. 10-196. Unlawfully carrying a concealed weapon.](#)

[Sec. 10-197. Prohibited use of weapons.](#)

[Sec. 10-198. Possessing, carrying or using dangerous or deadly weapons.](#)

[Secs. 10-199—10-210. Reserved.](#)

Sec. 10-191. Definitions.

The following definitions apply to this Article:

Blackjack includes any billy, sandclub, sand bag or other hand-operated striking weapon consisting, at the striking end, of an encased piece of lead or other heavy substance, and at the handle end, a strap or springy shaft which increases the force of impact.

Bomb means any explosive or incendiary device or Molotov cocktail as defined in Section 9-7-103, C.R.S., which is not specifically designed for lawful and legitimate use in the hands of its possessor.

Firearm silencer means any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol or other firearm to be silent or intended to lessen or muffle the noise of the firing of any such weapon.

Gas gun means a device designed for projecting gas-filled projectiles which release their contents after having been projected from the device, and includes projectiles designed for use in such a device.

Gravity knife means any knife that has a blade released from the handle or sheath thereof by the force of gravity or the application of centrifugal force, that when released is locked in place by means of a button, spring, lever or other device.

Knife means any dagger, dirk, knife or stiletto with a blade over three and one-half (3½) inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing or tearing wounds, but does not include a hunting or fishing knife carried for sports use. The issue that a knife is a hunting or fishing knife must be raised as an affirmative defense.

Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one (1) shot, without manual reloading, by a single function of the trigger.

Short rifle means a rifle having a barrel less than sixteen (16) inches long, or an overall length of less than twenty-six (26) inches.

Short shotgun means a shotgun having a barrel or barrels less than eighteen (18) inches long or an overall length of less than twenty-six (26) inches.

Switchblade knife means any knife, the blade of which opens automatically by hand pressure applied to a button, spring or other device in its handle.

(Prior code 16-129)

Sec. 10-192. Article not to affect duties of peace officer.

The provisions of this Article shall not be held to prohibit any act by a peace officer in the lawful discharge of his or her duties.

(Prior code 16-130)

Sec. 10-193. Possessing an illegal weapon.

- (a) As used in this Section, the term *illegal weapon* means a blackjack, bomb, firearm silencer, gas gun, machine gun, short shotgun, short rifle, metallic knuckles, gravity knife or switchblade knife.
- (b) It shall be unlawful for any person other than a peace officer or member of the Armed Forces of the United States or State National Guard to knowingly possess an illegal weapon.

(Prior code 16-131)

Sec. 10-194. Possession of a defaced firearm.

It shall be unlawful for any person to knowingly and unlawfully possess a firearm, the manufacturer's serial number of which, or other distinguishing number or identification mark, has been removed.

(Prior code 16-132)

Sec. 10-195. Defacing a firearm.

It shall be unlawful for any person to intentionally remove, deface, cover, alter or destroy the manufacturer's serial number or any other distinguishing numbers or identification mark of a firearm.

(Prior code 16-133)

Sec. 10-196. Unlawfully carrying a concealed weapon.

- (a) It shall be unlawful for any person to knowingly and unlawfully:
 - (1) Carry a knife concealed on or about his or her person; or
 - (2) Carry a firearm concealed on or about his or her person.
- (b) It shall be an affirmative defense that the defendant was:
 - (1) A person in his or her own dwelling, place of business or on property owned or under his or her control at the time of the act of carrying;
 - (2) A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of his, her or another's person or property, while traveling; or
 - (3) A person who, prior to the time of carrying a concealed weapon, has been issued a written permit to carry the weapon by the Chief of Police, the Mayor or the County Sheriff; and such written permit shall be effective in all areas of the State.

(Prior code 16-134)

Sec. 10-197. Prohibited use of weapons.

It shall be unlawful for any person to:

- (1) Intentionally and unlawfully aim a firearm at another person;
- (2) Recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow;
- (3) Set a loaded gun, trap or device designed to cause an explosion upon being tripped or approached, and leave it unattended by a competent person immediately present;
- (4) Have in his or her possession a firearm while he or she is under the influence of intoxicating liquor or of a narcotic drug or dangerous drug. Possession of a permit issued under Section 18-12-105, C.R.S., is no defense to a violation of this Subsection;
- (5) Not being a peace officer, discharge a firearm in the Town, other than a shooting gallery or rifle range; or
- (6) Not being a peace officer, display a deadly weapon in the Town in a manner calculated to alarm.

(Prior code 16-17, 16-135)

Sec. 10-198. Possessing, carrying or using dangerous or deadly weapons.

Except within his or her own domicile, it shall be unlawful for any person to have in his or her possession, or to carry or use, a revolver or pistol of any description, shotgun or rifle which may be used for the explosion of cartridges, any air gun, gas-operated gun or spring gun or any instrument, toy, weapon or bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever, whether such instrument is called by any name set forth above or by any other name; provided that nothing contained in this Section shall prevent the use of any such instruments in shooting galleries or in any private grounds or residence under circumstances when such instrument can be fired, discharged or operated in such a manner as not to endanger persons or property and also in such manner as to prevent the projectile from traversing any grounds or space outside the limits of such gallery, grounds or residence; and further provided that nothing herein contained shall be construed to prevent the carrying of any type of gun whatsoever, when unloaded and properly cased, to or from any range or gallery.

(Ord. 465, 1991)

Secs. 10-199—10-210. Reserved.

ARTICLE XI Offenses Relating to Minors

[Sec. 10-211. Loitering near schools and other interference with schools prohibited.](#)

[Sec. 10-212. Curfew.](#)

[Sec. 10-213. Intoxication of minor.](#)

[Sec. 10-214. Truancy.](#)

[Secs. 10-215—10-230. Reserved.](#)

Sec. 10-211. Loitering near schools and other interference with schools prohibited.

- (a) It shall be unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public, private or parochial school, its grounds or buildings or grounds or buildings adjacent thereto, either on foot or in or on any vehicle without having some lawful business therein or thereabout or in connection with such school or the employees thereof.
- (b) No person shall annoy, disturb or otherwise prevent the orderly conduct of class or activities of any such school, or annoy, assault, disturb or molest any student or employee of any school while in any such school building or any school grounds or grounds adjacent to any school, or conduct himself or herself in a lewd, wanton or lascivious manner in speech or behavior in or about any school building or school grounds or grounds adjacent to any school.
- (c) No person shall park or move a vehicle in the vicinity or on the grounds of any school for the purpose of annoying or molesting the students or employees thereof or in any effort to induce, entice or invite students into such vehicles for immoral purposes.

(Ord. 466 § 1, 1991)

Sec. 10-212. Curfew.

- (a) It shall be unlawful for the parent, guardian or person having the care, custody or control of a child under the age of eighteen (18) years to cause or permit such child to be in any public street, alley or public place between the hours of 10:00 p.m. of one (1) day and 5:00 a.m. on the following day at any time unless accompanied by his or her parent, guardian, adult member of his or her family, or adult person in whose charge such minor child was placed.
- (b) If said minor child is employed or has attended a school, church or other function duly organized and supervised by adults or persons over the age of twenty-one (21) years, which activity or employment terminates after 9:30 p.m. or commences before 5:30 a.m., then time requires specified in Subsection (a) above shall be expanded to the extent of one-half (½) hour after the termination of such activity or employment or one-half (½) hour before the commencement of said activity or employment if such minor is en route between his or her home and said activity or employment.

(Ord. 466 § 1, 1991)

Sec. 10-213. Intoxication of minor.

It shall be unlawful for any parent, guardian or person having the care, custody or control of any child under the age of eighteen (18) years to cause or permit such child to become intoxicated by any alcoholic or fermented malt beverage, or by means of any narcotic or dangerous drug.

(Ord. 466 § 1, 1991)

Sec. 10-214. Truancy.

- (a) It is unlawful for any parent, guardian or person having the care, custody or control of any child, ward or other person who has attained the age of seven (7) years and is under the age of seventeen (17) to direct or permit such child or other person to be absent from school. This provision shall not apply under the following circumstances:
 - (1) Is home due to injury or illness as directed by a parent or guardian.
 - (2) Has a current age and school certificate or work permit issued pursuant to the Colorado Youth Employment Act of 1971, Article 12 of Title 18, C.R.S.

- (3) Has been directed by school officials not to go to school or permission to be absent was granted by school officials.
 - (4) Has graduated from twelfth grade.
 - (5) Is being instructed at home by a duly licensed teacher or under a nonpublic-approved home-based educational program
- (b) Except as otherwise provided in Subsection (a) above, it is unlawful for any person who has attained the age of ten (10) years and is under the age of seventeen (17) years to be truant from school.

(Ord. 2011-119 §1)

Secs. 10-215—10-230. Reserved.

ARTICLE XII Possession and Use of Tobacco Products by Minors Prohibited

[Sec. 10-231. Intent.](#)

[Sec. 10-232. Definitions.](#)

[Sec. 10-233. Unlawful possession or use of tobacco products by minors.](#)

[Sec. 10-234. Unlawful furnishing of tobacco products to minors.](#)

[Sec. 10-235. Retail sale of tobacco products.](#)

[Sec. 10-236. Vending machines.](#)

[Secs. 10-237—10-250. Reserved.](#)

Sec. 10-231. Intent.

It is the intent of this Article to protect the public health, safety and welfare by prohibiting the possession and use of tobacco products by minors and by prohibiting the dissemination and furnishing of tobacco products to minors.

(Ord. 566 §1, 1997)

Sec. 10-232. Definitions.

As used in this Article, the following words or phrases are defined as follows:

Minor means any person younger than eighteen (18) years of age.

Retailer means any person who sells cigarettes or smokeless tobacco to individuals for personal consumption or who operates a facility where vending machines or self service displays are permitted under this Article.

Smoking means the holding or carrying of a lighted pipe, lighted cigar or lighted cigarette of any kind and includes the lighting of a pipe, cigar or cigarette of any kind.

Tobacco product means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

(Ord. 566 §1, 1997)

Sec. 10-233. Unlawful possession or use of tobacco products by minors.

- (a) It shall be unlawful for any minor to knowingly possess, consume or use, either by smoking, ingesting, absorbing or chewing, any tobacco product.
- (b) It shall be unlawful for any minor to knowingly obtain or attempt to obtain any tobacco product by misrepresentation of age or by any other method.
- (c) It shall be rebuttably presumed that the substance within a package or container is a tobacco product if the package or container has affixed to it a label which identifies the package or container as containing a tobacco product.
- (d) The Municipal Court may, in its discretion and as part of the sentence to be imposed, require a person convicted of violating any portion of this Section to complete Court-approved public service in an amount to be set by the Court. Additionally, upon the first conviction of any person, the Court shall emphasize education as a component of any sentence.

(Ord. 566 §1, 1997)

Sec. 10-234. Unlawful furnishing of tobacco products to minors.

- (a) It shall be unlawful for any person to knowingly furnish to any minor, by gift, sale or any other means, any tobacco product.
- (b) Each retailer shall verify by means of photographic identification containing the bearer's date of birth that a person purchasing a tobacco product is eighteen (18) years of age or older. No such verification is required for any person over the age of twenty-six (26). It shall be an affirmative defense to a prosecution under this Section that the person furnishing the tobacco product was presented with and reasonably relied upon photographic identification containing the bearer's date of birth which identified the minor receiving the tobacco product as being eighteen (18) years of age or older.

(Ord. 566 §1, 1997)

Sec. 10-235. Retail sale of tobacco products.

- (a) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to engage, employ or permit any minor to sell tobacco products from such retail business.
- (b) It shall be unlawful for any business proprietor, manager or other person in charge or control of a retail business of any kind to stock or display a tobacco product in any way which allows a customer to access such tobacco product without first securing the physical assistance of an adult business employee for each transaction. The provisions of this Subsection shall not apply to stores possessing a valid retail liquor store license, as defined by the Colorado Liquor Code, issued by the Town and to vending machines meeting the requirements of Section 10-236 of this Code.

(Ord. 566 §1, 1997)

Sec. 10-236. Vending machines.

- (a) It shall be unlawful for any person to sell or offer to sell any tobacco product by use of a vending machine or other coin-operated machine, except that tobacco products may be sold at retail through

vending machines only in places to which minors are not permitted access and such vending machine is under the direct supervision of the owner of the establishment or an adult employee of the owner.

- (b) It shall be unlawful for any person to possess or allow upon premises controlled by such person an operable vending machine containing any tobacco product unless such vending machine is located in a place where minors are not permitted access and such vending machine is under direct supervision of the owner of the establishment or an adult employee of the owner.
- (c) As used in this Section, *under direct supervision* means the vending machine shall be in plain vision of the adult employee or owner during regular business hours.

(Ord. 566 §1, 1997)

Secs. 10-237—10-250. Reserved.

ARTICLE XIII Offenses Related to Marijuana

[Sec. 10-251. Definitions.](#)

[Sec. 10-252. Possession of marijuana and marijuana accessories.](#)

[Sec. 10-253. Sale and transfer of marijuana and marijuana accessories.](#)

[Sec. 10-254. Public consumption or use of marijuana.](#)

[Sec. 10-255. Prohibitions regarding minors on private property.](#)

[Sec. 10-256. Personal cultivation of marijuana.](#)

[Sec. 10-257. Violations.](#)

[Secs. 10-258—10-270. Reserved.](#)

Sec. 10-251. Definitions.

The following terms have the meanings set forth herein:

Colorado Medical Marijuana Code means Article 43.3 of Title 12, Colorado Revised Statutes.

Marijuana means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. *Marijuana* includes marijuana products as defined herein. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana accessories means any equipment, products or materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing or containing marijuana, or for ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

Medical marijuana card means a card properly and duly issued under the Colorado Medical Marijuana Code.

(Ord. 2013-128 §1)

Sec. 10-252. Possession of marijuana and marijuana accessories.

- (a) No person under twenty-one (21) years of age shall possess marijuana or marijuana accessories unless such person has been issued a medical marijuana card. If such person has been issued a medical marijuana card, such person shall not possess more than two (2) ounces of marijuana unless otherwise authorized to do so by the Colorado Medical Marijuana Code.
- (b) No person twenty-one (21) years of age or older shall possess more than one (1) ounce of marijuana unless such person has been issued a medical marijuana card. If such person has been issued a medical marijuana card, such person shall not possess more than two (2) ounces of marijuana unless otherwise authorized to do so by the Colorado Medical Marijuana Code.

(Ord. 2013-128 §1)

Sec. 10-253. Sale and transfer of marijuana and marijuana accessories.

- (a) No person shall sell, distribute, transfer, trade, exchange or give marijuana or marijuana accessories, with or without remuneration, to a person under the age of twenty-one (21).
- (b) No person shall sell, distribute, transfer, trade or exchange marijuana or marijuana accessories, with remuneration, to a person twenty-one (21) years of age or older.
- (c) No person shall give more than one (1) ounce of marijuana to a person twenty-one (21) years of age or older.

(Ord. 2013-128 §1)

Sec. 10-254. Public consumption or use of marijuana.

- (a) No person shall openly and publicly consume or use marijuana. In addition to other circumstances that may result in open and public consumption or use, a person shall be deemed to be openly and publicly consuming or using marijuana if such consumption or use is visible and identifiable at or from a public location.
- (b) No person shall consume or use marijuana in a manner that endangers others.
- (c) No person shall consume or use marijuana in a location or facility owned or operated by the Town, including but not limited to public parks, public buildings and public streets.
- (d) As the relevant terms are defined in Section 42-4-1305.5, C.R.S., no person while in the passenger area of a motor vehicle shall: (1) use or consume marijuana; or (2) have in his or her possession an open marijuana container. Nothing in this Section or in any section of this Code is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede state law regarding the same, whenever enacted.

(Ord. 2013-128 §1)

Sec. 10-255. Prohibitions regarding minors on private property.

No person who is in possession and control of private property shall knowingly allow any person under the age of twenty-one (21) to possess or consume marijuana on such private property, unless such minor person has been issued a medical marijuana card. For purposes of this Section, *possession and control of private property* shall include the owner, tenant or designated custodian, such as a house-sitter or babysitter, of such private property.

(Ord. 2013-128 §1)

Sec. 10-256. Personal cultivation of marijuana.

- (a) No person twenty-one (21) years of age or older shall possess more than six (6) marijuana plants, only three (3) or fewer of which are mature flowering plants. The marijuana produced by such plants, in excess of one (1) ounce, shall be maintained on the premises where grown and shall not be sold.
- (b) Cultivation of the marijuana plants shall be conducted in an enclosed space which shall be locked. Cultivation shall be conducted in compliance with all other relevant provisions of this Code.
- (c) No person shall openly or publicly cultivate marijuana. In addition to other circumstances that may result in open or public cultivation, a person shall be deemed to be openly or publicly cultivating marijuana if the marijuana plants are visible and identifiable at or from a public location or cause a public nuisance.

(Ord. 2013-128 §1)

Sec. 10-257. Violations.

A person who violates the provisions of this Article shall be subject to the penalties set forth in Section 1-62 of this Code.

(Ord. 2013-128 §1)

Secs. 10-258—10-270. Reserved.

ARTICLE XIV Prohibited Residency of Sex Offenders

[Sec. 10-271. Findings and intent.](#)

[Sec. 10-272. Definitions.](#)

[Sec. 10-273. Prohibition.](#)

[Sec. 10-274. Exceptions.](#)

[Sec. 10-275. Measurement.](#)

[Sec. 10-276. Penalties.](#)

[Secs. 10-276—10-280. Reserved.](#)

Sec. 10-271. Findings and intent.

- (a) The Town Council finds that sexual predators and specified sex offenders who prey on children pose an extreme threat to public safety. Sexual predators and specified sex offenders endanger society by exposing a particularly vulnerable population, children, to extreme harm. Removing such persons from the regular proximity of places where children are located and limiting the frequency of contact between sexual predators and specified sex offenders and children will reduce the opportunity and risk for offenses against children to be committed.
- (b) This Article is intended to serve the Town's compelling interests to promote, protect and improve the health, safety and welfare of the public by creating areas, around locations where children regularly gather in concentrated numbers, where sexual predators and specified sex offenders are prohibited from establishing either temporary or permanent residence while still recognizing the need for safe and adequate housing for those individuals who are released to the community by state authorities.

(Ord. No. 2019-157, § 1, 1-20-2019)

Sec. 10-272. Definitions.

For the purpose of this Article, the following terms shall have the following meanings:

Licensed day care center means a child care center or a family child care home licensed by the State of Colorado.

Park means any public park, including playgrounds.

Permanent residence means a place where a person abides, lodges or resides for five (5) or more consecutive days.

Recreation center means a publicly owned recreation or sports center.

School means any public, private, parochial, charter or other school attended by students under the age of eighteen (18), except for home schools.

Sexual predator means any person age eighteen (18) or older who has been found to be a sexually violent predator pursuant to the applicable provisions of Title 18, C.R.S., as amended from time to time, related to a conviction where at least one (1) victim was a minor under the age of eighteen (18).

School bus stop means any public or private school bus stop designated or approved by a school district.

Specified sex offender means any person required to register under the Colorado Sex Offender Registration Act, Article 22, Title 16, C.R.S., as amended from time to time, and:

- a. Who has been convicted of a felony for an offense requiring registration where the victim was under the age of eighteen (18); or
- b. Who has multiple convictions for offenses requiring registration where at least one (1) victim was under the age of eighteen (18); or
- c. Whose offenses requiring registration involved multiple victims and at least one (1) victim was under the age of eighteen (18).

Swimming pool means a publicly owned water-filled structure used for the purpose of swimming or other water activities. *Swimming pool*, as used in this Article, shall not include any water-filled structures that are not publicly owned.

Temporary residence means a place where a person abides, lodges or resides for a period of five (5) or more days in an aggregate calendar year and which is not the person's permanent residence, or a place where a person routinely abides, lodges or resides for a period of five (5) or more consecutive or nonconsecutive days in any month and which is not the person's permanent address.

(Ord. No. 2019-157, § 1, 1-20-2019)

Sec. 10-273. Prohibition.

- (a) It shall be unlawful for a sexual predator or a specified sex offender to establish a permanent or temporary residence within three hundred (300) feet of any school, school bus stop, park, licensed day care center, recreation center or swimming pool in the Town.
- (b) It shall be unlawful to let or rent any portion of any property, room, place, structure, trailer or other vehicle to a sexual predator or specified sex offender with the knowledge that it will be used as a permanent or temporary residence in violation of this Article.

(Ord. No. 2019-157, § 1, 1-20-2019)

Sec. 10-274. Exceptions.

- (a) A sexual predator or specified sex offender is not guilty of a violation of Section 10-273 above if:
 - (1) The sexual predator or specified sex offender had established the permanent or temporary residence prior to the effective date of this Article; provided, however, that this exception shall not apply if the sexual predator or specified sex offender was convicted of offenses identified in Section 10-272 above, for which registration under the Colorado Sex Offender Registration Act is required, after the effective date of this Article;
 - (2) The sexual predator or specified sex offender is placed in the residence pursuant to a State-licensed foster care program; or
 - (3) The school, park, licensed day care center, recreation center or swimming pool was opened, or the school bus stop was designated, after the sexual predator or specified sex offender established such person's permanent or temporary residence.
- (b) A person who lets or rents any portion of any property, room, place, structure, trailer or other vehicle to a sexual predator or specified sex offender with the knowledge that it will be used as a permanent or temporary residence in violation of this Article is not guilty of a violation of Section 10-273 above if:
 - (1) The person let or rented the property, room, place, structure, trailer or other vehicle to the sexual predator or specified sex offender prior to the effective date of this Article;
 - (2) The person lets or rents the property, room, place, structure, trailer or other vehicle to a sexual predator or specified sex offender pursuant to a State-licensed foster care program; or
 - (3) The person let or rented the property, room, place, structure, trailer or other vehicle to the sexual predator or specified sex offender prior to the opening of a school, park, licensed day care center, recreation center or swimming pool, or prior to the designation of a school bus stop.

(Ord. No. 2019-157, § 1, 1-20-2019)

Sec. 10-275. Measurement.

For purposes of determining the minimum distance separation required herein, the measurement shall be made by following a straight line from the outer property line of the property on which the school, school bus stop, park, licensed day care center, recreation center or swimming pool is located to the nearest point on the outer property line of the property on which the permanent or temporary residence is located.

(Ord. No. 2019-157, § 1, 1-20-2019)

Sec. 10-276. Penalties.

A person who violates the provisions of this Article shall be subject to the penalties set forth in Section 1-62 of this Code.

(Ord. No. 2019-157, § 1, 1-20-2019)

Secs. 10-276—10-280. Reserved.

CHAPTER 11 Streets, Sidewalks and Public Property

ARTICLE I - General

ARTICLE II - Excavations

ARTICLE III - Sidewalks, Curbs and Gutters

ARTICLE IV - Street Numbering and Naming

ARTICLE V - Parks

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ARTICLE I General

[Sec. 11-1. Certain ordinances relating to streets not affected by Code.](#)

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[Sec. 11-3. Notice and removal of encroachments.](#)

[Sec. 11-4. Throwing broken glass, nails or dangerous substances on streets and sidewalks prohibited.](#)

[Sec. 11-5. Tree planting, maintenance and removal.](#)

[Sec. 11-6. Parade permits.](#)

[Secs. 11-7—11-20. Reserved.](#)

Sec. 11-1. Certain ordinances relating to streets not affected by Code.

- (a) Nothing in this Code or the ordinance adopting this Code shall be construed as repealing or otherwise affecting the validity of any ordinance:
- (1) Dedicating, accepting, naming, establishing, locating, relocating, opening, paving, widening or vacating any street or other public way in the Town;
 - (2) Relating to municipal street maintenance agreements with the State;
 - (3) Establishing or prescribing grades for streets in the Town;
- (b) All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length herein.

(Prior code 22-1)

Sec. 11-2. Encroachments prohibited.

No encroachment or obstruction whatever, other than provided by law, authorized by the Board of Trustees, by provision of this Code or by other ordinance, shall be made or placed upon any street, alley, sidewalk, curb, gutter, curbside or other public place within the Town.

(Prior code 22-2)

Sec. 11-3. Notice and removal of encroachments.

Whenever any encroachment or obstruction is made, located, permitted or maintained contrary to this Chapter, the Chief of Police shall give notice to the person who made, caused or permitted the same, or to the person who owns or controls the premises on which the same is located or connected, directing such person to remove such encroachment or obstruction within twenty-four (24) hours after receipt of the notice. In the event such notice shall not be obeyed, the Chief of Police may order the removal of the encroachment or obstruction; and the costs and expenses of such removal shall be assessed against the responsible person pursuant to the provisions of Chapter 7.

(Prior code 22-3)

Sec. 11-4. Throwing broken glass, nails or dangerous substances on streets and sidewalks prohibited.

It shall be unlawful for any person to throw, deposit or cause to be thrown or deposited on any street, alley, sidewalk or other public way, any broken glass, broken crockery, nails or any other dangerous substance.

(Prior code 22-4)

Sec. 11-5. Tree planting, maintenance and removal.

- (a) It shall be unlawful to plant or cause to be planted any species of tree in the right of way of any street, alley, sidewalk or other public place within the Town which by its habit or growth would obstruct, restrict or conflict with necessary and safe use of the public right-of-way.
- (b) It shall be unlawful as a normal practice for any person or firm to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this Section at the determination of the Board of Trustees.

(Ord. 460, § 16-153, 1991)

Sec. 11-6. Parade permits.

No procession or parade, excepting the forces of the United States armed services, the military forces of this State and the forces of the Police and Fire Departments, shall occupy, march or proceed along any street, sidewalk or other public property except in accordance with a permit issued by the Chief of Police and such other regulations as are set forth in this Code which may apply.

(Prior code 22-5)

Secs. 11-7—11-20. Reserved.

ARTICLE II Excavations

[Sec. 11-21. Supervision of work.](#)

[Sec. 11-22. Preparation and approval of rules and regulations.](#)

[Sec. 11-23. Commencement and completion.](#)

[Sec. 11-24. Barricades and lights.](#)

[Sec. 11-25. Width and minimum inconvenience to public.](#)

[Sec. 11-26. Sidewalks and gutters clear.](#)

[Secs. 11-27—11-40. Reserved.](#)

Sec. 11-21. Supervision of work.

All work on any excavation, cut, trench or opening in or under any street, sidewalk, curb, gutter, curbside, alley or other public place shall be supervised by the Street Superintendent.

(Prior code 22-18)

Sec. 11-22. Preparation and approval of rules and regulations.

A complete set of rules and regulations shall be prepared by the Street Superintendent and approved by the Board of Trustees describing the procedures, precautions and specifications under which excavation work and backfilling shall be done under the provisions of this Article and any other provisions deemed necessary to the best interests of the Town in connection therewith.

(Prior code 22-19)

Sec. 11-23. Commencement and completion.

All work authorized by a permit issued pursuant to this Article shall be commenced within a reasonable time after issuance of the permit and shall be diligently and continuously performed until completion. In the event that weather, process of law or any other unexpected obstacle shall cause work to be stopped for so long a time that public travel shall be unreasonably obstructed, the Street Superintendent may order the excavation refilled and repaved as if the work contemplated in the permit were actually completed.

(Prior code 22-20)

Sec. 11-24. Barricades and lights.

Every person making or causing to be made any excavation shall keep the excavation barricaded at all times and, between the hours of sunset and sunrise, he or she shall keep such excavation properly lighted so as to warn all persons thereof.

(Prior code 22-21)

Sec. 11-25. Width and minimum inconvenience to public.

No opening or excavation under this Article shall be undercut or have a greater width at the bottom than at the top. In no case shall more than one-half ($\frac{1}{2}$) of the width of any street, alley or other public

place be opened or excavated at one (1) time, and, in all cases, one-half (½) is restored for safe use. All such work shall be performed in such way as to cause minimum inconvenience and restriction to the public and to both pedestrian and vehicular traffic.

(Prior code 22-22)

Sec. 11-26. Sidewalks and gutters clear.

It shall be unlawful for any person performing any excavation work to place any dirt or other materials upon any sidewalk or in any gutters, and such work shall be performed so as to permit the free passage of water along the gutters.

(Prior code 22-23)

Secs. 11-27—11-40. Reserved.

ARTICLE III Sidewalks, Curbs and Gutters

[Sec. 11-41. Sidewalks, curbs and gutters mandatory.](#)

[Sec. 11-42. Notice and order to install sidewalk, curb, gutter or curbside and related procedures.](#)

[Sec. 11-43. Duty to keep sidewalks, gutters, curbs and curbsides free and clean.](#)

[Secs. 11-44—11-60. Reserved.](#)

Sec. 11-41. Sidewalks, curbs and gutters mandatory.

It shall be the duty of every owner of real property within the Town to construct, install, maintain, repair and replace a sidewalk, curb and gutter or curbside adjacent to his or her property in strict accordance with written standards and specifications adopted from time to time by resolution of the Town Council. The Town Council shall also determine on a case-by-case basis whether and to what degree the Town shall pay for repairing, maintaining and replacing existing curb and gutter.

(Prior code 22-6; Ord. 2005-741 §1)

Sec. 11-42. Notice and order to install sidewalk, curb, gutter or curbside and related procedures.

- (a) When the Town Council deems it necessary that any portion of any sidewalk, curb, gutter or curbside be constructed, repaired or replaced, it may order the same to be done in accordance with the provisions of this Chapter. The Town shall give written notice of the Town Council's order by mailing such notice by first class mail to the name and address of the owner of any property affected as it appears on the records of the County Assessor.
- (b) If the property owner objects to the Town Council's order, he or she may request a hearing before the Town Council. Any such request shall be in writing stating the specific grounds for the objection and shall be received by the Town Clerk within fifteen (15) days of the date of the Town's notice. Upon proper request, the Town Council shall promptly hear the matter at a public meeting, after notice to the property owner, at which he or she shall be given an opportunity to be heard. After due consideration, the Town Council shall affirm, modify or reverse its original order.

- (c) If the property owner does not construct, repair or replace the improvements ordered pursuant to this Section within ninety (90) days from the date of the original notice or from the Town Council's order after notice and a hearing, the Town Council may order the same to be performed by the Town with the costs and expenses assessed against the property owner. The Town may collect any unpaid assessments under this Section as provided by law.

(Prior code 22-7)

Sec. 11-43. Duty to keep sidewalks, gutters, curbs and curbwalks free and clean.

- (a) For the purposes of this Section, the word *sidewalks* shall include not only areas improved with concrete or other such material but shall include also areas within a street right-of-way actually used by the public as pedestrian walkways, or capable of being so used, although unimproved.
- (b) It shall be the duty of all owners or occupants of every premises within the Town to keep the sidewalks, gutters, curbs and curbwalks in front of and adjacent to the tenements and grounds occupied by them free of mud, dirt, debris, rubbish and filth.
- (c) It shall be the duty of all persons within the corporate limits of the Town to keep the sidewalks in front of and adjacent to the tenements and grounds occupied by them clear of snow and ice, and after any fall of snow such persons shall remove the same from such sidewalks within twenty-four (24) hours after the termination of each such snowfall.
- (d) If the snow or ice has not been removed as herein set forth, and not removed forthwith after notification from the Town, then the owner or tenant shall be in violation of this Section and subject to the penalties herein provided.
- (e) If the snow or ice has not been removed from the sidewalks as herein described after notification from the Town Marshal, the owner or tenant shall be in violation of this Section and subject to the penalties set forth herein.
- (f) Wherever houses or other buildings shall be occupied by several tenants, it shall be the duty of the persons occupying the story or stories nearest such sidewalks to clean snow and ice from the same. Where the basement of any building shall reach below the level of the ground the second story shall be deemed nearest as aforesaid, and such basement or first story the nearest after such second story; provided that no occupant shall be required to keep clear as aforesaid any such sidewalk for a greater number of feet than may be contiguous or opposite to any premises or part of the premises actually occupied by him or her.
- (g) Where any premises, or parts of premises, are not occupied in any manner, it shall be the duty of the owner thereof to comply with the requirements of Subsections (b), (c), (d), (e) and (f).
- (h) In the event the owner of any such premises contemplated under Section 7-2(g) and so unoccupied is a nonresident of the Town or absent from the Town, any agent who has charge of such premises shall comply with the requirement of Subsections (b), (c) (d) (e) and (f).
- (i) It is unlawful for any person to drag, shovel or deposit any snow that has been removed from private property upon any street, gutter or sidewalk or upon any other public ground or place. This provision does not apply in regard to the properties used as stores and places of business in the downtown area of the Town.

(Prior code 13-2; Ord. 455, 1990)

Secs. 11-44—11-60. Reserved.

ARTICLE IV Street Numbering and Naming

[Sec. 11-61. Numbers required.](#)

[Sec. 11-62. System of numbering.](#)

[Sec. 11-63. Placing numbers required.](#)

[Sec. 11-64. Material of numerals.](#)

[Sec. 11-65. Unauthorized numbers.](#)

[Sec. 11-66. Map of streets indicating numbers required.](#)

[Sec. 11-67. Authority to name streets and subdivide streets and lands.](#)

[Secs. 11-68—11-80. Reserved.](#)

Sec. 11-61. Numbers required.

It is the duty of the owner or occupant of every building in the Town to number such building in accordance with the provisions of this Article and with the numbers assigned by the Town Clerk. The Street Superintendent shall assign to every building its proper number. The expense of such numbering shall be paid by the owner or occupant of the building.

(Prior code 22-34)

Sec. 11-62. System of numbering.

In numbering the buildings upon the streets, all even numbers shall be on the south and west sides of each street or avenue and all odd numbers shall be on the north and east sides of each street or avenue; provided, however, that where a street or avenue shall curve or change direction, the street or avenue shall nevertheless be numbered in accordance with the principal direction thereof. The numbering of a cul-de-sac shall be clockwise.

(Prior code 22-35)

Sec. 11-63. Placing numbers required.

It shall be the duty of the owner or occupant of any building to place assigned numerals in a conspicuous position at the front of each building and, upon notice from the Street Superintendent, such numerals shall be so placed within thirty (30) days after service of such notice.

(Prior code 22-36)

Sec. 11-64. Material of numerals.

All numerals shall be of a metallic, glass, porcelain or other durable material, or gilt lettering on the inside of a glass transom of a door, and shall be distinctly legible and at least three (3) inches in height.

(Prior code 22-37)

Sec. 11-65. Unauthorized numbers.

It shall be unlawful for any owner or occupant of any building to use or permit to be used upon any building any number other than the number assigned by the Street Superintendent.

(Prior code 22-38)

Sec. 11-66. Map of streets indicating numbers required.

The Town Clerk shall prepare, or cause to be prepared, from time to time when directed by the Board of Trustees, a map of the streets showing the numbers of all buildings and lots and the names of all streets.

(Prior code 22-39)

Sec. 11-67. Authority to name streets and subdivide streets and lands.

The Board of Trustees shall have the power to name or rename any of the streets or public highways, and the Board of Trustees shall have the power to divide or subdivide any of the streets, public highways or public lands into streets, roadways, gutters, sidewalks and parks.

(Prior code 22-40)

Secs. 11-68—11-80. Reserved.

ARTICLE V Parks

[Sec. 11-81. Definition.](#)

[Sec. 11-82. Authority to establish.](#)

[Sec. 11-83. Daily park hours.](#)

[Sec. 11-84. Destruction of park property.](#)

[Sec. 11-85. Erection of tents and buildings.](#)

[Sec. 11-86. 3.2% beer permit.](#)

[Sec. 11-87. Lake Park rules and regulations.](#)

[Secs. 11-88—11-100. Reserved.](#)

Sec. 11-81. Definition.

For purposes of this Article, the term *park* shall mean a park, reservation, playground, beach, recreation center or any other area in the Town, either now existing or which shall be subsequently acquired in accordance with the provisions of this Article, owned or used by the Town, and devoted to active or passive recreation.

(Prior code 19-1)

Sec. 11-82. Authority to establish.

The Town shall have authority to acquire, establish and maintain, in the manner provided for by state law, public parks or pleasure grounds.

(Prior code 19-2)

Sec. 11-83. Daily park hours.

The parks shall be open daily to the public from 5:00 a.m. until 11:00 p.m., and no person not an employee of the parks shall remain in them at any other time; provided, however, that the Town Council may, by permit first having been obtained, extend or limit the time herein specified.

(Prior code 19-3)

Sec. 11-84. Destruction of park property.

It shall be unlawful to cut, mark, remove, break or climb upon, or in any way injure, damage or deface the trees, shrubs, plants, turf or any of the buildings, fences, bridges or other structures or property within or upon park premises, or in any other way injure or impair the natural beauty or usefulness of any park or recreation area.

(Prior code 19-4)

Sec. 11-85. Erection of tents and buildings.

It shall be unlawful to build or place any tent, building, booth, stand or other structure in or upon any of the parks or other recreational facilities without first having obtained a permit to do so from the Town Council.

(Prior code 19-5)

Sec. 11-86. 3.2% beer permit.

- (a) A special 3.2% beer permit is hereby established to authorize the consumption of 3.2% beer in Hays Park.
- (b) A fee for the permit shall be collected at the time the permit is issued. A portion of the fee shall be returned provided there is full and proper cleanup and no violation of governing laws, rules or regulations.
- (c) The collection, administration and enforcement of the 3.2% beer permit shall be performed by the Town Clerk or Police Department. The Town Council is authorized to adopt all rules and regulations which may be necessary or appropriate for the collection, administration and enforcement of the 3.2% beer permit.

(Ord. 457, 1990)

Sec. 11-87. Lake Park rules and regulations.

The following shall apply to the use and enjoyment of Lake Park:

HOME RULE CHARTER AND CODE OF THE TOWN OF JOHNSTOWN, COLORADO

- (1) Anyone may fish in Lake Park, provided that he or she purchase and have in his or her possession a fishing permit issued by the Town Clerk. A fee to be set by resolution shall be charged to purchasers of a fishing permit, the revenues collected to be used for administrative costs such as trash removal, police patrol, Code enforcement and overall maintenance. The permit issued shall not be transferable to any other person and any improper use of the facility of Lake Park may cause such permit to be revoked by the Town.
- (2) There shall be no swimming in the lake, nor boating. Within Lake Park there shall be no alcoholic beverages and possession of firearms within the park, except by law enforcement personnel, shall be prohibited.
- (3) The Town Council may, by resolution, provide for rules and regulations concerning the use of the park facilities.

(Ord. 2006-769 §1)

Secs. 11-88—11-100. Reserved.

ARTICLE VI Cemetery

[Sec. 11-101. Ordinance accepting cemetery land not affected by Code.](#)

[Sec. 11-102. Definition.](#)

[Sec. 11-103. Penalty and liability for damage.](#)

[Sec. 11-104. Perpetual care by Town.](#)

[Sec. 11-105. Management and control by Town.](#)

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[Sec. 11-111. Grave spaces and charges.](#)

[Sec. 11-112. Assessments for perpetual care on lots sold before April 1, 1957; prescribed.](#)

[Sec. 11-113. Assessments for perpetual care on lots sold before April 1, 1957; charge for default in payment.](#)

[Sec. 11-114. Assessments for perpetual care before April 1, 1957.](#)

[Sec. 11-115. Cost of grave openings.](#)

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[Sec. 11-142. Changes in rules authorized.](#)

[Sec. 11-143. Disinterment charges.](#)

[Secs. 11-144—11-150. Reserved.](#)

Sec. 11-101. Ordinance accepting cemetery land not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect Ordinance No. 120, Section 1, passed on April 1, 1957, accepting and concerning Elwell Cemetery and renaming it *Johnstown Cemetery*; and such ordinance is hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Prior code 10-16)

Sec. 11-102. Definition.

Wherever the term *cemetery* is used in this Article, it shall refer to the Johnstown Cemetery.

(Prior code 10-17)

Sec. 11-103. Penalty and liability for damage.

Any person violating any provision of this Article shall be deemed guilty of an offense and upon conviction thereof shall be penalized as provided in Section 1-62. All persons doing damage to property or graves in and about the cemetery shall be liable to the Town and to the owners of the property damaged for such damage.

(Prior code 10-18)

Sec. 11-104. Perpetual care by Town.

The Town shall undertake perpetual care upon all grave spaces sold by it, and upon all family lots procured before April 1, 1957, provided that the perpetual care assessments have been paid. This care includes maintenance of lawn with seasonal watering.

(Prior code 10-19)

Sec. 11-105. Management and control by Town.

The Town undertakes full management and control acting through its Board of Trustees, its Cemetery Committee and more directly, its Town Clerk and its Cemetery Superintendent.

(Prior code 10-20)

Sec. 11-106. Cemetery Superintendent generally.

There is hereby created the position of Superintendent of Cemeteries, referred to herein as the Cemetery Superintendent. It shall be the duty of the Cemetery Superintendent to supervise the digging of graves and setting of monuments, markers and corner stones and generally to supervise the cemetery, though not himself or herself to do the manual labor except as instructed so to do by the Board of Trustees. The Cemetery Superintendent shall properly care for and protect all trees, flowers, plants, shrubs and grass growing in the cemetery and keep the driveways and walks in good condition and free from weeds and protect all cemetery property. He or she shall promptly report all infractions and violations of this Article, and of the rules and regulations made pursuant hereto, to the chairman of the Cemetery Committee. The Cemetery Superintendent shall be at the cemetery ready to give information and render assistance to lot owners and visitors during such times as shall be proscribed by the Cemetery Committee and when so arranged by appointment, and he or she shall receive such compensation and be under such rules as shall be proscribed by the Board of Trustees, on the recommendation of the Cemetery Committee. The Cemetery Superintendent may make reasonable charges for special surveys and other work connected with the placement of monuments and vaults. He or she is empowered to enforce the provisions of this Article. The Cemetery Superintendent shall be responsible to his or her successor for all property belonging to the Town in his or her custody or under his or her control on the termination of his or her employment.

(Prior code 10-21)

Sec. 11-107. Fund allocations and disbursements.

- (a) All cemetery funds shall be classified as follows: Cemetery Perpetual Care Fund and the General Fund.

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- (b) Fifteen percent (15%) of the monies and proceeds derived from the sale of lots and grave spaces shall be deposited and carried in the Cemetery Perpetual Care Fund.
- (c) All monies and proceeds derived from the sale of all grave spaces, other than those applied pursuant to Section 11-110, and all other revenue derived from the operation of the cemetery from any source whatever and the earnings received from investment of Perpetual Care Funds shall be deposited and carried in the General Fund.
- (d) The Cemetery Perpetual Care Fund and the entire principal thereof shall be safely and perpetually kept and invested. It shall be invested in such securities as under state law are approved for investment of municipal funds and as shall be approved by the Board of Trustees. The income may be used for cemetery maintenance. The principal can only be used as declared necessary by the Board of Trustees for major improvements or maintenance of the cemetery.
- (e) All disbursements made for or on account of the cemetery shall be paid out of the General Fund.

(Prior code 10-22; Ord. 477, 1992)

Sec. 11-108. Records, receipt of funds and burial orders.

- (a) The Town Clerk shall keep all records of the cemetery in the Town Hall and shall be furnished with suitable books and blanks for that purpose. The Town Clerk shall keep in his or her office a map of the cemetery.
- (b) No orders shall be issued until the following information is furnished the Town Clerk:
 - (1) Name, age, sex and the place of death of the deceased;
 - (2) The lot and block number upon which burial is to be made;
 - (3) The undertaker in charge of the body;
 - (4) The time of burial; and
 - (5) The size of the grave.
- (c) The Town Clerk shall, upon proper payments and showing, issue a burial order addressed to the Cemetery Superintendent setting forth the grave lot and burial block upon which burial is to be made. After each burial, the Cemetery Superintendent shall make a written report to the Town Clerk setting forth in detail the date of the burial and the location of the grave. It shall be the duty of the Town Clerk upon receipt of such report to revise, bring to date and keep current the cemetery plat book. The burial order shall be delivered to the Cemetery Superintendent at least eight (8) hours before the burial.
- (d) The Town Clerk shall receive all required payments to the cemetery and to its employees and collect all payments and assessments coming due in connection with the cemetery.
- (e) An appointed member of the Cemetery Committee shall keep in a separate place the duplicate permanent record book and the duplicate book of cemetery blocks, lots and grave spaces.

(Prior code 10-23)

Sec. 11-109. Town Clerk to receive application for purchase or transfer of lots or grave spaces.

The Town Clerk shall receive all applications for purchase or transfer of lots or grave spaces.

(Prior code 10-24)

Sec. 11-110. Transfer of lots and burial spaces; deeds.

No cemetery lot or burial space shall be sold, transferred or conveyed by any owner without consent to transfer being first had from the Town Clerk, and no such transfer or conveyance shall be made unless all assessments and charges against the lot or burial space are paid in full. In case of such sales, transfers or conveyances, the following procedure only shall be followed: The owner shall surrender to the Town the deed or other evidence of title then held by him or her to lot or burial space or, in case it is shown by affidavit that such deed or evidence of title is lost, the owner shall execute and deliver to the Town a quitclaim deed to the lot or burial space. The owner shall then name in writing the person to whom such transfer is to be made, and a new deed or evidence of title shall then be executed by the Mayor and delivered to the person or persons designated. Upon any such transfer, permanent record thereof shall be made and kept by the Town Clerk. Those portions of such lot or burial space upon which burials are made or are contemplated to immediately be made shall be paid for in full before such burial.

(Prior code 10-25)

Sec. 11-111. Grave spaces and charges.

Each grave space purchased in the cemetery shall be four (4) feet by ten (10) feet. It shall be kept green in season and have perpetual care, and no grave space therein shall be sold without provision for perpetual care. The price with perpetual care for a grave space shall be determined by resident and nonresident status of the Town. A *resident* is hereby defined as a person living within Weld County School District RE-5J boundaries. A nonresident may purchase a grave space at the resident rate if the space is intended for the use of a deceased resident. The price with perpetual care shall be three hundred seventy-five dollars (\$375.00) per grave space for a resident and six hundred twenty-five dollars (\$625.00) for a nonresident per grave space. This price includes the cost of opening and closing. Grave openings on weekends and holidays will be an additional one hundred twenty-five dollars (\$125.00). Any changes to the above-stated fees may be made by the Town Council by resolution.

(Prior code 10-26; Ord. 500, 1995; Ord. 2004-725 §1; Ord. 2004-727 §1; Ord. 2010-113 §1)

Sec. 11-112. Assessments for perpetual care on lots sold before April 1, 1957; prescribed.

There is hereby levied on all lots and burial spaces in the cemetery which have been sold before April 1, 1957, without provision and payment for perpetual care, an assessment of sixty cents (\$0.60) per square foot on all lots and grave spaces of other sizes, which charge is and shall be for perpetual care and shall be due and payable from and after April 1, 1957.

(Prior code 10-27)

Sec. 11-113. Assessments for perpetual care on lots sold before April 1, 1957; charge for default in payment.

There hereby is levied on all lots and burial spaces in the cemetery which have been sold before April 1, 1957, without provision and payment for perpetual care and upon which the perpetual care assessment provided by Section 11-112 is not paid, an annual assessment of two cents (\$0.02) per square foot for the maintenance and improvement of the cemetery, which assessment shall be due and payable on or before May 31 of each year from and after April 1, 1957, so long as the assessment made and provided in Section 11-112 herein remains in default.

(Prior code 10-28)

Sec. 11-114. Assessments for perpetual care before April 1, 1957.

On lots or burial spaces in the cemetery sold before April 1, 1957, there is an annual charge of two cents (\$0.02) per square foot to cover the current expenses of perpetual care.

(Prior code 10-29)

Sec. 11-115. Cost of grave openings.

For grave sites not subject to the terms of Section 11-111, a standard charge of one hundred twenty-five dollars (\$125.00) shall apply to resident and nonresident grave openings on weekdays and two hundred fifty dollars (\$500.00) on Saturdays. The standard charges as stated within this Section shall apply to all openings of graves in the cemetery, whether for infant, adult or indigent and welfare cases, except as provided in Section 11-127. Any changes to the above-stated fees may be made by the Town Council by resolution.

(Prior code 10-30; Ord. 464, 1991; Ord. 500, 1995; Ord. 2004-725 §1; Ord. 2010-113 §2)

Sec. 11-116. Payment of grave space and contracts.

At the time of the selection of a grave space that is to be on contract, a payment of at least one-half (½) of the total fee is due at the time of selection of grave space. The grave space can be placed on contract with the payment option of the purchaser. The grave space must be paid in full at the time of use or within a five (5) year period, whichever first occurs; otherwise, the contract shall be terminated and the deposit forfeited.

(Prior code 10-31)

Sec. 11-117. Revision of prices and assessments.

The price of lots, grave spaces, perpetual care and assessments may be raised or lowered at the discretion of the Town Council on the recommendation of the Cemetery Committee.

(Prior code 10-32)

Sec. 11-118. Applications for lots, deeds and spaces.

Application for deeds to cemetery lots and spaces and for licenses in the single section shall be made to the Town Clerk. The Town Clerk is empowered to collect and is designated as the officer to whom all payments for the same, as well all assessments coming due in connection with the cemetery, shall be made. He or she shall report all defaults, deficiencies and nonperformances on the part of any persons in connection with unpaid cemetery accounts to the Town Council for action. Such reports shall be made semiannually.

(Prior code 10-33)

Sec. 11-119. Depth of opening.

A minimum depth of five (5) feet is established for all grave openings in the cemetery, other than for urn ashes, or for individual ground-level mausoleums.

(Prior code 10-34)

Sec. 11-120. Urn ashes.

- (a) Interment of urn ashes in the cemetery is authorized in grave spaces of less than full size which are now in existence.
- (b) Grave spaces shall not be sold or divided in one-half (½) for the purpose of creating an area for two (2) interment spaces for urns.
- (c) Interment of urn ashes in the cemetery, except as stated in Subsections (a) and (b), shall require a full-sized grave space. Two (2) burials in a single full-sized grave space may be permitted, provided that it shall contain either one (1) casket and one (1) cremains (urn ashes) or two (2) cremains (urn ashes).
- (d) Interment of urn ashes in the cemetery requires, in each case, a concrete container with concrete lid, all having a minimum thickness of four (4) inches and an overall covering of six (6) inches or more of soil.
- (e) Designated urn spaces within the cemetery shall consist of an area two (2) feet by four (4) feet. The price with perpetual care for a grave space shall be determined by resident and nonresident status of the Town. A *resident* is hereby defined as a person living within the Weld County School District RE-5J boundaries. A nonresident may purchase a grave space at the resident rate if the space is intended for the use of a deceased resident. The price with perpetual care shall be one hundred seventy-five dollars (\$175.00) per grave space for a resident and two hundred fifty dollars (\$250.00) for a nonresident per grave space. This price includes the cost of opening and closing. Grave openings on weekends and holidays will be an additional seventy-five dollars (\$75.00). Any changes to the above-stated fees may be made by the Town Council by resolution.
- (f) For urn sites not subject to the terms of Subsection (e) above, a standard charge of seventy-five dollars (\$75.00) shall apply to resident and nonresident openings on weekdays and one hundred fifty dollars (\$150.00) on Saturdays and holidays. Any changes to the above-stated fees may be made by the Town Council by resolution.
- (g) Only flat markers will be allowed within the designated urn interment area.

(Prior code 10-35; Ord. 464, 1991; Ord. 500, 1995; Ord. 2004-725 §1; Ord. 2004-727 §1; Ord. 2010-113 §§3—5)

Sec. 11-121. Grave liners.

Wooden outer boxes or grave liners are hereby outlawed due to rapid deterioration and settling under the watering conditions of perpetual care. All graves shall be provided with a concrete box liner having two (2) inches minimum thickness of wall, with a matching concrete lid or slab covering. This is a minimum requirement and does not preclude the use of concrete sealed vaults of the inverted type, nor does it preclude vaults made of other material such as fiberglass, when such is of comparable strength and durability. These provisions do not apply to spaces purchased prior to 1966.

(Prior code 10-36)

Sec. 11-122. Unused space redeemable.

Unoccupied portions of lots in the cemetery purchased prior to 1957 may be surrendered and credit obtained to apply on perpetual care assessment for the occupied or reserved portions. A credit allowance of ten dollars (\$10.00) is made for each grave space, ten (10) feet by four (4) feet in area, surrendered by quitclaim deed. The same shall apply on perpetual care assessment of sixty cents (\$0.60) per square foot.

(Prior code 10-37)

Sec. 11-123. Refusal of further applications for unpaid assessments.

In cases where assessments for perpetual care on cemetery spaces have not been paid, application for burial permits on the unoccupied portions of the ground will be refused until assessments have been paid along with current charges.

(Prior code 10-38)

Sec. 11-124. Repossession of abandoned ground.

As provided by law, unoccupied portions of ground in the cemetery abandoned over the years, with the purchasers' whereabouts being unknown, may be repossessed by the cemetery. This is exemplified by fifty-two (52) names which were published in 1958 giving notice that failure to make claims within a five (5) year period or make payment on assessments would result in forfeiture and surrender of all unoccupied portions of the space originally purchased.

(Prior code 10-39)

Sec. 11-125. Deeds and titles.

Perpetual care certificates shall be issued for ground purchased from Elwell Cemetery prior to 1957 if and when the perpetual care assessments are paid. Deeds are issued only in the event of transfer to others following relinquishment by quitclaim deed to the cemetery.

(Prior code 10-40)

Sec. 11-126. Indigent and welfare cases.

Welfare payment for burial spaces in the cemetery is made available for indigents and welfare cases and is restricted in location to Block No. 4, only, in the southeast corner of the cemetery. The charge for grave opening must be paid along with other burial expenses.

(Prior code 10-41)

Sec. 11-127. Infant graves at reduced price.

Small area graves are provided for the burial of infants in the southwest corner of the cemetery with perpetual care. A two-foot by five-foot space shall cost one hundred dollars (\$100.00) for a resident and two hundred dollars (\$200.00) for a nonresident and shall include the charge for the opening and closing of grave space. Any changes to the above-stated fees may be made by the Town Council by Resolution.

(Prior code 10-42; Ord. 2010-113 §6)

Sec. 11-128. Opening and closing of graves.

The opening and closing of graves in the cemetery shall be done by Town employees under the direction of the Cemetery Superintendent. A notice of eight (8) working hours or more must be given to ensure the proper preparation of the grave, including requests for Saturday openings.

(Prior code 10-43)

Sec. 11-129. Mausoleums.

The use of individual mausoleums or ground-level concrete vaults as approved by the State Board of Health has been approved by the cemetery, and reservation for them is made in the three (3) blocks of Nos. 61, 62 and 63. Placements of such must be closely supervised and provided with a six (6) inch concrete apron all around exactly at ground level, the purpose being to occupy the full width of each grave space, thus, facilitating the mowing of lawn with perpetual care.

(Prior code 10-44)

Sec. 11-130. Headstones and monuments.

Arrangements for the placement of headstones and monuments in the cemetery must be approved by the Cemetery Superintendent and installed under his or her supervision. A submerged concrete foundation shall be placed upon firm soil and have overall dimensions eight (8) inches greater than dimensions of the base of the stone. Homemade markers or wooden crosses are outlawed.

(Prior code 10-45)

Sec. 11-131. Two-party headstone identifying two (2) grave sites.

Concerning the placement of a two (2) party headstone of such design as to identify two (2) grave sites, the Town finds it necessary and requires the full payment of both grave sites prior to the installation of such a headstone.

(Prior code 10-45.1)

Sec. 11-132. Footstones.

- (a) The purpose of this Section is to clarify the responsibility of the person or persons desiring to install footstones used with a family headstone at the cemetery.
- (b) The placement of footstones of such design as to identify single spaces used with a family headstone within a family plot shall be permissible only in the following areas:
 - (1) Along the six (6) foot walkways; and
 - (2) Along the roadways.

(Prior code 10-45.2)

Sec. 11-133. Shrubs and flowers.

- (a) The planting of small shrubs and flowers in the cemetery must be sharply curtailed and done only with the approval of the Cemetery Superintendent. In general, a narrow strip of annual flowers is permitted on the grave side of a monument. Where the monument is a double one, roses may be placed at each end.
- (b) It becomes the responsibility of the owner to properly care for such plantings; and in the case of flagrant neglect, the Cemetery Superintendent is authorized to remove them.

(Prior code 10-46)

Sec. 11-134. Trees and large shrubs.

- (a) The planting of trees and large shrubs in or on open grassed areas in the cemetery is outlawed, except when given special approval by the Cemetery Committee and the Cemetery Superintendent.
- (b) Replacement of trees and shrubs is allowed when approved by the Cemetery Superintendent.

(Prior code 10-47)

Sec. 11-135. For sale signs and advertisements.

Signs indicating a lot or vault for sale in the cemetery are forbidden. No advertisement signs or cards of monument dealers or funeral directors will be permitted in the cemetery.

(Prior code 10-48)

Sec. 11-136. Outside workmen.

A written order from the lot holder or his or her representative is required along with the approval of the Cemetery Superintendent for any outside workmen to enter the cemetery. This applies to both erecting or removing anything from a lot or space. The Cemetery Superintendent's approval can be withdrawn when character or work is deemed unsatisfactory or rules of the cemetery are disregarded.

(Prior code 10-49)

Sec. 11-137. Control of improvements.

The Town reserves to itself the right to fully control the matters of the setting of monuments and the planting of trees, shrubbery and flowers in the cemetery. All title and ownership of trees, shrubbery and other plantings shall be and remain with the Town, which shall have the right to remove or transplant the same.

(Prior code 10-50)

Sec. 11-138. Certain conditions prohibited.

Enclosures of any kind, curbing or coping around the lot or grave, ornaments, chairs, settees, vases, glass jars, artificial flowers, flowers, toys, watering cans or other articles that may be considered objectionable by the administrative authorities are prohibited in the cemetery, and the right to remove the

same without notice to the lot owner is reserved. Objects of wood of any kind are prohibited; and no gravel, brick, stone, cement or other kind of artificial walkway will be allowed upon any lot.

(Prior code 10-51)

Sec. 11-139. Containers for flowers.

Permanent receptacles for flowers in the cemetery must be made of metal or stone and must be sunk below the level of the ground so as not to interfere with the mowing of the lawn nor appear unsightly when not in use.

(Prior code 10-52)

Sec. 11-140. Heavy loads entering grounds.

The Cemetery Superintendent shall be consulted before any heavy loads enter the cemetery grounds. All materials must be moved along the pathways of the cemetery or over planks laid for the immediate service.

(Prior code 10-53)

Sec. 11-141. Funeral tributes.

Forty-eight (48) hours' time is allowed for funeral designs and floral pieces, following a burial in the cemetery, before disturbance by cemetery employees. Close relatives must recover any desired memento or tribute during that time.

(Prior code 10-54)

Sec. 11-142. Changes in rules authorized.

The Town Council, acting under the law or through its Cemetery Committee, can at any time amend or expand this set of cemetery rules and regulations.

(Prior code 10-55)

Sec. 11-143. Disinterment charges.

The Town charges for processing a request for disinterment shall be two hundred fifty dollars (\$250.00). The request must be presented to the Town Clerk in accordance with state law. The party making application shall be solely responsible for providing the personnel and equipment and all costs relating to the disinterment. Any changes to the above-stated fees may be made by the Town Council by resolution.

(Prior code 10-56; Ord. 500, 1995; Ord. 2004-725 §1; Ord. 2010-113 §7)

Secs. 11-144—11-150. Reserved.

CHAPTER 13 Municipal Utilities

ARTICLE I - General

ARTICLE II - Sewers

ARTICLE III - Water

ARTICLE IV - Water Rights Dedication

ARTICLE V - Infrastructure Reimbursement

ARTICLE VI - Water Conservation

ARTICLE VII - Storm Water Utility

ARTICLE VIII - Cross-Connection Control Program

ARTICLE I General

[Sec. 13-1. Ordinance No. 78 not affected by Code.](#)

[Sec. 13-2. Annexation required for water and sewer service.](#)

[Secs. 13-3—13-10. Reserved.](#)

Sec. 13-1. Ordinance No. 78 not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect Ordinance No. 78, passed by the Town Council relating to water and sewers within the Town, and all of such ordinance as is not included in this Code or amended by a subsequent ordinance is hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(Prior code 25-1)

Sec. 13-2. Annexation required for water and sewer service.

Any person requesting either water or sewer service for a property that is outside the Town boundaries must first annex such property to the Town to be included within the Town boundaries prior to the Town extending either water or sewer service.

(Ord. 2008-815 §1)

Secs. 13-3—13-10. Reserved.

ARTICLE II Sewers

[Sec. 13-11. Definitions.](#)

[Sec. 13-12. Use of public sewers required.](#)

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[Sec. 13-26. Adoption of rules and regulations governing sewers.](#)

[Sec. 13-27. Sewer tap fees.](#)

[Sec. 13-28. Reserved.](#)

[Secs. 13-29—13-40. Reserved.](#)

Sec. 13-11. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. section 1251 et seq.

Article means this Article II of Chapter 13 of the Town of Johnstown Municipal Code.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty degrees (20°) Celsius, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

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Chemical Oxygen Demand or COD means a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

Combined sewer means a sewer intended to receive both wastewater and storm water or surface water.

Easement means an acquired legal right for the specific use of land owned by others.

Floatable oil is oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. Wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the POTW.

Garbage means the animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

Indirect Discharge or Discharge means the introduction of any pollutant into the POTW from any non-domestic source under Section 307(b), (c) or (d) of the Act.

Industrial Users or IU means a source of indirect discharge.

Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

- a. Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and,
- b. Therefore, is a cause of a violation of the Town's NPDES permit(s) (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory and regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act; any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Industrial waste means the wastewater from industrial processes, trade or business as distinct from domestic or sanitary wastes.

Medical Waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

National Pollutant Discharge Elimination System Permit or "NPDES Permit" means the permit(s) issued by the State of Colorado authorizing the Town to discharge to waters of the United States under the Act, and includes, as may be amended from time to time, CO-0021156 and CO-0047058.

Natural outlet means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or ground water.

May is permissive (see *shall*).

Pass through means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the Town's NPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, firm, company, association, society, corporation or group, and includes industrial users.

pH means the logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of seven (7) and hydrogen ion concentration of 10^{-7} .

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Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, flow, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutants in wastewater prior to, or in lieu of, a discharge of such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes or by other means, except by diluting the concentration of the pollutants, unless otherwise allowed by law or by the Superintendent.

Publicly Owned Treatment Works or POTW means the treatment works, as defined by Section 212 of the Act (33 U.S.C. section 1292), that are owned by the Town. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances that convey wastewater to the POTW Treatment Plant.

POTW Treatment Plant means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste and includes, as may be amended from time to time, the Johnstown Central Wastewater Treatment Facility and the Low Point Wastewater Treatment Plant.

Public sewer means a common sewer controlled by a governmental agency or public utility.

Sanitary sewer means a sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

Sewage is the spent water of a community, and typically refers to water containing human excrement and gray water (as from showers, baths, dishwashing operations, sinks, washing machines). The preferred term is *wastewater*.

Sewer means a pipe or conduit that carries wastewater.

Shall is mandatory (see *may*).

Slug discharge means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration or flows during normal operation that adversely affect the collection system and/or performance of the wastewater treatment works. Slug discharge includes any discharge of a non-routine, episodic nature, such as an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the Town's NPDES Permit, the POTW's regulations, local limits or pretreatment requirements.

Storm drain (sometimes termed *storm sewer*) means a drain or sewer for conveying water, ground water, subsurface water or unpolluted water in any source.

Superintendent means the superintendent of wastewater facilities, of wastewater treatment works, and/or of water pollution control of the Town or his or her authorized deputy, agent or representative. If the Town does not have a designated Superintendent, the Town Manager may assume the role thereof or delegate the administration of this Article or any part of it, subject to the limitations of the Johnstown Municipal Code, to duly qualified employees or agents of the Town.

Total Suspended Solids (TSS) or Suspended Solids (SS) means suspended matter that either floats on the surface of or is in suspension in water, wastewater or other liquids, and is removable by laboratory filtering as prescribed in *Standard Methods for the Examination of Water and Wastewater*.

Town means the Town of Johnstown.

Unpolluted water is water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards

Wastewater means the liquid and water-carried pollutants from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW. It may be a combination of the liquid and water-carried waste together with any ground water, surface water and storm water that may be present.

Wastewater treatment works means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with waste treatment plant or wastewater treatment plant or water pollution control plant or POTW.

Watercourse means a natural or artificial channel for the passage of water either continuously or intermittently.

(Prior code 25-17; Ord. No. 2016-145, § 1, 1-18-2017)

Sec. 13-12. Use of public sewers required.

- (a) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the Town, or in any area under the jurisdiction of the Town, any human or animal excrement, garbage or other objectionable waste.
- (b) It shall be unlawful to discharge to any natural outlet within the Town, or in any area under the jurisdiction of the Town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Article.
- (c) Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.
- (d) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer, are hereby required, at the owners' expense, to install suitable toilet facilities therein, and to promptly connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, provided that the public sewer is within three hundred (300) feet of the property line.

(Prior code 25-18; Ord. No. 2016-145, § 1, 1-18-2017)

Sec. 13-13. Private wastewater disposal.

- (a) Where a public sanitary or combined sewer is not available under the provisions of Section 13-12(d), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Section.
- (b) Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the Town, which shall be supplemented by any plans, specifications and other information as deemed necessary by the Superintendent. The applicant shall also pay a permit and inspection fee to the Town at the time the application is filed. The amount of the permit and inspection fee shall be set by resolution of Town Council.
- (c) A permit for a private wastewater disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. The Superintendent shall be allowed to inspect the work at any stage of construction, and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within two (2) business days of the receipt of notice by the Superintendent.

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- (d) The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations of the Colorado Department of Public Health and Environment. No permit shall be issued for any private wastewater disposal system employing subsurface soil absorption facilities where the area of the lot is less than forty-three thousand five hundred sixty (43,560) square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.
- (e) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 13-12(d), a direct connection shall be made to the public sewer within thirty (30) days in compliance with this Article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.
- (f) The owners shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the Town.
- (g) No statement contained in this Section shall be construed to interfere with any additional requirements that may be imposed by the Superintendent or the Colorado Department of Public Health and Environment.

(Prior code 25-19; Ord. No. 2016-145, § 1, 1-18-2017)

Sec. 13-14. Sanitary sewers, building sewers and connections.

- (a) No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Superintendent.
- (b) There shall be two (2) classes of building sewer permits: (1) for residential and commercial service, and (2) for service to establishments producing industrial wastes. In either case, the owner or his or her agent shall make application on a special form furnished by the Town. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Superintendent and, for industrial users, shall include the information required by Section 13-15(1) and any additional information required by the Superintendent. The applicant shall also pay a permit and inspection fee to the Town at the time the application is filed. The amount of the permit and inspection fee shall be set by resolution of Town Council.
- (c) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.
- (d) A separate and independent building sewer shall be provided for every building; except where one (1) building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one (1) building sewer, but the Town does not and will not assume any obligation or responsibility for damage caused by or resulting from any such single connection aforementioned.
- (e) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this Article.
- (f) The size, slope, alignment and materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing codes or other applicable rules and regulations of the Town. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM International Standards and WPCF Manual of Practice No. 9 shall apply.
- (g) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public

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sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

- (h) No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or ground water to a building drain which in turn is connected directly or indirectly to a public sanitary sewer unless such connection is approved by the Superintendent for purposes of disposal of polluted surface drainage.
- (i) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing codes or other applicable rules and regulations or the procedures set forth in appropriate specifications of the ASTM International Standards and the WPCF Manual of Practice No. 9. All such connections shall be made gas-tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.
- (j) The applicant for the building sewer permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the Superintendent or his or her representative.
- (k) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be promptly restored in a manner satisfactory to the Town.

(Prior code 25-20; Ord. No. 2016-145, § 1, 1-18-2017)

Sec. 13-15. Use of the public sewers.

- (a) No person shall discharge or cause to be discharged any unpolluted waters such as storm water, surface water, ground water, roof runoff, subsurface drainage or cooling water to any sewer; however, storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by permission of the Superintendent.
- (b) Storm water other than that exempted under Subsection (a) above and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers or to a natural outlet approved by the Superintendent and other regulatory agencies. Unpolluted industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer or natural outlet.
- (c) No person shall discharge or cause to be discharged any of the following described water or wastes to any public sewers:
 - (1) Petroleum oil, nonbiodegradable cutting oil or products of mineral oil origin in amounts that will cause interference or pass through;
 - (2) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
 - (3) Wastewater having a pH less than five and one-half (5½) or otherwise causing corrosive structural damage to the POTW or equipment;
 - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
 - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40 °C (104 °F) unless the Superintendent approves alternate temperature limits;

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- (6) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
 - (7) Trucked or hauled pollutants except in manner consistent with Subsection (m) below; and
 - (8) Solids or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair, fleshings, entrails, paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (d) The following described substances, materials, water or waste shall be limited in discharges to concentrations or quantities which will not harm the POTW, the sewers, the wastewater treatment process or equipment, will not have an adverse effect on the receiving stream and will not otherwise endanger lives, limb, public property or constitute a nuisance. The Superintendent may set limitations lower than the limitations established in the regulations below if, in his or her opinion, such more severe limitations are necessary to meet the above objectives. In forming his or her opinion as to the acceptability, the Superintendent may consider such factors as the quantity of subject waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater treatment plant, degree of treatability of the waste in the wastewater treatment plant and other permanent factors. The limitations or restrictions on materials or characteristics of waste or wastewaters discharged to the POTW which shall not be violated without approval of the Superintendent are as follows:
- (1) Fats, oils or greases of animal or vegetable origin in concentrations which could cause a problem to the collection system or the POTW (e.g., restricted flow in pipes, sewage backups, lift station operation issues, decreased treatment, etc.);
 - (2) Any garbage that has not been properly shredded. For purposes of this Subsection, properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half ($\frac{1}{2}$) inch (1.27 centimeters) in any dimension. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers. However, garbage grinders shall only be used to grind small amounts of garbage incidental to cleaning of plates, cookware, etc. and not to dispose of large quantities of waste. Waste must be scraped into a garbage can prior to cleaning;
 - (3) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances to such degree that any such material received in the composite wastewater at the POTW Treatment Plant exceeds the limits established by the Superintendent for such materials;
 - (4) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the Superintendent;
 - (5) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations;
 - (6) Quantities of flow, concentrations of which constitute a slug discharge;
 - (7) Waters or wastes containing substances which are not amenable to transport, treatment or reduction by the wastewater treatment processes employed or are amenable to treatment only to such degree that the wastewater treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters;
 - (8) Any water or wastes which, by interaction with other water or wastes in the public sewer system or POTW, release obnoxious gases, form suspended solids which cause interference with the collection system or create a condition deleterious to structures and treatment processes;
 - (9) Wastewater which imparts color that cannot be removed by the POTW Treatment Plant, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently impart

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color to the POTW Treatment Plant's effluent, thereby causing a violation of the Town's NPDES Permit;

- (10) Sludges, screenings or other residue from the pretreatment of industrial wastes, unless specifically approved by the Superintendent and otherwise in compliance with the Town's NPDES Permit;
- (11) Wastewater causing, alone or in conjunction with other sources, the POTW Treatment Plant's effluent to fail toxicity tests;
- (12) Detergents, surface-active agents (surfactants) or other pollutants that might cause excessive foaming in the POTW or receiving waters; and
- (13) Wastewater causing a reading on an explosion hazard meter at the point of discharge into the POTW or at any point in the POTW.

The pollutants, substances or wastewater prohibited by this Subsection 13-15(d) shall not be processed or stored in such a manner that they could or will be discharged to the POTW.

- (e) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Subsection (d) of this Section, and which, in the judgment of the Superintendent, may have a delirious effect upon the POTW, processes, equipment or receiving waters or which otherwise create hazard to life or constitute a public nuisance, the Superintendent may:
 - (1) Reject the wastes;
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers; or
 - (3) Require payment of the added cost of handling and treating the wastes not otherwise covered by existing taxes or sewer charges under the provisions of this Article.
- (f) When considering the above alternatives, the Superintendent shall give consideration to the economic impact of each alternative on the discharger, but, in any event, shall not allow a discharge that has the potential to cause a violation of the Town's NPDES Permit or the law, If the Superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Superintendent.
- (g) No user shall increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment, including pretreatment, to achieve compliance with a discharge limitation unless expressly authorized by law or by the Superintendent. The Superintendent may impose mass limitations on users who are using dilution to meet applicable requirements.
- (h) Grease, oil and sand interceptors shall be provided when, in the opinion of the Superintendent, they are necessary for the proper handling of liquid wastes containing floatable fats, oils or greases in excessive amounts as specified in Subsection (d)(1), or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates and means of disposal which are subject to review by the Superintendent. Any removal and hauling of the collected materials not performed by the owner's personnel must be performed by currently licensed waste disposal firms.
- (i) Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner or the operator at his or her expense.
- (j) When required by the Superintendent, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be

constructed in accordance with plans approved by the Superintendent. The structure shall be installed by the owner at his or her expense, and shall be maintained by him or her so as to be safe and accessible at all times.

- (k) The Superintendent may require the user of sewer services to provide information needed to determine compliance with this Article. The requirements may include, but are not limited to:
 - (1) Wastewater discharge peak rate and volume over a specified time period;
 - (2) Chemical analyses of wastewaters;
 - (3) Information on raw materials, processes and products affecting wastewater volume and quality;
 - (4) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
 - (5) A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
 - (6) Details of systems to prevent and control the losses of materials through spills to the municipal sewer; and/or
 - (7) A wastewater discharge permit application, questionnaire or other reports and notifications in a format and timeframe specified by the Superintendent.
- (l) Industrial users.
 - (1) Mandatory pretreatment requirements. In addition to all other requirements contained in this Article, industrial users shall provide wastewater treatment, as necessary, to comply with the pretreatment standards required by the Town's NPDES Permit and otherwise required by law. The industrial user shall achieve compliance prior to discharge. Any facilities necessary for compliance shall be provided, operated and maintained at the industrial user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Superintendent for review, and shall be acceptable to the Superintendent before such facilities are constructed. Acceptance by the Superintendent of any such facilities shall not be construed as a guarantee or agreement by the Superintendent that such facilities will achieve compliance with this Article. The review of such plans and operating procedures shall in no way relieve the industrial user from the responsibility of modifying such facilities, as necessary, to produce a discharge acceptable to the Superintendent under the provisions of this Article.
 - (2) Additional pretreatment and monitoring requirements. The Superintendent may, in his or her discretion:
 - a. Require an industrial user to restrict its discharge, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic waste streams from non-domestic waste streams or impose such other conditions as may be necessary to protect the POTW and ensure the industrial user's compliance with the requirements of this Article;
 - b. Require an industrial user discharging into the POTW to install and maintain, on the user's property and at the owner's or operator's expense, a suitable storage and flow-control facility to ensure equalization of flow;
 - c. Require an industrial user discharging into the POTW to install, at the owner's or operator's expense, suitable monitoring facilities or equipment that isolates appropriate wastewater discharges into the wastewater system and facilitates accurate observation, sampling and measurement of discharges. The equipment shall be maintained in proper working order and kept safe and accessible without restriction to POTW personnel at all times. Where practical, the monitoring equipment shall be located and maintained on the industrial user's premises outside of the building; and/or
 - d. Require an industrial user with the potential to discharge flammable substances to install and maintain an approved combustible gas detection meter.

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- (3) Slug discharge control. Facilities to prevent slug discharges shall be provided and maintained at the industrial user's expense. The Superintendent may require industrial users to implement prevention plans to control slug discharges.
- (4) Notification. After initial approval, industrial users shall provide the following notifications:
 - a. In the case of any discharge, including, but not limited to, spills, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a slug discharge or a discharge that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the POTW of the incident. The notification shall include:
 1. Name of the facility;
 2. Location of the facility;
 3. Name of the caller;
 4. Date and time of the discharge;
 5. Date and time discharge was halted;
 6. Location of the discharge;
 7. Type of waste;
 8. Estimated volume of the discharge;
 9. Estimated concentration of pollutants in the discharge;
 10. Corrective actions taken to halt the discharge; and
 11. Method of disposal, if applicable.
 - b. Within five (5) working days following such discharge under Part A of this Subsection, the industrial user shall, unless waived by the Superintendent in writing, submit a detailed written summary describing the cause(s) of the discharge and measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to persons or property; nor shall such notification relieve the industrial user of any fines, penalties or other liability which may be imposed pursuant to this Article and applicable regulations.
 - c. The industrial user shall notify the Superintendent in advance of any substantial change in the volume or character of pollutants in their discharge and/or of any changes to their facilities affecting the potential for slug discharges and/or accidental release of prohibited discharges.
 - d. The industrial user shall notify the Superintendent, the Colorado Department of Public Health and Environment and Region 8 of the Environmental Protection Agency in writing of any discharge into the POTW of any substance which, if otherwise disposed of, would be considered a hazardous waste under 40 CFR section 261. Each industrial user shall notify the POTW in advance of any substantial change to such discharge. The specific information required to be reported and the time frames in which it is to be reported are found at 40 CFR section 403.12(p).
- (5) Recordkeeping. Industrial users shall retain all records related to discharges for a minimum period of three (3) years. The records shall be made immediately available upon request of the Superintendent at any time during the three (3) year period or so long as actually retained.
- (6) Time for Compliance. All existing industrial users shall come into compliance with the terms of this Article upon the effective date.

- (m) Trucked or hauled waste. The Superintendent may regulate trucked and hauled waste to ensure that persons are complying with the terms of this Article and that the Town is acting in compliance with its NPDES Permit.
- (n) RV disposal stations. The Superintendent may allow recreational vehicle ("RV") disposal sites in the service area if the quality or quantity of the RV waste does not adversely impact the POTW. The Superintendent may require RV disposal sites in the service area to ensure adequate controlled access to its disposal site including locked access, sign-in records for persons discharging from the RV, record keeping by the RV disposal site and other information deemed appropriate.
- (o) All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this Article shall be determined in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association, and/or per EPA approved methods, as referenced in 40 CFR Part 136. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the Superintendent.
- (p) No statement contained in this Section shall be construed as preventing any special agreement or arrangement between the Town and any person relating to an industrial concern whereby an industrial waste of unusual strength or character may be accepted by the Town for treatment, except that no such agreement shall be permitted which violates Subsection (c) of this Section or causes or may cause the Town to violate its NPDES Permit or the law.

(Prior code 25-21Ord. No. 2016-145, § 1, 1-18-2017)

Sec. 13-16. Powers and authority of inspectors.

- (a) The Superintendent and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the POTW system in accordance with the provisions of this Article.
- (b) The Superintendent and other duly authorized employees are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the POTW. All records, reports, data or other information supplied by any person as a result of any disclosure required by this Article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 or Colorado law. These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to: processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted which is desired to be considered a trade secret shall have the words, "Confidential Business Information," stamped on each page containing such information. The person must demonstrate to the satisfaction of the Superintendent and the Town Manager that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets.

Information designated as a trade secret pursuant to this Subsection shall remain confidential and shall not be subject to public inspection. Such information shall be available only to officers, employees or authorized representatives of the Town charged with implementing and enforcing the provisions of this Article and properly identified representatives of the Environmental Protection Agency and or the Colorado Department of Public Health and Environment. Effluent data obtained by self-monitoring, monitoring by the POTW or monitoring by any state or federal agency shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

- (c) While performing the necessary work on private properties referred to in Subsection (a) above, the Superintendent or duly authorized employees shall observe all safety rules applicable to the premises established by the company and otherwise required by law.

- (d) The Superintendent and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the wastewater facilities lying within the easement. All entry and subsequent work, if any, on the easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. No. 2016-145, § 1, 1-18-2017)

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-16 in its entirety. Former § 13-16 pertained to destroying facilities, and derived from Prior code 25-22.

Sec. 13-17. Abandonment of connection.

No person shall abandon any building connection without first obtaining a written permit therefor. Such building connection shall be abandoned and effectively sealed as appropriate to the material of the building lead, subject to approval by the Superintendent.

(Ord. No. 2016-145, § 1, 1-18-2017)

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-17 in its entirety. Former § 13-17 pertained to powers and authority of inspectors, and derived from Prior code 25-22.1.

Sec. 13-18. Interference with Town employees prohibited; digging up streets for purposes of sewer connections; destroying facilities.

- (a) No person shall in any way interfere with the Town employees in any discharge of their duties with respect to the POTW.
- (b) No person shall dig up or cause to be dug up any street or alley in the Town for the purpose of connecting with the sewer system, without first obtaining a permit, and no person having a permit shall dig up any portion of any street or alley for the purpose of connecting with the sewer system of the Town and fail or neglect to replace the street or alley to its original condition.
- (c) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the POTW.
- (d) Any person violating these provisions may be subject to immediate arrest under charge of disorderly conduct and may be subject to any other recourse permitted under this Article, the Johnstown Municipal Code or the law.

(Ord. No. 2016-145, § 1, 1-18-2017)

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-18 in its entirety. Former § 13-18 pertained to hearing board, and derived from Prior code 25-22.2.

Sec. 13-19. Administrative Enforcement.

- (a) *Notice of violation.* When the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Superintendent may serve upon such person a written notice of violation. Within five (5) business days

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of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to Superintendent. Submission of such a plan in no way relieves the person of liability for any violations occurring before or after receipt of the notice of violation. If the plan for correction submitted by the person is not satisfactory to the Superintendent, the Superintendent may take further action. Nothing in this Subsection shall limit the authority of the Superintendent to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(b) *Suspension of service.*

- (1) *Suspension of Service with Notice.* The Superintendent may suspend wastewater treatment service in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, which causes or may imminently cause pass through, interference or the violation of the Town's NPDES Permit or which results or may imminently result in a violation of any other provision of this Article. Any person notified of a suspension of wastewater treatment service shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the Superintendent may take such steps as deemed necessary including immediate physical severance of the sewer connection, to prevent or minimize damage to the POTW or endangerment to individuals or the environment
- (2) *Emergency Suspension.* The Superintendent may, without prior notice of hearing, order wastewater treatment services suspended or physically sever a sewer connection if an actual or proposed discharge immediately and substantially endangers public health, safety or welfare, or the environment, or may likely cause the Town to violate any condition of its NPDES Permit or the law. Any such emergency suspension order shall become effective immediately, and any person notified of such suspension shall immediately stop or eliminate all discharge of industrial waste. In such emergency situations, the Town is authorized to prevent or minimize danger or property damage.

(c) *Administrative orders and penalties.*

- (1) *Administrative orders.* When the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Superintendent may issue an order to the person responsible for the discharge directing that such person immediately, or within a time specified by the Superintendent, come into compliance. If the person does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance otherwise required by the provisions of this Article or required to ensure that the Town remains in compliance with the NPDES Permit, nor does a compliance order relieve the person of liability for any violation, including any continuing violation during the time it takes the person to come into compliance. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the person.
- (2) *Administrative penalties.* When the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Superintendent may fine such person in an amount not to exceed the amount set forth in Section 1-62 of the Johnstown Municipal Code. Such fines shall be assessed on a per-violation, per day basis. The Superintendent may, in addition to fines, collect charges to pay for damage to the POTW, fines issued to the POTW as a result of such person's noncompliance and any other costs incurred by the Town or the POTW as a result of such person's noncompliance. A lien against the person's property may be sought for unpaid charges, fines, and penalties. The issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the person.

(d) *Appeal of administrative orders or penalties.*

- (1) *Petition.* A person who disputes an administrative order or administrative penalty may petition for a hearing on a revision or modification thereof. The petition shall be in writing, filed with the Town Clerk and contain facts in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. A person may only file one petition in connection with a particular dispute, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.
- (2) *Hearing.* The Town Manager may hold a hearing on the petition or may designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (3) *Final order.* Within ten (10) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order, which may, within five (5) days of its issuance, be appealed to the Town Council.
- (4) *Appeal to Town Council.* An appeal to the Town Council shall be in writing, filed with the Town Clerk and allege with particularity the errors and omissions contained in the final order. The appellant shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of the hearing shall be given to all parties concerned at least five (5) days prior to the hearing. The appellant shall have the burden of proof on appeal. Within thirty (30) days of the hearing, the Town Council shall make its final determination and affirm, modify or reverse the final order.
- (5) *Service.* Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article.
- (6) *Limitation.* Notwithstanding the right to appeal, the Superintendent may take any action deemed necessary during the pendency of the appeal to allow the Town to remain in compliance with the Town's NPDES Permit, to prevent or mitigate damage to the POTW and to protect the health, safety, or welfare of the public, including, but not limited to, discontinuing wastewater treatment services or physically severing of the sewer connection.

(Ord. No. 2016-145, § 1, 1-18-2017)

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-19 in its entirety. Former § 13-19 pertained to abandonment of connection, and derived from Prior code 25-23.

Sec. 13-20. Judicial Enforcement.

- (a) *Injunctive relief.* When the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town Manager may petition the District Court of Weld or Larimer County for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of an administrative order issued hereunder or any other requirement imposed by this Article, by the Town's NPDES Permit or by law. The Town Manager may also seek such other action as is appropriate, including pursuing legal recourse to require the person in violation to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against such person.
- (b) *Action at Law.* When the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town

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Manager may commence an action at law in the District Court of Weld or Larimer County. An action at law shall not be a bar against, or a prerequisite for, taking any other action against such person.

- (c) *Municipal Court.* Without limitation to other potential remedies, when the Superintendent finds that a person has violated, or continues to violate, any provision of this Article, the Town's NPDES Permit or any other order under this Article, the Town Manager may direct that the person be served a summons and issued a citation into the Johnstown Municipal Court and be subject to the penalties set forth in Section 1-62 of the Johnstown Municipal Code.

(Ord. No. 2016-145, § 1, 1-18-2017)

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-20 in its entirety. Former § 13-20 pertained to interference with Town employees prohibited; digging up streets for purposes of sewer connections, and derived from Prior code 25-24.

Sec. 13-21. Sewer service charges.

- (a) Monthly service charges for residential customers are increased from sixteen dollars (\$16.00) per month to eighteen dollars (\$18.00) per month.
- (b) Nonresidential service charges shall be at a monthly minimum fee that covers a base amount of water plus an additional charge if the water use exceeds the monthly allowance based on the water meter size. The monthly base volume is equal to six thousand (6,000) gallons per month (two hundred [200] gallons/day/SFE). If the commercial customers use more water than the monthly minimum, they shall be charged two dollars and fifty-nine cents (\$2.59) per one thousand (1,000) gallons. The excess of water used above the monthly base volume will be based only on the average of the three-month (December, January and February) winter use period. The charges noted herein do not apply to grandfathered unmetered downtown commercial users, unless meters are eventually installed.

Sewer Service Charges

<i>Customer Class</i>	<i>Customer (\$/Mo.)</i>	<i>Min. Vol. (\$/1000 g)</i>	<i>In Town Rates</i>		<i>Outside Town Rates</i>	
			<i>Minimum Chg. (\$/Mo.)</i>	<i>Volume Chg. (\$/1000 g)</i>	<i>Customer (\$/Mo.)</i>	<i>Volume Chg. (\$/1000 g)</i>
Residential	\$2.49		\$18.00		\$22.51	
Nonresidential	2.49	6,000	18.00	\$2.59	22.51	\$3.23

- (c) In addition to the above charges, customers that discharge wastes with BOD and suspended solids concentrations above normal domestic wastes shall be assessed a surcharge of \$0.0698 per pound of excess BOD and \$0.107 per pound of excess suspended solids.
- (d) Industrial users who desire treatment of domestic wastewater only, wastewater treatment charges will be based on the number of employees, determined in a manner prescribed by Town staff. By way of example, 50 employees at 200 gal/employee/day = 1,000 gal/day, which equals 1,000/250 = 4.0 single

family residential equivalents (SFE). This results in a monthly charge of $4.0 \times \$18.00 = \72.00 , or an amount reflecting the monthly SFE charge then in effect.

(Ord. 2004-732 §6)

Sec. 13-22. Billing; payment.

The sewer charges levied pursuant to this Article shall be payable monthly and shall be added to and made a part of the monthly water bill of the various properties in the Town. Properties outside the Town shall pay monthly and in advance, or as provided by agreement; and if the same are not paid within thirty (30) days, the Town Clerk shall notify in writing the owner and/or tenant of the deficiencies. Then if the deficiencies are not corrected within ten (10) days following a written notice by the Town Clerk, a penalty of five percent (5%) of such charge shall be added to such bill.

(Prior code 25-29)

Sec. 13-23. Lien upon premises of unpaid charges; liability of owner.

All sewer charges shall be a charge and lien upon the premises to which sewer service is furnished from the date the same becomes due and until paid, and the owners of every building, premises, lot or house shall be liable for all sewer service taken from his or her premises, which lien and liability may be enforced by the Town by action at law or suit to enforce such lien. In case the tenant in possession of such premises or building shall pay the sewer charge, it shall relieve his or her landlord from such obligation and lien, but the Town shall not be required to look to any person whatsoever other than the owner for the payment of sewer service herein provided. Further, if the sewer charges are not paid by the owner or by the tenant, then and in that event the Town Clerk shall notify in writing the County Treasurer and give him or her the legal description of the property and the amount of the sewer charges due, and shall be certified to the County Treasurer and added to the real estate taxes of the property owner.

(Prior code 25-30)

Sec. 13-24. Discontinuance of sewer service for delinquent bills and discharging nonacceptable wastes.

In addition to the remedies provided in this Section, the Town may, without notice, discontinue sanitary sewer service to any premises as to which the sanitary sewer service system charges are delinquent for a period of ten (10) days. The Town may, without notice, discontinue the sanitary sewer service to any premises discharging nonacceptable wastes into the sanitary sewer system.

(Prior code 25-31)

Sec. 13-25. Disposition and use of funds.

The funds received from the collection of charges and rentals authorized by this Article shall be deposited, paid out and applied only in the manner and form provided for the issuance of sanitary sewer refunding and improvement revenue bonds for the Town, for the purpose of refunding and paying outstanding sanitary sewer revenue bonds, and for extending and improving the Town's sanitary sewer system and treatment plant, such funds to be known and established as the *Sanitary Sewer Refunding and Improvement Bond Fund*, but nothing contained in this Chapter shall be construed in any way to prevent the Town Council from applying and crediting to such fund available money derived from any other sources.

(Prior code 25-32)

Sec. 13-26. Adoption of rules and regulations governing sewers.

The Town Council shall make and enforce such rules and regulations as it may deem necessary for the safe, efficient and economical management of the Town sewer system. Such rules and regulations, when not repugnant to this Code or any other ordinances of the Town and laws of the State, shall have the same force and effect as ordinances of the Town.

(Prior code 25-33)

Sec. 13-27. Sewer tap fees.

The sewer tap fee schedule is determined in accordance with the meter capacity as recommended for the water meters. Water use and wastewater flows from the larger meters can vary widely from one (1) customer to another, depending on the type of customer. Consequently, the fees for the larger meters (four [4] inches through eight [8] inches) shall be determined on a case-by-case basis to reflect the individual needs of those users. Fees are summarized in the following table:

Sewer Tap Fees

<i>Water Meter Size</i>	<i>AWWA Ratio to ¾"</i>	<i>In Town</i>	<i>Outside Town</i>
¾"	1.0	\$ 3,800.00	\$ 5,600.00
1"	1.7	6,000.00	9,333.00
1½"	3.3	12,000.00	18,687.00
2"	5.3	19,200.00	29,867.00
3"	11.7	42,000.00	85,333.00
4"	21.0	Negotiable	Negotiable
6"	46.7	Negotiable	Negotiable
8"	80.0	Negotiable	Negotiable

(Ord. 2004-732 §5)

Sec. 13-28. Reserved.

Editor's note— Ord. No. 2016-145, § 1, adopted January 18, 2017, repealed § 13-28 in its entirety. Former § 13-28 pertained to penalties for violation of Sections 13-12 through 13-15 and Section 13-17, and derived from Prior Code 25-22.3.

Secs. 13-29—13-40. Reserved.

ARTICLE III Water

[Sec. 13-41. Requirements for receiving Town tap; subdivision and annexation requirements concerning water and water transfers.](#)

[Sec. 13-42. Rates and charges, meters generally.](#)

[Sec. 13-43. Tap fees; costs of installation and maintenance.](#)

[Sec. 13-44. Billing procedure and delinquent payments.](#)

[Sec. 13-45. Potable water service charges.](#)

[Secs. 13-46—13-49. Reserved.](#)

[Sec. 13-50. Article not to affect contracting industrial users.](#)

[Sec. 13-51. Amendment of fees.](#)

[Sec. 13-52. Raw water service.](#)

[Secs. 13-53—13-60. Reserved.](#)

Sec. 13-41. Requirements for receiving Town tap; subdivision and annexation requirements concerning water and water transfers.

- (a) All owners of a subdivision, areas of land and/or business, commercial, industrial or residential sites outside the Town limits that request and petition the Town for domestic water must, as a part of the consideration for securing and receiving Town domestic water service, agree to transfer when a request for Town water is made, at no cost to the Town, certain water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights of the water, to the Town before receiving permits to tap the Town water lines.
- (b) All petitioners requesting annexation of their land to the Town shall, as a prerequisite to receiving approval of the annexation, agree on behalf of themselves, and all successors in interest to the land to be annexed, to transfer at no cost to the Town water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights upon subdividing and/or requesting domestic water service to the Town before receiving the approval of the annexation petition.
- (c) The owners or lessees of land, subdividers or owners of a subdivision within or without the Town limits shall furnish to the Town three (3) acre foot units of project water or shares of Home Supply Ditch Co. water which the Town can use in its system per each acre of land as a prerequisite and as a part of the consideration to receive Town water service and Town water taps for the land, subdivision or parcel. But if the land is dry, the Town shall still require the owner, lessee, subdivider or developer to furnish water as above required at the time of the final approval of the annexation. This standard shall apply to a subdivision, subdevelopment or parcel of land within or without the Town limits, but shall be applied one (1) time and one (1) time only to the subdivision or parcel of land, except if further subdivided and additional water taps are requested.

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- (d) *Subdivision* or *subdividing* shall be defined as any division of any parcel of land where additional water taps are requested.
- (e) Persons requesting one (1) water tap only for a single parcel of land over twenty thousand (20,000) square feet and where the tap does not exceed three-fourths ($\frac{3}{4}$) inch shall furnish to the Town one-third ($\frac{1}{3}$) of the acre requirements as defined herein.
- (f) The water as required under this Section shall be a prerequisite to receiving any Town water service tap, and the water must be transferred in full to the Town before any approval is given for a service tap.

(Prior code 25-53)

Sec. 13-42. Rates and charges, meters generally.

- (a) The Town Council shall cause to be installed water meters both within and outside the Town and shall establish uniform meter rates for all users of the water and water system.
- (b) The Town shall initially install water meters for every primary tap service in use on December 5, 1966, within the Town at its own expense.
- (c) In all cases where there is a second tap and a meter is desired (existing second tap on December 5, 1966, only) by a water user, there shall be an extra twenty-five dollar (\$25.00) installation charge.
- (d) Potable water tap fee. The water tap fee shall be five thousand two hundred dollars (\$5,200.00) for a three-quarter-inch meter. In addition, the tap fee schedule shall be revised for the larger meters to be based on the meter capacity of the larger meters in relation to the three-quarter-inch meters, as determined by the American Water Works ratings. In addition, since the water use and peak rates of use from the larger meters can vary widely from one (1) customer to another depending on the type of customer, the fees for the larger meters (four [4] inches through eight [8] inches) shall be determined on a case-by-case basis to reflect the individual needs of those users. The fees are summarized in the following table:

Water Tap Fees

<i>Water Meter Size</i>	<i>Ratio to $\frac{3}{4}$"</i>	<i>In Town</i>	<i>Outside Town</i>
$\frac{3}{4}$ "	1.0	\$ 5,200.00	\$ 5,600.00
1"	1.7	8,687.00	9,333.00
1½"	3.3	17,333.00	18,687.00
2"	5.3	27,733.00	29,867.00
3"	11.7	60,667.00	85,333.00
4"	21.0	Negotiable	Negotiable
6"	46.7	Negotiable	Negotiable

8"	80.0	Negotiable	Negotiable
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(Prior code 25-59; Ord. 519, 1996; Ord. 2004-732 §1)

Sec. 13-43. Tap fees; costs of installation and maintenance.

- (a) All users of the Town's domestic water system, at the time of securing a building permit, shall pay to the Town the cost of the water meter and installation, which will then be installed by the Town. All other costs for providing facilities to a property for domestic water service shall be the responsibility of the property owner.
- (b) The regular tap fee to be paid by the property owner shall be set by the Town Council by resolution.
- (c) All new water accounts shall require the applicant thereof to submit to the Town a deposit of one hundred fifty dollars (\$150.00) to secure timely payment of water and sewer charges as they become due.
 - (1) In the case of a change of residence within the Town, any person who has had a water account with the Town for the previous twelve (12) months prior to the change, and has had no delinquent payments during that period, shall be exempt from an additional deposit.
 - (2) A person required to pay a deposit may pay the same in three (3) consecutive monthly installments of not less than fifty dollars (\$50.00) per installment, the first of which shall be payable upon establishment of the utility service, the remaining two (2) installments will be added to the next two (2) consecutive months of the utility bill.
 - (3) For homeowners, the deposit will be held in trust for twelve (12) months. At the end of that time, the deposit will be applied to the homeowners' utility account within sixty (60) days if no delinquent payments have occurred.
 - (4) For renters, the deposit will be held in trust and returned within sixty (60) days after the final utility bill has been paid. Upon termination of service to that account, a deduction shall be made from the security deposit with any balance returned to the customer.
- (d) Town employees of the Water and Sewer Department shall be permitted to enter all properties having water and sewer facilities for the purpose of inspection, observation, measurement, sampling, testing, maintenance and upgrading of the Town's water system. Failure to allow access to such property by an owner, tenant or other occupant shall justify the Town's implementing procedures to terminate water service to the property.
- (e) Future maintenance of the meter, unless maintenance and repair are necessary due to negligence of the property owner, shall be the responsibility of the Town.
- (f) The Town shall be responsible for maintenance of the water line from the tap to the shut-off valve.
- (g) The property owner shall be responsible for the cost of the cut and backfill from the tap to the shut-off valve, the cost and installation of the meter pit and all materials from shut-off to the improvement on the property and all necessary repairs and maintenance from the shut-off valve to the improvement on the property.
- (h) Raw water development fee. A raw water fee of one thousand dollars (\$1,000.00) for a three-quarter-inch meter shall be assessed for all new water taps (potable or raw) for the purpose of funding raw water development projects. The fees for larger meters shall be adjusted in accordance with the ratios for the larger meters. The raw water fee schedule is shown in the following table:

Raw Water Tap Fees

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<i>Meter Size</i>	<i>Ratio to ¾"</i>	<i>Water Development Fee</i>
¾"	1.0	\$ 1,000.00
1"	1.7	1,667.00
1½"	3.3	3,333.00
2"	5.3	5,333.00
3"	11.7	11,667.00
4"	21.0	Negotiable
6"	46.7	Negotiable
8"	80.0	Negotiable

(Prior code 25-59.1; Ord. 2004-714 §§1,2; Ord. 2004-732 §3; Ord. 2006-775 §1; Ord. 2010-111 §1)

Sec. 13-44. Billing procedure and delinquent payments.

- (a) All water meters shall be read at least once each month by such person as the Town Council may employ, and the amount due shall be payable on or before the tenth day of the following month.
- (b) If any water bill for any property is delinquent for more than thirty (30) days, the owner and/or tenant of the property shall be so notified by the Town Clerk in writing. The cost of such notification shall be surcharged to the owner's and/or tenant's water bill in the amount of five dollars (\$5.00). If any water bill is delinquent for more than thirty (30) days, the water service shall be shut off and the water shall not be turned on until and unless the total arrearage, together with the current month's charges, has been paid in full with cash or with certified funds. The cost of resumption of such water service shall be the sum charged by the Town to turn on water and borne by the water user and/or the property owner. Moreover, in the event the delinquent water bill exceeds one hundred fifty dollars (\$150.00), there shall be a surcharge assessed in the sum of fifty dollars (\$50.00) each thirty-day delinquency.
- (c) Any tampering with the shutoff pertaining to the water service shall be in violation of this Article.
- (d) The property owner or owners whereat water meters are installed shall be primarily responsible to pay for the water used as indicated by the water meter and as billed therefor.
- (e) All water rates shall be a charge and lien upon the premises to which water is delivered from the date the same becomes due and until paid, and the owner of every building, premises, lot or house shall be liable for all water delivered to or taken and used upon his or her premises, which lien and liability may be enforced by the Town by action at law or suit to enforce such lien. In case the tenant in possession of such premises or building shall pay the water rent or rate, it shall relieve his or her

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landlord from such obligations and lien, but the Town shall not be required to look to any person whatsoever other than the owner for the payment of water rents and rates herein provided. Further, if the water rent is not paid by the owner or by the tenant, then and in that event the Town Clerk shall notify in writing the County Treasurer and give him or her the legal description of the property and the amount of the water rent due which shall be certified to the County Treasurer and added to the real estate taxes of the property owner.

(Prior code 25-60, Ord. 452, 1989; Ord. 504, 1995)

Sec. 13-45. Potable water service charges.

The service charge schedule for all customers is shown in the following table:

Potable Water Service Charges

<i>Rate Schedule</i>	<i>Charges</i>	
	<i>In Town</i>	<i>Outside Town</i>
Residential customers		
Monthly minimum volume (gallons)	5,000	5,000
Monthly minimum charge	\$10.40	\$13.40
Volume charges (per 1,000 gallons)		
5,001 - 10,000 gallons	\$ 2.00	\$ 2.60
10,001 - 15,000 gallons	2.24	2.91
15,001 - 20,000 gallons	2.49	3.24
20,001 - 27,000 gallons	2.74	3.56
Over 27,000 gallons	2.99	3.89
Nonresidential/Commercial/Industrial customers		
Volume charges (per 1,000 gallons)	2.49	3.24

(Ord. 2004-732 §2)

Secs. 13-46—13-49. Reserved.

Sec. 13-50. Article not to affect contracting industrial users.

The rates prescribed in this Article, the size of the orifice into the main and any provision regarding a discount of payment shall not apply to industrial users with contracts in effect. Such users shall be governed by such agreements, regulations and resolutions as the Town Council may, from time to time, establish.

(Prior code 25-65)

Sec. 13-51. Amendment of fees.

The fees provided in this Chapter may be amended by the Town Council by resolution.

(Ord. 520, § 5, 1996)

Sec. 13-52. Raw water service.

- (a) Service charge for raw water use. Rates for raw-water-only service to green belt areas and parks shall be set at eighty percent (80%) of the treated water charges as provided in Section 13-45 of this Article.
- (b) Residential raw water use. The tap fees and rates for residential use of raw water service (dual-water systems) shall be negotiated on a case-by-case basis.

(Ord. 2004-732 §4)

Secs. 13-53—13-60. Reserved.

ARTICLE IV Water Rights Dedication

[Sec. 13-61. Title.](#)

[Sec. 13-62. Intent and purpose.](#)

[Sec. 13-63. Definitions.](#)

[Sec. 13-64. Water rights dedication requirement.](#)

[Sec. 13-65. Water and sewer demand analysis.](#)

[Sec. 13-66. Dedication of water rights for park, open space or recreation uses.](#)

[Sec. 13-67. Exceptions.](#)

[Sec. 13-68. Procedure.](#)

[Sec. 13-69. Agricultural and open space property.](#)

[Sec. 13-70. Option or right of first refusal to purchase.](#)

[Sec. 13-71. Return flows and augmentation, exchange or reuse plans.](#)

[Sec. 13-72. Regulations may be modified.](#)

[Secs. 13-73—13-90. Reserved.](#)

Sec. 13-61. Title.

The ordinance codified in this Article shall be known and may be cited as the *Town Water Rights Dedication Ordinance* .

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-62. Intent and purpose.

It is the intent and purpose of this Article to require the dedication of water rights to the Town sufficient to satisfy any new or additional demand for Town water service resulting from the extension of water service, annexation of land to the Town or any change in land use, within or outside the limits of the Town, which will require new or additional water supply from the Town, and thereby to assure an adequate and stable supply of water to all Town water users, to ensure the financial stability of the Town water utility and to promote the general welfare of the public.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-63. Definitions.

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

Annexation means the act of attaching, adding, joining or uniting a parcel of land to the legal entity known as the Town of Johnstown.

Appurtenant means belonging to, accessory or incident to, adjunct, appended, annexed to or used in conjunction with.

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

Change in land use shall include expansion of an existing use.

Consumptive use means the amount of water consumed and which does not return to the stream system after use.

Conveyance of water rights means the process by which legal title to water rights is transferred by appropriate deed, stock assignment, allotment contract or other record transfer.

Dedicate or *dedication* means to appropriate an interest in land or water rights to some public use, made by the owner, and accepted for such use by or on behalf of the public.

Dwelling unit means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by the Uniform Building Code.

Extension of water service means any extension of the Town water service for which a tapping charge is assessed or any increase in Town water service resulting from a change in use of property, an increased use of property or an increase in irrigated area.

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Historical use affidavit means a notarized written statement which sets forth the following information concerning each water right proposed for dedication to the Town:

- a. The name(s) and address(es) of the owner(s);
- b. The amount of each water right or the number of shares of stock;
- c. If the water right is used for irrigation, the number of acres presently being irrigated and a legal description and/or map of the acreage irrigated;
- d. A copy of the stock certificate in any ditch or reservoir company which furnishes water and (unless this requirement is waived by the Town) all decrees or judgments determining or adjudicating each water right proposed for dedication to the Town and any other water rights appurtenant to the property;
- e. A copy of the document(s) by which the present owner(s) of each water right received title to the water right proposed for dedication to the Town and any other water rights appurtenant to the property;
- f. A copy of all diversion records for each water right proposed for dedication or transfer to the Town (unless this requirement is waived by the Town); and
- g. A description of the historical use of the water right, including the amount and time of diversions and, if the use was irrigation, the type of irrigation, the number of acres irrigated, the crops grown and a description of any other water rights used on the land irrigated.

Lease means any grant for permissive use which results in the creation of a landlord-tenant relationship.

Person means an individual, a partnership, a corporation, a municipality or any other legal entity, public or private.

Raw water credit means the number of S.F.E.'s for which dedication credit is provided by the Town for the dedication of a particular acceptable water right to the Town.

Single family equivalent unit (SFE or S.F.E.) means a number related to the volume of water necessary to meet the demand and consumptive use requirements of an average dwelling unit housing not more than three and one-half (3.5) persons and having not more than three thousand (3,000) square feet of irrigated area. The S.F.E. unit value assigned to such average dwelling unit is one (1.0). The S.F.E. unit value assigned to any particular dwelling unit may be greater than, equal to or less than one (1.0). The S.F.E. unit value assigned to other uses shall be based on the Town's estimated volume of water demanded and consumed by such uses as compared to the volume of water demanded and consumed by such average dwelling unit.

Sufficient priority means that a water right has a date as of which it is entitled to use water in relation to other water rights deriving their supply from the same source which is sufficiently senior that it may reasonably be expected to provide a dependable water supply for the requirements of this Article. Factors to be considered in making this determination shall include, but not by way of limitation, the appropriation date and adjudication date of the water right, the decreed use(s), the historical use of the water right, the physical flow available and the administrative practices of the office of the State Engineer.

Town means the Town of Johnstown.

Town Administrator means the Town Administrator of the Town of Johnstown, Colorado.

Town water service means treated water service or raw water service furnished by the Town.

Transfer water rights means the conveyance of legal title to water rights to the Town.

Water court transfer fee means the estimated cost per S.F.E. of court filing fees, publication fees, professional fees and other reasonable and customary costs associated with required proceedings in the Water Court for the Town to make full and lawful use of water rights dedicated to or acquired by the Town for use in its municipal water system.

Water right means a decreed right to use in accordance with its priority a certain portion of the waters of the State by reason of the appropriation of the same. It shall include both direct-flow and storage rights.

(Ord. 577 §1, 1998; Ord. 99-580 §1; Ord. 99-590 §1)

Sec. 13-64. Water rights dedication requirement.

- (a) From and after the effective date of the initial ordinance codified herein, any person who seeks approval of any of the following:
- (1) an extension of water service;
 - (2) annexation of land to the Town;
 - (3) any change in land use, within or outside the limits of the Town, if such change in land use will increase the demand for Town water service;

shall dedicate water rights to the Town of sufficient priority to produce, after dedication of such water rights to the Town and completion of any necessary water court transfer proceedings, at least one-half (0.5) acre-foot of deliverable supply per year, of which at least two-tenths (0.2) of an acre-foot per year must be fully consumable, for each S.F.E. unit, determined in accordance with this Section and Section 13-68(d), and which will be available for diversion at such point or points of diversion as the Town may designate for use and consumption by the Town for municipal purposes; provided that wastewater from in-house or in-building uses will either be treated by the Town's municipal wastewater treatment facilities or other wastewater treatment facilities of equal efficiency and which provide similar return flow patterns. If wastewater from in-house or in-building uses will not be treated by the Town's municipal wastewater treatment facilities or other wastewater treatment facilities of equal efficiency and which provide similar return flow patterns, the Town shall increase the dedication requirement so that, after dedication of such water rights to the Town, the water rights to be dedicated will produce an amount of deliverable and fully consumable water per year for each S.F.E. which is sufficient to ensure an adequate supply of water to satisfy the proposed use or uses. In the case of a request for annexation of land to the Town, the person who seeks approval of the annexation shall comply with this Article.

- (b) Any person required to dedicate water rights to the Town by Subsection (a) of this Section shall designate, on forms to be prescribed by the Town, all water rights proposed to be dedicated to the Town and shall provide a legal description of the land for which an extension of water service is requested or for which approval of annexation or a change in land use is sought; and, in addition, shall specify the proposed use or uses for which Town water service is requested and the number of S.F.E. units required for such use or uses. The form shall be accompanied by an historical use affidavit, except that if the total number of S.F.E. units is greater than thirty (30) S.F.E. units, the Town may, in its discretion, require in addition to the historical use affidavit an engineering report prepared at said person's expense by an engineer experienced in water rights matters, which report is determined by the Town to sufficiently analyze the historical use of the water rights proposed for dedication to the Town.
- (c) Thereafter, the Town shall make a determination as to whether or not the water rights are sufficient to satisfy the requirements of Subsection (a) of this Section. In making such determination, the Town shall consult with persons knowledgeable in water rights matters.
- (d) The dedication requirement shall be satisfied by the person seeking approval of the extension of water service, annexation or a change in land use, whether or not that person will be the ultimate user of the Town water service.
- (e) All costs and expenses to dedicate water rights to the Town to satisfy the requirements of Subsection (a) of this Section, or to dedicate water rights which the Town has otherwise accepted in accordance with Section 13-68, shall be paid by the person required to dedicate water rights to the Town pursuant to this Article. All costs and expenses necessary to change such water rights so they can be diverted

and used by the Town for municipal use shall be paid by the person required to dedicate water rights to the Town pursuant to this Article, or his or her successor in interest, by payment of all required water court transfer fees.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-65. Water and sewer demand analysis.

- (a) The annexor, developer or owner, as the case may be, shall include with the annexation petition, or subdivision submittal if the property has already been annexed, or the request for extension of water service, a written analysis sufficient to allow the Town to fully evaluate the probable water demand and consumption and the sewer service requirements for the property to be developed, based on the specific development plan proposed by such annexor, developer or owner. The analysis shall include the entire property and shall specify the use of all land in the property. Water demands and consumption shall be estimated separately for each use category (e.g. single-family residential, multifamily residential, commercial, office, industrial, parks or others), and irrigation demands and consumptive use shall be set forth separately for each use category which is applicable to the property.
- (b) The Town may elect to provide its own analysis if, in its judgment, the Town has sufficient information and experience with other similar developments to adequately evaluate the probable water demands and consumption and the sewer service requirements for the property. If the Town and the annexor, developer or owner agree on applicable criteria for the property, the Town may advise such person that he or she is not required to submit the written analysis provided for in Subsection (a).

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-66. Dedication of water rights for park, open space or recreation uses.

- (a) If the owner of any property to which the provisions of this Article is applicable dedicates land to the Town pursuant to this Code, such land to be used for park, open space or recreation uses, such owner shall also comply with the provisions of this Article, including the dedication of water rights sufficient to irrigate said land, as determined by the Board of Trustees.
- (b) Where the Board of Trustees enters into an agreement to accept cash-in-lieu of in-kind land dedication for parks, open space or recreation uses, and the Town is unable to specifically determine the irrigation demand for the public project for which the cash is contributed, from a specific Town construction plan, master plan or otherwise, the amount of water rights dedication, or cash-in-lieu of water rights dedication, at the Board of Trustee's discretion, which shall be required to meet the requirements of Subsection (a) shall be equal to the amount required to irrigate eighty percent (80%) of the land area which otherwise would have been required for in-kind land dedication by this Code.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-67. Exceptions.

- (a) The Board of Trustees may substitute or waive any conditions or requirements deemed necessary to meet the purposes of this Article.
- (b) This Article does not apply to an extension of water service for which the dedication requirements have been previously satisfied.
- (c) The Board of Trustees may from time-to-time determine that certain provisions of this Article, as amended, may be inapplicable to certain developments or portions of developments, or the application of said Article should be deferred in time or on certain conditions, if there is existing water service from

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Little Thompson Water District or the Town believes all or part of the development would be better served by said District, either temporarily or permanently. Any such determinations shall be set out expressly in the annexation, development and other similar agreements relating to water service.

- (d) The Board of Trustees may make exceptions to the provisions of Section 13-68 in the event that all water rights appurtenant to the property being annexed cannot be dedicated upon annexation as a result of a mortgage or other encumbrance or a situation where the annexor or developer is not, at annexation, the owner of the water rights, if the Town determines that the owner or developer has made a good faith effort to secure the release of the mortgage or encumbrance, which effort has been unsuccessful, and the Town further determines that special circumstances exist which make granting an exception in the best interests of the Town.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-68. Procedure.

- (a) The Town shall include in any annexation, subdivision, development or similar agreements, provisions addressing whether or not there is any commitment on behalf of the Town to provide water or sewer service. Any provision affirmatively providing a commitment for water or sewer service shall limit the level of service to the amount of water dedicated by the developer and/or acquired by the Town for the developer's benefit with cash-in-lieu payments.
- (b) At the time of annexation, the annexor shall elect to do one (1) or more of the following: (1) offer for dedication to the Town all water rights appurtenant to the property to be annexed; and/or (2) offer for dedication to the Town water rights which are not appurtenant to the property to be annexed; or (3) not to offer for dedication to the Town all water rights appurtenant to the property to be annexed. The Town may, in its discretion, and using the criteria set forth in this Article, consider and accept for dedication water rights offered by the annexor which are not appurtenant to the property to be annexed. The Town shall determine whether any such water rights in (1) and/or (2) offered to the Town for dedication will be accepted, rejected or accepted in part by the Town for dedication.
- (c) In the event the annexor elects not to offer for dedication to the Town all water rights appurtenant to the property to be annexed, the Town shall provide in the annexation, subdivision, development and other similar agreements that: (1) there is no commitment by the Town at the time of approval of the annexation to provide water or sewer service to the property; (2) if the developer later elects to offer all such appurtenant water rights and the Town accepts them for dedication, the timing and extent of any commitment to serve water or sewer shall be limited by the completion of any necessary water court proceedings by the Town; (3) no platting of the property may occur until water right dedications have been completed for each plat; (4) only Colorado Big Thompson Project (CBT) units will be accepted for dedication at the time of platting; and (5) the annexor, developer or owner shall not be entitled to provide cash-in-lieu payments to the Town until after such time as all appurtenant water rights have been offered to the Town for dedication.
- (d) The Town shall evaluate any water rights offered to the Town for dedication. The Town shall determine whether said water rights are to be accepted based upon the following criteria: priority date, historical point of diversion, location of historical use, historical yield, historical consumptive use, the contribution to historical consumptive use of other water rights or sources of water supply, future use of the land historically irrigated, including future irrigation, considerations with respect to title, anticipated difficulties with transferring the water rights to appropriate points of diversion, places of storage and municipal uses, the Town's contractual obligations and arrangements, expected needs of the Town and of the Town's municipal water supply system, composition of the Town's water rights portfolio at the time of the proposed annexation, and any other appropriate factors. Recognizing that the Town will incur additional expenses in the future by accepting dedications of water rights under this Ordinance that are not decreed for municipal use by the Town, the Town has a two-tiered water court transfer fee structure and a two-tiered raw water credit structure:

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TABLE I
(Water Rights Decreed for Municipal Use)

If the following water rights are decreed for municipal use and are accepted by the Town, the following water court transfer fees shall be applicable:

Water Rights	Raw Water Credits
Consolidated Home Supply	\$150.00 per S.F.E.
Ditch & Reservoir Company	
Colorado Big Thompson	
Project Units (CBT)	\$0.00
Other acceptable water rights	\$150.00 per S.F.E.

Water court transfer fees shall be paid not later than the time of approval of the plat(s) to which the water rights dedication is applicable. These values are subject to change at any time by ordinance of the Town Council.

TABLE II
(Water Rights Not Decreed for Municipal Use)

If the following water rights are not decreed for municipal use and are accepted by the Town, the following water court transfer fees shall be applicable:

Water Rights	Raw Water Credits
Consolidated Home Supply	\$300.00 per S.F.E.
Ditch & Reservoir Company	
Other acceptable water rights	\$300.00 per S.F.E.

Water court transfer fees shall be paid not later than the time of approval of the plat(s) to which the water rights dedication is applicable. These values are subject to change at any time by ordinance of the Town Council.

TABLE III
(Water Credits For Water Decreed for Municipal Use)

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If the following water rights are accepted by the Town and are decreed for municipal use, the following raw water credits shall be applicable:

Water Rights	Raw Water Credits
Consolidated Home Supply	
Ditch & Reservoir Company	16 S.F.E.s per share
Colorado Big Thompson Project Units (CBT)	.71 S.F.E. per unit

These values are subject to change at any time by ordinance of the Town Council.

TABLE IV
(Water Credits For Water Not Decreed for Municipal Use)

If the following water rights are accepted by the Town and are not decreed for municipal use, the following raw water credits shall be applicable:

Water Rights	Raw Water Credits
Consolidated Home Supply Ditch & Reservoir Company	12.8 S.F.E.s per share
Colorado Big Thompson Project Units (CBT)	.71 S.F.E. per unit

For water rights acceptable to the Town for dedication which are not set forth in the table above, raw water credits shall be determined by the Town in the same manner as the raw water credits listed above were determined, which determination shall include use of the criteria set forth in Section 13-64 and this Subsection (d). These values are subject to change at any time by ordinance of the Town Council.

- (e) The Town reserves the right, in its sole discretion, to accept, reject or accept in part any water rights proposed for dedication to the Town. If the Town determines that the water rights proposed for dedication to the Town are unacceptable to the Town, or insufficient to comply with the dedication requirements, the Town may, in its sole discretion, determine whether the Town will accept cash-in-lieu of dedication to satisfy all or part of the dedication requirement. If the Town elects to accept cash-in-lieu of dedication, the amount of cash shall be equal to the current fair market value of water rights required to satisfy the dedication requirement, determined as of the date of actual payment by the annexor, developer or owner, which value shall include any transaction costs incurred or to be incurred by the Town in acquiring additional water rights for the Town's system. All determinations required by this Section shall be made by the Town in its sole judgment.
- (f) No plat shall be approved by the Town unless sufficient water rights dedications and/or cash-in-lieu payments have been accepted by the Town to provide sufficient water supply for the demands projected for all proposed uses within the platted area.
- (g) No extension of water service, including any new or additional water service, shall be furnished until there has been full compliance with the provisions of this Article, unless the Board of Trustees

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determines by resolution or written agreement that one (1) or more of the exceptions set forth in Section 13-67 apply.

- (h) The Town reserves the right to review actual water usage within a project at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the annexor, developer or owner, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.
- (i) All costs and expenses related to the dedication of water rights to the Town shall be borne by the person required to dedicate water rights to the Town pursuant to this Article.
- (j) Any decision or recommendation made by the Town Administrator or other Town agent or designee under any delegation of authority or responsibility contained in this Article or otherwise relating to water rights dedication shall be submitted to the Board of Trustees for determination or ratification, as the case may be. No such decision or recommendation shall be of any force or effect until finally determined or ratified by the Board of Trustees by ordinance, resolution or approval of a written agreement.
- (k) In the event the water rights offered to the Town for dedication provide raw water credits in excess of those required by this policy, the annexor, developer or owner shall offer any excess water rights for sale to the Town at current fair market value. The Town may enter into a written agreement to purchase all or part of any such excess water rights and, in the event the Town does not then purchase all of such excess water rights, the Town may require the annexor, developer or owner to grant to the Town a right of first refusal to purchase such excess water rights in the future, pursuant to the provisions of Section 13-70.
- (l) The Town shall not require that groundwater wells or their appurtenant water rights be offered to the Town for dedication or purchase, nor shall the Town provide any raw water credits for such structures or water rights.
- (m) All determinations provided for herein shall be made by the Town in the exercise of its reasonable judgment and shall be consistent with this Article.
- (n) All dedications of water rights to the Town hereunder shall be effected by delivering to the Town sufficient warranty deeds, stock certificates with appropriate stock assignments or by written approval by the Northern Colorado Water Conservancy District of the transfer of any allotment contracts, as is appropriate to the particular transaction. All title documents shall be subject to approval by the Town's attorneys. No water rights dedication shall be considered completed until the Town has accepted sufficient documents transferring title to the Town.

(Ord. 577 §1, 1998; Ord. 99-590 §1; Ord. No. 2014-135, § 1, 9-15-2014)

Sec. 13-69. Agricultural and open space property.

If the owner of the property proposed to be annexed, subdivided or on which the land use is proposed to be changed resulting in an increased demand for Town water service desires to retain the land, or any portion thereof, in agricultural production or as open space prior to development, he or she may, pursuant to written agreement with the Town, be permitted to lease back, on an annual basis and for irrigation, aesthetic and recreational purposes only, all or part of the water rights dedicated to the Town pursuant to this Article. The terms of any such leases shall be at fair market value, as determined by the Town, and on such other terms and conditions as are determined by the Town. Said leases shall provide that in the event any portion of the land for which the water is leased is platted during the term of the lease, the Town may cancel the lease, in whole or in part, to the extent any portion of the leased water is determined by the Town to be necessary for water service to the property so platted.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-70. Option or right of first refusal to purchase.

- (a) Time. Prior to any extension of water service, any person required to comply with the provisions of this Article shall also grant to the Town the option for one (1) year to purchase any and all water rights which are appurtenant to the land to be annexed, or on which the land use is proposed to be changed, but which are in excess of the dedication requirements of this Article. The option may be exercised by the Town at any time for a period of one (1) year following the date of the grant to the Town with regard to any or all of the water rights subject to the grant.
- (b) Price.
 - (1) The option price shall be that price agreed upon by the parties. If the parties cannot 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.
 - (2) 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 who shall be appointed by both parties. The average of the three (3) appraisals shall be the option price. All three (3) appraisers must have at least ten (10) years' experience in appraising water rights in Colorado.
- (c) Right of first refusal.
 - (1) Grant of right. In addition to the grant to the Town of the option to purchase water rights as provided in Subsection (a), any person required to comply with the dedication requirements shall also grant to the Town a right of first refusal regarding any water rights subject to said option to purchase. If the Town for any reason should choose not to exercise its option to purchase water rights as provided in Subsection (a), the Town shall have the right of first refusal in the event the water rights are to be sold separately from the land, for a period of ten (10) years following the date of the grant to the Town.
 - (2) Notice period. If the owner of the water rights subject to the right of first refusal wishes to sell the water rights to a third party, he or she shall give the Town at least ninety (90) days' prior written notice of his or her intention to effect a sale of the water rights by delivering to the Town an acceptable bona fide written offer to purchase made by a third party.
 - (3) Exercise of right. During the ninety-day notice period provided for in Subsection (c)(2), the Town shall enjoy its right of first refusal entitling it to purchase the water rights offered for sale on the same terms and conditions as contained in the acceptable bona fide written offer. 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 to purchase, then the Town shall so notify the owner in writing and shall proceed to closing on the terms and conditions contained in the acceptable bona fide written 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 the third party shall be for a price which is at least equal to that price which was tendered to and refused by the Town, and on terms and conditions which are no more favorable to the third party than those refused by the Town.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-71. Return flows and augmentation, exchange or reuse plans.

The Town shall have dominion and control of all water supplied through its water system, subject to reasonable use thereof by its customers in compliance with applicable water service agreements, leases or licenses or the Town's ordinances. Such dominion and control shall continue without interruption as to all wastewater, return flows, runoff, sewage or tail water attributable to or originating in water supplied through Town-owned or controlled water rights or facilities. The Town shall have the exclusive right to recapture such return flows or claim credit therefrom for reuse, successive use, exchange, replacement,

augmentation, substitute supply or any other lawful purposes, and the Town's dominion and control over water shall continue to attach to all such return flows, regardless of form, even after they return to the groundwater aquifers or the surface stream systems. All return flows from water supplied through Town-owned or controlled water rights or facilities remain the property of the Town.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Sec. 13-72. Regulations may be modified.

This Article may, in the future, be modified from time to time by ordinance to reflect changes in the Town's needs, current market conditions and other appropriate factors.

(Ord. 577 §1, 1998; Ord. 99-590 §1)

Secs. 13-73—13-90. Reserved.

ARTICLE V Infrastructure Reimbursement

[Sec. 13-91. Water and sewer line reimbursements; purpose.](#)

[Sec. 13-92. Conditions invoking eligibility for reimbursement for connections to public water and sewer.](#)

[Sec. 13-93. Computation of reimbursement for connection to public mains.](#)

[Sec. 13-94. Reimbursement procedure for private payment.](#)

[Secs. 13-95—13-110. Reserved.](#)

Sec. 13-91. Water and sewer line reimbursements; purpose.

It is the intention of the Board of Trustees in providing a reimbursement procedure under this Article to provide an appropriate incentive for developers of private property to pay for the initial construction of water and sewer mains to connect their property with existing public water and sewer mains by providing a process whereby a developer can recoup a portion of the initial construction cost of such water or sewer mains. The Board of Trustees also recognizes that it is necessary for a developer to timely apply to the Town for reimbursement and further that there shall be a limitation on the period of time, expressed in years, whereby a developer may recoup his or her cost.

(Ord. 98-585 §1)

Sec. 13-92. Conditions invoking eligibility for reimbursement for connections to public water and sewer.

Property benefiting from sanitary sewer service or water service can be either contiguous or noncontiguous to the system. Noncontiguous development requires the construction of off-premises mains. *Off-premises mains* are defined as mains constructed to serve a property which is not contiguous to existing water and sewer mains and which crosses other private property or properties. Excluded from this definition are water or sewer mains in the interior or on the perimeter of the property initially served. The measurement of the off-premises main shall be from the point it departs the initially served property along such main to the point of connection to the existing public system. All persons desiring water or

sewer service for property abutting or in the drainage area of an off-premises main shall be required to pay reimbursement if all of the following circumstances exist:

- (1) The off-premises main was constructed in accordance with Town specifications and requirements with prior approval by the Town, at the expense of one (1) or more private persons who have obtained approval for reimbursement from the Board of Trustees pursuant to Section 13-93;
- (2) The person against whom the reimbursement is to be assessed requests approval for additional line extensions or services which connect to the off-premises main either directly or indirectly within ten (10) years of the completion of the construction. The initial ten-year period may be renewed for an additional five-year period or periods by action of the Board of Trustees upon petition by the person who paid for such initial construction. If such renewal petition is not filed prior to the lapse of an initial or renewal period, such renewal shall not be allowed; the granting or denial of a renewal period shall be completely at the discretion of the Board of Trustees;
- (3) The property to be served with water or sewer service was owned at the time of construction by a person who did not participate in the cost of construction;
- (4) The property owners against whom the reimbursement may be assessed were notified (or their predecessors in interest were notified) by the initial developer of their opportunity to participate in the cost of construction prior to the completion of construction. With respect to all owners of property directly abutting the off-premises main, such notification shall be by both certified and first class postage prepaid mail. With respect to all owners of property not directly abutting the off-premises main but in the drainage area of such off-premises main, such notification shall be in the form of signs (in the shape and form as those used for zoning request changes) announcing such opportunity erected at the intersection of the off-premises main with all public streets and roads, and left standing at all times during construction of the off-premises main.

(Ord. 98-585 §1)

Sec. 13-93. Computation of reimbursement for connection to public mains.

To be eligible for reimbursement, a developer must seek prior approval from the Board of Trustees, to be for an initial ten-year period. The area subject to the reimbursement procedure described in Section 13-92 shall consist of land tracts which the Board of Trustees determines benefit from the off-premises main. Costs shall be proportionally allocated by the Board to the land area on a frontage, flow capacity, drainage area or other equitable basis if all conditions are met. The developers seeking reimbursement approval shall submit to the Town Council a proposed formula for approval. The allocations shall be calculated on a gross acreage if allocated on a drainage area basis, and shall include all rights-of-way, stormwater facilities, parks and other private land which may be dedicated to public purposes within each tract. In each case, the reimbursement will be computed by prorating the construction cost, without any additional charges other than interest, against the property served by the off-premises main. The reimbursement shall be paid prior to the approval of plans for construction of additional extensions or when service taps are requested, whichever come first. An interest component may be added, but shall apply to the first ten-year period only, and not to subsequent periods, and it shall be equal to that of ten-year U.S. treasury bills at the completion of construction as evidenced by the date of final approval by the Town Council. Eligibility for reimbursement and reimbursement formulas must have approval of the Town Council, such approval to be had by a majority of those members present and voting.

(Ord. 98-585 §1)

Sec. 13-94. Reimbursement procedure for private payment.

Private persons who pay for the construction of sections of public water or sewer mains and who desire partial reimbursement for such payment shall deliver a written document to the Town Manager

setting forth the total construction cost, and setting forth the name and address of an individual, bank or other organization authorized to receive payments from the Town pursuant to this Section. Only water and sewer mains constructed by prior approval of the administrative authority and in strict compliance with Town standard specifications will be considered for reimbursement. As reimbursement charges are paid to the Town pursuant to Sections 13-92 and 13-93, the Town shall transmit such payments to such authorized individuals, bank or other organization. The Town shall have no responsibility to see that such individual, bank or other organization properly deals with such funds. The Town shall not recognize any recipients or claimants other than the named individual, bank or other organization.

(Ord. 98-585 §1)

Secs. 13-95—13-110. Reserved.

ARTICLE VI Water Conservation

[Sec. 13-111. Levels of drought condition.](#)

[Sec. 13-112. Water waste.](#)

[Sec. 13-113. Drought surcharge.](#)

[Sec. 13-114. Penalty for violation.](#)

[Secs. 13-115—13-130. Reserved.](#)

Sec. 13-111. Levels of drought condition.

- (a) There shall be three (3) separate levels of drought conditions. Level 1 shall be a normal year, requiring no restrictions, and shall be in effect without further action by the Town Council; Level 2 shall be a moderate drought year limiting outdoor irrigation as hereinafter provided and shall become effective as provided by resolution adopted by the Town Council; and Level 3 shall be severe drought conditions prohibiting lawn irrigation and shall become effective as provided by resolution adopted by the Town Council. The Town Council's decision to determine a restriction level shall be based upon the following criteria:
- (1) Water delivery limitations placed on the Town by its raw water providers;
 - (2) Snow pack and reservoir level;
 - (3) Available water supplies in general; and
 - (4) Any other relevant factor that affects the Town's available water supply.
- (b) Under Level 2 conditions, no person or property owner shall utilize water from the water utility for the purpose of spray irrigation or hand-watering of lawns, gardens or other landscapes unless such usage complies with all of the following restrictions:
- (1) Spray irrigation and hand-watering shall occur only on the homeowner's appropriate watering day and only between the hours of 6:00 p.m. and 10:00 a.m. Therefore, on the homeowner's appropriate watering day, watering may occur from midnight to 10:00 a.m. and then from 6:00 p.m. to midnight.
 - (2) Spray irrigation and hand-watering shall occur only on the designated property watering days to be indicated as either an even- or odd-numbered address. The last digit of the address of the property owner will determine the designated watering day. Even addresses may water on Sunday and Thursday. Odd addresses may water on Saturday and Wednesday.

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- (c) No person or property owner shall utilize water from the water utility for the purpose of washing sidewalks, driveways, patios or similar hardscapes.
- (d) Vehicles may be washed only on a property owner's District-assigned watering days, but shall be washed with a bucket or a hose running with an automatic shut-off nozzle. If possible, persons are encouraged to park vehicles on their lawns while washing occurs, but such vehicles may be on the lawn only while they are being washed and shall be immediately removed from the lawn upon completion. Commercial vehicle washing facilities are exempt from this regulation.
- (e) There shall be no lawn watering from the date of October 15 through the date of April 15. Trees and shrubs may be watered on either a Saturday or Sunday in accordance with the District irrigation schedule.
- (f) Watering of newly planted grass shall only occur subject to a permit issued by the Water Department. The cost of the permit shall be determined by resolution of the Town Council.
- (g) Irrigation with well water may occur only subject to the premises being clearly posted with a notice visible from the street indicating that irrigation is with well water.
- (h) Only nonpotable water may be used for construction purposes.
- (i) The Town may, by resolution, at such times where warranted, provide appropriate measures for watering large areas, such as open space and parks by schools and homeowners associations.

(Ord. 2003-704 §1; Ord. 2004-719 §1; Ord. 2013-127 §1)

Sec. 13-112. Water waste.

- (a) No person or property owner shall cause, allow or permit any water waste.
- (b) *Water waste* is the intentional or nonintentional use of water which results in water being utilized in a wasteful or inefficient manner. Water waste includes, without limitation, the following:
 - (1) Water applied in any manner, rate or quantity such that runoff results from the landscaped area being watered and water runs onto public or private streets or into drainage or storm drainage facilities;
 - (2) Failure to repair or shut off within one (1) hour any irrigation system that is malfunctioning; or
 - (3) Excessive use of water for any exempt activities set forth in this regulation including, without limitation, vehicle washing and use of child-type swimming pools.
- (c) *Excessive* means more than the minimum reasonably necessary to accomplish the task.

(Ord. 2003-704 §1)

Sec. 13-113. Drought surcharge.

The Town Council may establish by resolution a temporary drought surcharge for excessive water usage. Funds received from the surcharge shall be used solely for leasing or acquisition of water rights, for the cost of enforcement of water restrictions and water department operation and maintenance. This shall be a temporary surcharge and may last no longer than one (1) irrigation season. These charges shall supersede the charges expressed for usage rates under Section 13-45 of this Chapter.

(Ord. 2003-704 §1)

Sec. 13-114. Penalty for violation.

It shall be unlawful to violate of the terms and conditions of this Article, and the penalties for violation of this Article shall be as follows:

<i>Offense</i>	<i>Penalty</i>
1st offense	\$ 25.00
2nd offense	50.00
3rd offense	100.00
4th offense	200.00
5th or any subsequent offense	1,000.00

There shall be no suspension of fines.

(Ord. 2003-704 §1)

Secs. 13-115—13-130. Reserved.

ARTICLE VII Storm Water Utility

[Sec. 13-131. Declaration of purpose.](#)

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[Sec. 13-135. Comprehensive Storm Water Management Plan.](#)

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[Sec. 13-149. Storm Water Utility Enterprise.](#)

[Secs. 13-150—13-160. Reserved.](#)

Sec. 13-131. Declaration of purpose.

- (a) The Town Council hereby finds, determines and declares that providing storm water facilities for drainage and control of flood and surface waters within the Town, including areas to be subdivided and developed, is necessary in order that storm and surface waters may be properly drained, treated and controlled and is necessary to protect the health, safety and welfare of the Town and its inhabitants.
- (b) The Town Council further finds, determines and declares that the owners of all real property within the Town are the ultimate beneficiaries and users of the Town's storm water system and should pay a portion of the costs of providing the facilities, maintenance and administration necessary for the reasonable control of storm water.
- (c) The Town Council further finds, determines and declares that dedicated funding for storm water management is needed.
- (d) The Town Council further finds that the appropriate way to establish and administer the program is by establishing a storm water utility as an enterprise fund operation of the Town.

(Ord. 2004-718 §1)

Sec. 13-132. Definitions.

Best management practices (BMPs) means methods that have been determined to be the most effective, practical means of preventing or reducing pollution from storm water runoff. These include schedules of activities, prohibitions of practices, maintenance procedures and other management practices. BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or water disposal or drainage from raw material storage.

Detention means the collection and temporary storage of storm water in such a manner as to provide treatment through physical, chemical or biological processes, with subsequent gradual release of the storm water.

Developed land means land on which any part of its surface has been modified by the works of humans in such a way that the land's natural ability to absorb and hold precipitation has been reduced.

Drainage basin means the watershed area contributing storm water to the storm water system.

Equivalent residential unit (ERU) means the average impervious area of a residential lot.

Impervious surface means a surface that has been compacted or covered so that it is highly resistant to infiltration by water.

Retention means the prevention of, or to prevent the discharge of, a given volume of storm water runoff into surface waters by permanent storage.

Storm water means the flow of surface water that results from and occurs following a precipitation event or irrigation return flow.

Storm water management means all activities related to the administration, planning, master planning, financing, construction, operation and maintenance of the storm water system.

Storm Water Management Plan means a plan for receiving, handling and transporting storm water within the Town storm water system.

Storm Water Management Utility shall be operated as an enterprise following the accepted principles and procedures established by the Governmental Accounting Standards Board as a publicly held "Enterprise Fund."

Storm water system means all natural and manmade elements, facilities, structures, equipment and land that are used for or incidental to the conveyance, control, treatment or disposition of storm water.

Storm water system development charges means charges that are a one-time payment that fund the expansion of public facilities needed to accommodate new development. The intent is for new development to pay for its proportional share of the capital costs for additional infrastructure capacity.

Surface waters means water naturally open to the atmosphere (rivers, lakes, reservoirs, ponds, streams, impoundments, seas, etc.) and all springs, wells or other collectors directly influenced by surface water.

Town means the Town of Johnstown, including staff and elected and appointed officials.

(Ord. 2004-718 §1)

Sec. 13-133. Creation of Storm Water Utility.

There is hereby created a Storm Water Utility of the Town empowered to implement the provisions of this Article.

(Ord. 2004-718 §1)

Sec. 13-134. Administration by Town Manager.

The administration of the provisions of this Article is hereby vested in and shall be exercised by the Town Manager, who may prescribe forms and rules and regulations in conformity with this Article or for the ascertainment, computation and collection of the fees imposed hereunder and for the proper administration and enforcement hereof. The Town Manager may delegate the administration of this Article or any part thereof, subject to the limitations of this Code, to duly qualified employees and agents of the Town.

(Ord. 2004-718 §1)

Sec. 13-135. Comprehensive Storm Water Management Plan.

The Storm Water Management Utility shall develop a Comprehensive Storm Water Management Plan for the Town based on sound engineering studies that indicate the location of all facilities in the Town, including those facilities that currently exist and those determined to be needed and that are intended to be constructed in the future. The Town Council may adopt the Comprehensive Storm Water Management Plan by resolution. All substantial modifications or amendments shall also be made by

resolution of the Town Council. Such plan shall guide the Storm Water Management Utility in the construction, operation and maintenance of the storm water system. The Town shall, in all ways and within the limits of its powers, solicit adjacent municipalities and Weld County to cooperate in providing storm water facilities in drainage basins, or parts thereof, extending outside the Town limits and in general to carry out the Storm Water Management Plan developed therein. Maps showing all drainage basins and proposed facilities shall be furnished to the Weld County Commissioners for their use in this matter as such maps are requested and become available and updated.

(Ord. 2004-718 §1)

Sec. 13-136. Storm water fees.

The Storm Water Utility must receive sufficient revenue to ensure proper operation and maintenance, development and perpetuation of the system and maintenance of the utility's financial integrity. Operation and maintenance expenses include the annual cost of salaries and wages, employee fringe benefits, power, other purchased utilities, repair materials and supplies, smaller items of equipment that do not extend the useful life of major facilities and general overhead. These costs represent the normal everyday costs of operation that should be covered by monthly service charges. Major capital improvements are typically funded through either debt financing cash reserves from storm water fees or system development charges.

- (1) System development charges. As each parcel of land is developed or redeveloped and approved as to final plat, each acre of such filing shall be assessed a system development charge of one thousand one hundred dollars (\$1,100.00). This fee may be amended by the Town Council by resolution. These charges fund the expansion of public facilities needed to accommodate new growth.
- (2) Storm water management utility fee. There is hereby imposed on each and every property within the Town and upon the owners thereof a storm water management fee equal to five dollars (\$5.00) per ERU. Each single-family residential lot shall be equivalent to one (1) ERU. A schedule of ERUs applicable to other than single-family residential properties shall be adopted by resolution of the Town Council as recommended by the Town Manager with the assistance of the Town Engineer. The storm water management utility fee may be amended by the Town Council by resolution. This fee is deemed reasonable and is necessary to pay for the operation, maintenance and minor capital expenses associated with replacement and improvement of the Town storm water facilities and of such future storm water facilities as may be required and to pay for the design, right-of-way acquisition and construction or reconstruction of storm water facilities to the extent that such costs have been determined to be the responsibility of developed properties. All of the proceeds of this fee are deemed to be in payment for use of the Town's storm water system by the real property on which the fee is imposed and by the owners thereof.
- (3) There is hereby established a detention credit which shall act to reduce the fee assessed against certain lots or parcels of land subject to the within storm water drainage fee. Any lot or parcel of land located within the Town which contains self-maintained on-site storm water detention facilities shall be entitled to a twenty-five-percent reduction on the fee assessed pursuant to the formula set forth above. It shall be the obligation of the owners of lots or parcels of land entitled to this detention credit to present satisfactory evidence thereof to the Town Engineer prior to obtaining the benefit of this credit.

(Ord. 2004-718 §1)

Sec. 13-137. Storm water management fund.

All storm water management program fees collected by the Town and such other monies as might be available to the Town for the purposes of this Article shall be deposited into a special fund which is

hereby created, known as the "Storm Water Management Program Fund." Such fund shall be used for the purpose of paying the costs of storm water facilities to be constructed, operations, administration, repairs and maintenance of the storm water facilities of the Town. All amounts available in such fund from time to time shall be invested by the Town Treasurer in investments proper for Town funds. All funds collected pursuant to the provisions of this Article for operation, administration, maintenance and construction of storm water facilities shall be separately designated as such and shall be used solely for those purposes.

(Ord. 2004-718 §1)

Sec. 13-138. Development infrastructure fund.

The water drainage fees currently collected pursuant to this Article shall be deposited in a special fund to be administered by the Storm Water Management Utility and expended in accordance with this Article.

(Ord. 2004-718 §1)

Sec. 13-139. Billing for fee.

The storm water management utility fee may be billed and collected with the Town water and sewer bill or other method as determined by the Town Council for those lots or parcels of land utilizing Town water and sewer services and billed and collected separately as storm water management utility fees for those lots or parcels of land and owners thereof not utilizing other Town utilities. All such bills for the Storm Water Management Utility shall be paid to the Town Treasurer and shall become due and payable in accordance with the rules and regulations of this Code pertaining to the collection of such charges. The Town Clerk shall place all such charges so collected into the Storm Water Management Utility Fund to be deposited and separately kept as a fund to be used only for the purposes stated herein.

(Ord. 2004-718 §1)

Sec. 13-140. Certain properties exempt from fees.

The following land uses are exempt from storm water management utility fees:

- (1) All public park land;
- (2) All public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses, wetlands or irrigation ditch/canal rights-of-way;
- (3) All public streets, highways, rights-of-way and alleys;
- (4) All railroad rights-of-way except railroad property not utilized for railroad purposes;
- (5) All cemeteries; and
- (6) All lands actively used for agriculture and larger than two (2) acres in size.

(Ord. 2004-718 §1)

Sec. 13-141. Enforcement.

Any fee which shall not be paid when due may be recovered in an action at law by the Town. In addition to any other remedies or penalties provided by this Article or any ordinance of the Town, the

Town Manager is hereby empowered and directed to enforce this provision as to any and all delinquent users. The employees of the Town shall, at all reasonable times, have access to any premises served by the Town for inspection, repair or the enforcement of the provisions of this Article.

(Ord. 2004-718 §1)

Sec. 13-142. Unpaid fees to be a lien.

All storm water management utility fee charges made pursuant to this Article shall become a permanent lien upon the property to which such charge is associated from the date said fee becomes due until such fee is paid. The owner of every building, premises, lot or house shall be obligated to pay the charge for all service provided for his or her premises, which obligation may be enforced by the Town by action at law or suit to enforce the lien. In the case that a tenant in possession of any premises or buildings shall not pay said fee, it shall not relieve the landowner from such obligation and lien, and the Town shall not be required to look to any person whatsoever other than the owner for the payment of such fees. No changes of ownership, occupation or use shall affect the application of this Section, and the failure of any owner to learn that he or she purchased property against which a lien for storm water management utility fees exists shall in no way affect his or her responsibility for such payment. Notwithstanding any provision to the contrary, any delinquent amount may be enforced by assessment and lien upon the property and premises so served and certification thereof to the County Treasurer for collection, with ten-percent administrative fee.

(Ord. 2004-718 §1)

Sec. 13-143. Administrative review; appeals.

- (a) Any owner who disputes the amount of the storm water management utility fee made against such owner's property or who disputes any determination made by or on behalf of the Town pursuant to and by the authority of this Article may petition for a hearing on a revision or modification of such fee or determination. The Town Manager may hold such hearing or may designate another person as a Hearing Officer with authority to hold such hearing. Such petition may be filed only once in connection with any such fee or determination, except upon a showing of changed circumstances sufficient to justify the filing of such additional petition.
- (b) Such petition shall be in writing, filed with the Town Clerk, and the facts and figures submitted shall be submitted under oath either in writing or orally at a duly scheduled hearing. The hearing, if any, shall take place at the Town Hall or other place as designated by the Hearing Officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (c) Within thirty (30) days of filing, the Hearing Officer shall make findings of fact based upon all relevant information, shall make a determination based upon such findings and, if appropriate, modify such fee or determination accordingly. Such determination shall be considered a final order of the Hearing Officer, which order may, within thirty (30) days of its issuance, be appealed to the Town Council for hearing on such a revision or modification of such fee. Any such appeal to the Town Council shall be in writing, filed with the Town Clerk, setting forth the specific errors and omissions of the Hearing Officer in the Officer's determination. Such hearing shall take place in the Town, and notice thereof and the proceedings shall otherwise be in accordance with the bylaws, rules and regulations of the Town Council. The appellant shall have the burden of proof.
- (d) Persons desiring to appeal a decision of the Hearing Officer to the Town Council shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of hearing shall be given to all parties concerned at least seven (7) days prior to the hearing or by mailing the same to such party's last known address by first-class mail, postage prepaid. The Town Council may, from time to time, adopt such additional rules and regulations as it deems

necessary and advisable for the conduct of its hearings and for carrying out the provisions hereof. Within thirty (30) days of filing of an appeal, the Town Council shall make its final determination and, if appropriate, modify such charge or determination of the Hearing Officer in accordance with the facts submitted to the extent that the Town Council finds such facts to be true.

- (e) Every decision or determination of the Hearing Officer shall be in writing and notice thereof shall be from the date of such action. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article.

(Ord. 2004-718 §1)

Sec. 13-144. Storm water facilities required for subdivisions.

Prior to the final approval of the plat of any subdivision or planned unit development (PUD) plan, the owners of the property being subdivided shall, at such owners' cost, prepare detailed plans and specifications for the construction and installation of all storm water facilities and BMPs required for such subdivision, including the facilities required to convey storm water to existing drains, detention ponds or other existing discharge points, all in conformity with the Storm Water Management Plan adopted by the Town Council. The Town Manager shall review such plans and specifications and, after the Town Manager's acceptance of the same, the plat of the subdivision or PUD plan may be approved, subject to the Town being furnished with acceptable assurance that such facilities will be constructed and installed as indicated and approved.

(Ord. 2004-718 §1)

Sec. 13-145. Title granted to Town.

Title granted to the Town for storm water structures and facilities, including but not limited to detention ponds, inlet and outlet structures and ditches, shall be by warranty deed and unencumbered fee simple title.

(Ord. 2004-718 §1)

Sec. 13-146. Responsibility for accepted facilities.

All storm water facilities constructed, installed or provided hereunder shall, upon acceptance of the same by the Town, become the property of the Town, and the Town thereafter shall be responsible for the operation and maintenance of the same. The Town may refuse to accept facilities inadequately constructed or constructed in variance with Town requirements.

(Ord. 2004-718 §1)

Sec. 13-147. Town to maintain storm water facilities; exception.

The Town shall maintain all public storm water facilities accepted by the Town located within the Town-owned land, Town rights-of-way and public easements, and may maintain additional dedicated public storm water facilities located within or adjacent to the Town. Such public facilities include, but are not limited to, open drainage ways and piped storm waters constructed expressly for use by the general public and as a part of the Town storm water facilities, bridges, roadside storm water ditches and gutters, flood control facilities, including detention and retention basins, dikes, overflow channels, pump stations and other improvements that have been designed and constructed expressly for use by the general

public. Such public storm water facilities do not include facilities not accepted by the Town for maintenance.

(Ord. 2004-718 §1)

Sec. 13-148. Disclaimer.

Floods or drainage problems associated with storm water runoff may occasionally occur which exceed the capacity of storm sewer facilities constructed and maintained by funds made available under this Article. This Article does not imply, and the Town expressly disclaims, that property liable for the charges established herein will always be free from storm water flooding or flood drainage. This Section does not purport to reduce the need or the necessity for the owner obtaining flood insurance. The establishment of a Storm Water Management Utility, its functions, maintenance of storm water drainage structures and facilities and the activities of the Storm Water Management Utility and/or its agents does not create liability of any nature or kind on the part of the Town for damages caused by storm water except as provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S.

(Ord. 2004-718 §1)

Sec. 13-149. Storm Water Utility Enterprise.

- (a) The Town Council hereby recognizes and confirms the operation of the municipal sewer system (the "system") as an enterprise within the meaning of Section 20 of Article X of the State Constitution.
- (b) The Town Council hereby formally establishes the Storm Water Utility Enterprise (the "Enterprise"), pursuant to the Act, for the purpose of continuing the operation of the system as a Water Activity Enterprise under the Act and as an enterprise within the meaning of Section 20 of Article X of the State Constitution.
- (c) The Town Council hereby designates itself as the ex officio governing body of the Enterprise, pursuant to the Act.
- (d) To the extent it deems necessary, the governing body of the Enterprise shall exercise the Town's legal authority relating to the system, but shall not levy a tax.
- (e) All action not inconsistent with the provisions of this Section heretofore taken by the Town Council or by the officers and employees of the Town directed toward the operation of the system as an enterprise under Section 20 of Article X of the State Constitution is hereby ratified, approved and confirmed.

(Ord. 2004-718 §1)

Secs. 13-150—13-160. Reserved.

ARTICLE VIII Cross-Connection Control Program

[Sec. 13-161. Purpose.](#)

[Sec. 13-162. Authority.](#)

[Sec. 13-163. Responsibility.](#)

[Sec. 13-164. Administration.](#)

[Sec. 13-165. General requirements.](#)

[Sec. 13-166. Standards for backflow prevention assemblies.](#)

[Sec. 13-167. Installations.](#)

[Sec. 13-168. Testing and maintenance.](#)

[Sec. 13-169. Right of entry.](#)

[Sec. 13-170. Violations.](#)

Sec. 13-161. Purpose.

The purpose of this Article is to:

- (a) Protect the Town's public potable water supply from the possibility of contamination or pollution by isolating within the Town's customers' internal distribution system such contaminants or pollutants which could backflow or back-siphon into the public water system;
- (b) Promote the elimination or control of existing cross-connections, actual or potential, between the Town's customers' on-site potable water systems and non-potable systems;
- (c) Provide for the maintenance of a continuing program of cross-connection control that will effectively prevent the contamination or pollution of potable water systems by cross-connection; and
- (d) Provide that backflow prevention devices within structures, building and appurtenant plumbing will be regulated by the Town's plumbing code, as adopted and in effect from time to time, and in accordance with this Article.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-162. Authority.

The Town, as the water purveyor, has the primary responsibility and authority for preventing water from unapproved sources, or any other substances, from entering the public potable water system, pursuant to the Town's Home Rule Charter and applicable federal and state laws and rules and regulations.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-163. Responsibility.

The Public Works Director, or such person's designee, shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If the Public Works Director determines that an approved backflow device is required at the Town's water service connection to any customer's premises, the Public Works Director shall give written notice to said customer to install an approved backflow prevention device at each service connection to such customer's premises. The customer shall install the approved device or devices at the customer's own expense within ninety (90) days of the receipt of the notice or the customer's water service may, in the Public Works Director's discretion, be discontinued until the proper device or devices are installed.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-164. Administration.

- (a) The Town, by and through its public works department, shall operate a "cross-connection control program," which includes, among other procedures, the provisions required by this Article and the required recordkeeping related to initial inspection, hazard level, initial device testing, yearly device testing and device replacement and similar measures.
- (b) Each property owner located in the Town or served by the Town's water system, or that has Town water facilities on such property, shall allow his or her property to be inspected for possible cross-connections, and such owner shall follow the provisions of the Town's cross-connection program if a cross-connection is permitted.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-165. General requirements.

The following requirements shall be met for all containment backflow prevention assemblies, required on identified hazardous cross connections:

- (a) Commercial, industrial, multi-family and institutional buildings shall have an approved reduced pressure zone assembly to isolate all building fixtures and taps from the Town's water distribution system.
- (b) Backflow prevention assemblies shall be installed in an accessible location to facilitate maintenance, testing and repair. Drawings must show various installations.
- (c) All backflow prevention assemblies shall be installed on the customer side, following the water meter, at a Town approved location.
- (d) It shall not be permissible to have connections or tees between the meter and service line backflow prevention assembly, unless approved in writing by the Town.
- (e) The valves associated with the backflow prevention device shall not be used as the inlet or outlet valve of the water meter. Test cocks shall not be used as supply connections.
- (f) In order to ensure that backflow prevention assemblies continue to operate satisfactorily, they shall be tested at the time of installation and on an annual schedule thereafter. Such test shall be conducted in accordance with American Society of Sanitary Engineering (A.S.S.E.) and/or University of Southern California, Foundation of Cross-Connection Control and Hydraulic Research (U.S.C. F.C.C.C. and H.R.) performance standards and field test procedures as directed by the Colorado Department of Public Health and Environment, as adopted and in effect from time to time.
- (g) All costs for design, installation, maintenance, repair and testing shall be borne by the customer.
- (h) All fire sprinkler systems shall conform to the applicable sections in the most-current edition of the National Fire Protection Association pamphlets and to the policies and procedures of, as appropriate, the Front Range Fire Rescue Fire Protection District or the Loveland Fire Recue Authority.
- (i) All identified hazardous cross-connections to the Town's water system shall conform to, or be brought into conformance with, the requirements of this Article within one year of adoption of this Article.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-166. Standards for backflow prevention assemblies.

Any backflow prevention assembly required herein shall be a model and size approved by the department of public works. Only approved backflow prevention assemblies shall be used. The term "approved backflow prevention assembly" shall mean an assembly that has been manufactured in full conformance with the standards established by the latest version of the Colorado Department of Public Health and Environment Cross-Connection Control Manual. Final approval shall be evidenced by a "certificate of approval" issued by an approved testing laboratory certifying full compliance with Colorado Department of Public Health and Environment standards and A.S.S.E. and/or U.S.C. F.C.C.C. and H.R. specifications. The following testing laboratories are qualified to test and certify backflow prevention assemblies, and an assembly being listed on their periodic approved list shall constitute meeting all of the above requirements:

1. A.S.S.E., American Society of Sanitary Engineering, 28901 Clemens Road, Suite 100, Westlake, Ohio 44145.
2. U.S.C. Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, OHE 430-D University Park-MC, 1453, Los Angeles, California 90089-14534.2.

In addition, the Public Works Director may provide written approval of testing laboratories other than the laboratories listed above.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-167. Installations.

The following requirements shall apply with respect to installation of any backflow prevention assembly:

- (a) Backflow prevention assemblies shall be installed in accordance with the specifications of the Town plumbing code, as adopted and in effect from time to time.
- (b) Backflow prevention assembly installations shall be inspected and approved for use by the building department.
- (c) All backflow assemblies shall be installed in the horizontal position unless a variance is obtained for other installation pursuant to the variance procedures applicable to the Town's plumbing code. Any variance granted may include specifications for vertical installation and may contain such other terms and conditions as are determined necessary by the director of public works or the chief building official.
- (d) A single check valve is not considered to be a backflow prevention assembly.
- (e) Reduced pressure backflow prevention devices shall be installed above ground. The unit shall be placed at least twelve (12) inches above finish grade to allow clearance for the repair work. A concrete slab at finish grade is recommended. Proper drainage shall be provided for the relief valve and drainage may be piped away from the location, provided that the valve and drain line are readily visible from above grade and provided that the relief valve is separated from the drain line by a minimum of double the diameter of the supply line. A modified vault installation may be used if constructed with ample side clearances. Precautions shall be taken to protect above ground installations from freezing and damage, and the Town may impose installation specifications upon an installation to protect the same from freezing or damage, and to protect the public water system and water supply.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-168. Testing and maintenance.

The following requirements shall apply with respect to testing and maintenance of cross-connection assemblies:

- (a) Identified hazardous cross connections (containment protection): The property owner and the customer at any premises where backflow prevention assemblies are installed shall obtain a certified test of the assemblies at least once per year. Such duty shall be a joint and several obligation of the property owner and the customer. If the Public Works Director deems the hazard to be great enough, the Public Works Director may, in his or her discretion, require certified inspections and testing at more frequent intervals. The certified tests shall be at the expense of the property owner and the customer and shall be performed by a certified technician approved by the Colorado Department of Public Health and Environment and the department of public works. In addition, an inspection of the assembly may be performed at any time pursuant to the right-of-entry procedures contained in Section 13-168 of this Article.
- (b) As necessary, the backflow prevention assembly shall be repaired or replaced at the expense of the property owner and the customer whenever the assembly is found to be defective. Records of all such tests, repairs or replacements shall be kept for three years by the property owner and the customer and the department of public works.
- (c) Existing backflow prevention assemblies shall be tagged by the technician performing the test at the completion of the test, showing the names of the technician and date of test.
- (d) All testing equipment used in the testing of backflow prevention assemblies shall be checked for accuracy yearly, or more often, and the proof of compliance shall be submitted to the department of public works upon request.
- (e) The department of public works retains the right to test or otherwise check the installation and operation of any containment assembly at any time to assure proper operation.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-169. Right of entry.

By previously arranged appointment and upon presentation of proper credentials, a department of public works representative shall have the right of entry to inspect any and all buildings or premises for the presence of cross-connections, for possible hazards relative thereto and for determining compliance with this Article. This right of entry shall be a condition of water service in order to protect the health, safety and welfare of the customers throughout the Town's water distribution system. The property owner and the customer shall work cooperatively with the department of public works to schedule an inspection or be subject to the remedies set forth in Section 13-170. Questions regarding proper credentials should be directed to the Public Works Director.

(Ord. No. 2019-155, § 1, 3-4-2019)

Sec. 13-170. Violations.

- (a) Failure of a property owner or customer to cooperate in the installation, maintenance, testing or inspection of backflow prevention assemblies as required by this Article shall be grounds for the discontinuance of water service to the premises or the requirement of installation of an air-gap separation from the public potable water system.
- (b) The Public Works Director may discontinue water service to any premises within the Town if unprotected cross-connections exist on the premises. When a defect is found in an installed backflow

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prevention assembly, or if a backflow prevention assembly has been removed or bypassed, the Public Works Director may discontinue water service until such conditions or defects are corrected.

- (c) In the Public Works Director's judgment and discretion, the discontinuance of service may be summary, immediate and without written notice when such action is necessary to protect the purity of the public potable water supply, the safety of the water system or the health, safety and welfare of members of the public.
- (d) It shall be unlawful for any person to violate any provision of this Article. In addition to the discontinuance of water service or other action taken by the Public Works Director, a person who violates the provisions of this Article shall be subject to the penalties set forth in Section 1-62 of this Code. The Municipal Court is further authorized to enter orders for injunctive relief to require compliance with this Article.

(Ord. No. 2019-155, § 1, 3-4-2019)

CHAPTER 15 Annexation

ARTICLE I - Annexation Regulations

ARTICLE I Annexation Regulations

[Sec. 15-1. Purpose of Chapter.](#)

[Sec. 15-2. Requirements of eligibility for annexation.](#)

[Sec. 15-3. Information required of petitioner.](#)

[Sec. 15-4. Procedure prior to approval or denial of petition; approval or denial.](#)

[Secs. 15-5—15-10. Reserved.](#)

Sec. 15-1. Purpose of Chapter.

The purpose of this Chapter is to provide a procedural means for the annexation of unincorporated areas to the Town and to set forth terms and conditions to be imposed on such annexations and to thereby provide for the logical extension of Town services to all present and future areas; to foster cooperation between the Town and petitioners for annexation; and to promote the harmonious growth of the Town.

(Prior code 6-1)

Sec. 15-2. Requirements of eligibility for annexation.

Unincorporated territory may be annexed to the Town, provided that the territory is eligible for annexation under the Municipal Annexation Act of 1965 , Section 31-12-101, *et seq.*, C.R.S.

(Prior code 6-2)

Sec. 15-3. Information required of petitioner.

- (a) In order to initiate the annexation procedure, a petition shall be filed with the Town Clerk two (2) weeks prior to the Planning and Zoning Commission meeting on the last Wednesday of each month.
- (b) The petition shall be accompanied by five (5) copies of a map or plat of the territory proposed to be annexed, showing the following:
 - (1) Legal description of the territory to be annexed;
 - (2) The physical relationship of the territory to the established corporate limits of the Town;
 - (3) Boundaries of special districts, if any having jurisdiction over areas within the territory;
 - (4) Proposed zoning of the area and exact boundaries of zoning districts if more than one (1) district is proposed;
 - (5) Major structures within the territory and general nature of their use;
 - (6) Major streets and utility easements within the area.
- (c) The following information pertinent to the territory to be annexed shall also be presented with the petition:

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- (1) Proof of ownership of lands within the territory, showing encumbrances;
- (2) Descriptions of water and ditch rights appurtenant to the properties within the territory;
- (3) Preliminary subdivision plats or preliminary development plans including declaration of covenants, conditions and restrictions for all residential-zoned property included in the development plan to be reviewed prior to completion of the annexation, showing:
 - a. Outer boundaries;
 - b. Existing features;
 - c. Proposed features (streets paved);
 - d. Contours;
 - e. Proposed floor plans, type of structure and mix;
 - f. Proposed drainage plan;
 - g. Proposed utilities plan:
 1. Sewer;
 2. Water;
 3. Gas;
 4. Electricity;
 5. Paved off-street parking;
 - h. Landscaping; and
 - i. Development schedule.
- (4) Statement within the petition as to water given to the Town at the time of annexation, in the amount of three (3) acre feet of water for every acre annexed. This statement may be altered, at the option of the Town, in circumstances where potable water services to the annexed parcel will not be furnished by the Town's facilities. The statement shall describe an impact fee assessment in lieu of water given. This impact fee will be negotiated with the Town and approved by the Board of Trustees.
- (5) The cost of extension of the Town government services and facilities will be that of the developer; meaning any extension of the sewer, water or streets will become the total cost of the petitioner and a performance bond or escrow agreement may be required to assure performance on his or her part.

(Prior code 6-3; Ord. 503, 1995; Ord. 524, 1996)

Sec. 15-4. Procedure prior to approval or denial of petition; approval or denial.

- (a) The petition for annexation shall be filed with the Town Clerk at least two (2) weeks prior to the Planning and Zoning Commission meeting on the third Wednesday of each month at which such petition shall be considered. The petition shall be accompanied by an annexation filing fee of one hundred dollars (\$100.00).
- (b) The Planning and Zoning Commission shall review the petition for annexation to ascertain whether the requirements of the Municipal Annexation Act of 1965 pertaining to eligibility for annexation are met. Such review shall investigate the feasibility of extending the Town services to the area proposed to be annexed. On the basis of this review, the Planning and Zoning Commission shall recommend such additional terms and conditions as are necessary and appropriate if the Town government services and facilities are to be extended to the area.

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- (c) Upon completion of the review process, the Planning and Zoning Commission shall transmit the petition to the Board of Trustees. Included in the transmittal shall be a written summary of findings with recommended steps to meet the terms and conditions on the part of the petitioner.
- (d) Upon receipt of the transmittal from the Planning and Zoning Commission, the Board of Trustees shall review the petition. Upon completion of the review, the Board of Trustees shall set forth in writing its findings and conclusion. If it is determined that the provisions pertaining to eligibility have been met, the territory shall be annexed by the Town upon terms and conditions set forth by the Board of Trustees. A finding that the area does not comply with the requirements pertaining to eligibility shall terminate the annexation proceedings.

(Prior code 6-4; Ord. 532, § 1, 1996)

Secs. 15-5—15-10. Reserved.

CHAPTER 16 Zoning

ARTICLE I - Purpose

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ARTICLE III - Establishment of Districts

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ARTICLE I Purpose

[Sec. 16-1. Declaration of purpose.](#)

[Secs. 16-2—16-10. Reserved.](#)

Sec. 16-1. Declaration of purpose.

The regulations contained in this Chapter shall be held to be minimum requirements enacted to promote the health, safety and general welfare of the Town. To these ends such regulations have been prepared and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land and undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of buildings; to encourage the most appropriate use of land; and to otherwise provide for the growth of an orderly and viable community.

(Prior code Appx. B, § 1)

Secs. 16-2—16-10. Reserved.

ARTICLE II Definitions

[Sec. 16-11. Rules of construction of language.](#)

[Sec. 16-12. Specific words and phrases.](#)

[Secs. 16-13—16-20. Reserved.](#)

Sec. 16-11. Rules of construction of language.

For the purposes of this Chapter, words used herein shall be interpreted in accordance with the following rules:

- (1) The particular controls the general.
- (2) In case of any difference of meaning or implication between the text of this Chapter and the heading of a section or subsection thereof, the text shall control.
- (3) The word *shall* is mandatory unless the context clearly indicates the contrary. The word *may* is permissive.
- (4) Words used in the present tense include the future, unless the context clearly indicates the future tense.
- (5) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

(Prior code Appx. B, § 2.01)

Sec. 16-12. Specific words and phrases.

When used in this Chapter, the following words and phrases shall have the specific meaning as hereinafter defined:

Auction facility means any area or building where the business of selling articles to the highest bidder is conducted.

Building means any structure used, designed or intended for the roofed shelter, enclosure or protection of persons, animals or property.

Child care center means a facility, by whatever name known, that is maintained for the whole or part of a day for the care of five (5) or more children who are younger than eighteen (18) years of age and who are not related to the owner, operator or manager thereof, whether the facility is operated with or without compensation for such care and with or without stated educational purposes, as more fully set forth in Section 26-6-102(1.5), C.R.S., as such definition may be amended from time to time by the Colorado General Assembly. (See also *family child-care home* for a different type of facility.)

Clinic, medical or dental means offices organized as a unified facility to provide medical or dental treatment as contrasted with an unrelated group of such offices, but not including bed-patient care.

Convenience store means a retail store occupying less than three thousand five hundred (3,500) square feet of floor space and providing some combination of groceries, general merchandise, beer (if licensed), miscellaneous auto supplies and prepared foods. Except where listed as *convenience store with gasoline*, a convenience store does not include retail gasoline sales, car washes or other forms of auto service.

Convenience store with gasoline means a convenience store that offers the retail sale of gasoline, diesel and other fuels at one (1) or more exterior islands; such a convenience store may also include a car wash, vacuums and air pumps, but shall not include auto service; an establishment with these characteristics that also includes auto service is considered a "Service Station."

Convenient center means a small group of retail stores and service establishments which serve a local neighborhood, including, by way of example but not of limitation, a food store, drugstore, hardware store, barber shop, restaurant, shoe repair shop or laundromat.

Dwelling, multifamily means a structure or portion thereof designed to house two (2) or more families, with each dwelling unit having a separate entrance.

Dwelling, single-family attached means a residential structure designed to house a single-family unit from lowest level to roof, with a private outside entrance, but not necessarily occupying a private lot, and sharing a common wall adjoining dwelling units.

Dwelling, single-family detached means a residential structure designed to house a single-family unit, with private outside entrance, but without common walls between the dwelling units.

Dwelling unit means a housekeeping unit designed and used for occupancy by a single individual or a family and containing cooking, living, sleeping and sanitary facilities, and having a separate entrance.

Family means persons related by blood or marriage and occupying the premises together; or persons living as a factual and functional equivalent of a family and occupying the premises together. For purposes of this Chapter, a *functional family* is one that shares living spaces, shares household duties and regularly shares meals; in contrast, a group living together with separate, lock-out bedrooms, or each buying their own groceries or sharing the rent but living separately, shall not be considered a family.

Family child-care home means a single-family residence that is operated and maintained by a permanent occupant of the residence for the care of two (2) to eight (8) children who are younger

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than eighteen (18) years of age and who are not related to the resident; periods of care shall be less than twenty-four (24) hours per day.

Gasoline service station means a place where gasoline, kerosene or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles, and including facilities for greasing, oiling, washing and minor repair of vehicles on the premises, but not including major automatic car washing or any body repair facilities.

Gross leasable area (G.L.A.) means the total floor area of commercial buildings, which floor area is designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, if any; expressed in square feet and measured from the center line of joint partitions and from outside wall faces.

Group home means any of the following living in a single residential unit, with one (1) or more care providers as required by state licensing laws or common practice: a residence serving not more than eight (8) developmentally disabled persons, also called a "community residential home," as defined in Section 27-10.5-102(4), C.R.S.; a residence serving not more than eight (8) persons sixty (60) years of age or older, as defined and limited by Section 31-23-303(2)(b)(II), C.R.S.; a residence serving up to eight (8) persons referred by a criminal justice agency, as defined and limited by Section 19-1-103(62), C.R.S.; or a residence serving up to eight (8) persons with mental illness (Section 31-23-303(2)(b.5), C.R.S.).

Home occupation means a gainful occupation conducted by members of the family, within its place of residence, where the space used is incidental to residential use and no article is sold or offered for sale, except such as is produced by such home occupation, and provided further that this is not intended to prohibit sales by mail or other methods that do not typically involve customer visits to the dwelling unit.

Hotel means a building in which lodging, with or without meals, is offered for compensation but not including kitchen facilities in individual rooms.

Indoor recreation facility means an establishment engaged in the provision of participant recreation exclusively within an enclosed structure, such as indoor soccer, ice-skating, tennis or similar use, and adequate provision has been made for spectators and competitive events.

Kitchen means a room or portion of a room designed and/or used for fixing meals and including a sink with hot and cold running water and either of the following combinations: a gas or electric range and a refrigerator with a rated capacity of ten (10) or more cubic feet; or any three (3) of the following appliances: refrigerator (any size), microwave oven, gas or electric range, cooktop, wall oven and/or automatic dishwasher.

Life care facility means a facility that is not a "nursing facility" that supplies life assistance to its residents and is subject to regulation under Section 12-31-101, et seq., C.R.S. (See also *nursing facility* for a different type of facility.)

Lot means a single parcel of contiguous land occupied or intended to be occupied by such structures and uses as permitted under this Chapter, together with the open spaces required by this Chapter, and abutting on a public street or officially approved way.

Lot area means the area of contiguous land bounded by lot lines, exclusive of land provided for public thoroughfare.

Lot lines mean the lines bounding a lot as defined herein.

Marijuana or recreational marijuana means all parts of the plant of the genus *cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including marijuana concentrate. *Marijuana* includes marijuana products as defined herein. *Marijuana* does not include industrial hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination

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or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.

Marijuana consumption establishment means an organization, business, club or commercial operation that allows its members or guests to burn, smoke, inhale the vapors of or otherwise consume marijuana in any form on the premises.

Marijuana cultivation facility shall have the meaning set forth in Article XVIII, Section 16, of the Colorado Constitution and includes without limitation any real property used for or upon which there is any type of structure associated with cultivating, preparing or packaging marijuana.

Marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments and tinctures.

Marijuana product manufacturing facility shall have the meaning set forth in Article XVIII, Section 16, of the Colorado Constitution and includes without limitation any real property used for or upon which there is any type of structure associated with manufacturing, preparing or packaging marijuana.

Marijuana testing facility shall have the meaning set forth in Article XVIII, Section 16, of the Colorado Constitution and includes without limitation any real property used for or upon which there is any type of structure associated with analyzing and certifying the safety and potency of marijuana.

Medical marijuana means marijuana that is grown and sold for a purpose authorized by Article XVIII, Section 14, of the Colorado Constitution.

Medical marijuana center means a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, Section 14, of the Colorado Constitution, but is not a primary caregiver, and which a municipality is authorized to prohibit as a matter of law.

Medical marijuana-infused products manufacturer means a person licensed, pursuant to the Colorado Medical Marijuana Code, to operate a business manufacturing medical marijuana-infused products, and which a municipality is authorized to prohibit as a matter of law.

Motel means a building or series of buildings in which lodging is offered for compensation, and which is distinguished from a hotel primarily by reason of providing direct independent access to, and adjoining parking for, each rental unit.

Neighborhood commercial means a small group of retail stores and service establishments which serve a local neighborhood, including, by way of example but not of limitation, a coffee shop, convenience food store, barber shop, restaurant, shoe repair shop or laundromat.

Neighborhood institutional use means a public or quasi-public use allowed in a district that is otherwise limited to residential uses; such uses include, but are not necessarily limited to, public and private schools, places of worship, community centers and recreation centers. Such uses must demonstrate that they are physically and functionally compatible with the surrounding uses and area.

Nonconforming lot means a lot which does not conform to the Lot Size Regulations of the district in which it is located.

Nonconforming structure means a structure which does not conform to the building location regulations of the district in which it is located.

Nonconforming use of land means a use of any land in a way which does not conform to the Use, Density or Open Space Regulation of the district in which it is located.

Nonconforming use of structure means a use carried on within any building which does not conform to the Use or Density Regulations of the district in which it is located.

Nursing facility means a facility, or a distinct part of a facility, which meets the state nursing home licensing standards in Section 25-1.5-103(1)(a)(I), C.R.S., is maintained primarily for the care

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and treatment of inpatients under the direction of a physician, and meets the requirements in 42 U.S.C. § 1396r for certification as a qualified provider of nursing facility services, as such definitions may be amended and revised by the Colorado General Assembly from time to time. (See also *life care facility* for a different type of facility.)

Offset means the horizontal distance between any structure and a lot line, other than a street right-of-way line.

Off-street parking space means the area on a lot designed to accommodate a parked motor vehicle as an accessory service to the use of lot and with adequate access thereto from the public street.

Open space, livability means open space on a building site, exclusive of space devoted to vehicular streets, drives and parking areas, and including pedestrian ways, space for active and passive recreation and landscaping.

Optional premises cultivation operation means a person licensed, pursuant to the Colorado Medical Marijuana Code, to grow and cultivate marijuana for a purpose authorized by Article XVIII, Section 14, of the Colorado Constitution, and which a municipality is authorized to prohibit as a matter of law.

Outdoor recreational facilities means land and structure, along with accessory equipment, designed and utilized for leisure time activities of a predominantly "outdoor" nature and of more specific purpose than passive park-like open areas, and further classified as follows:

- a. *Public* . Facilities owned and operated by a government agency for limited or general public use.
- b. *Private commercial* . Facilities owned and operated by a group for profit as a business, whether or not open to general public use.
- c. *Private group* . Facilities owned and operated by a group for the exclusive use of the members of such group and their guests and not for profit as a business.
- d. *Private residential* . Facilities owned by an individual, located on the same lot or adjoining lot to his or her family and guests.

Patient has the meaning set forth in Article XVIII, Section 14(1)(c), of the Colorado Constitution, and as may be further defined by state and local statutory, legislative or case law and regulations.

Place of worship means a facility used by an established religious organization holding tax-exempt status where people gather to perform acts of religious faith and devotion. Accessory uses may include religious training, administrative offices, kitchen, meeting rooms. Other additional, related uses may be considered in certain zone districts under a conditional use permit.

Primary caregiver has the meaning set forth in Article XVIII, Section 14(1)(f), of the Colorado Constitution, and as may be further defined by state and local statutory, legislative or case law and regulations.

Private lodge or club means a structure or grounds used for regular or periodic meetings or gatherings of a group of persons organized for a nonprofit purpose, but not groups organized to render a service customarily carried on as a business.

Professional office means the office of a doctor, dentist, architect, landscape architect, engineer, lawyer or other similar recognized profession.

Recreational marijuana establishment means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility or a retail marijuana store.

Retail marijuana store shall have the meaning set forth in Article XVIII, Section 16, of the Colorado Constitution and includes without limitation any real property used for or upon which there is any type of structure associated with the sale of marijuana to consumers.

Retail store means a commercial establishment for the sale of material goods or commodities in relatively small quantities directly to the consumer.

Setback means the horizontal distance between any structure and the established street right-of-way line.

Sign means any structure or part thereof or any device attached to a structure, or any other form of visual communication applied by paint, illumination, embossing or other technique to a structure for the purpose of directing, advertising, informing, warning or otherwise conveying information visually to the viewer.

Sign, directional means a sign intended solely for the purpose of directing patrons or customers to an establishment off the main traveled road and not including promotional advertising unnecessary to such directional purpose.

Sign, nonaccessory means a sign related to commercial or similar activities other than those actually engaged in on the site on which such nonaccessory sign is located.

Special trades contractor means an individual or company which specializes in one (1) or more construction trades of which the following are examples: plumbing and heating, finish work, electrical work, glazing, insulation, carpentry and masonry. The business operation is distinguished from an office use due to storage of materials and/or parking of specialized vehicles next to the business.

Structure means a combination of materials other than natural terrain or plant growth erected or constructed to form a shelter, enclosure, retainer, container, support, base, pavement or decoration. The word structure includes buildings. Exception: Not including fences six (6) feet or less in height.

Use, accessory means a use subordinate to and customarily incident to the permitted principal use of the property or buildings and located upon the same lot as the principal use.

Use, legal nonconforming means a building or premises lawfully used or occupied at the time of the passage of this Chapter or amendment thereto, which use or occupancy does not conform to the regulations of this Chapter or to the amendments thereto.

Use, permitted means that utilization of land by occupancy, activity, building or other structure which is specifically enumerated as permissible by the regulations of the zoning district in which land is located.

Use, principal means the main or primary use of property or structures as permitted on such lot by the regulations of the district in which it is located.

(Prior code Appx. B, § 2.02; Ord. 604 §2, 1999; Ord. 2003-709 §1; Ord. 2004-722 §1; Ord. 2010-116 §2; Ord. 2010-117 §1; Ord. No. 2016-143, § 1, 9-19-2016)

Secs. 16-13—16-20. Reserved.

ARTICLE III Establishment of Districts

[Sec. 16-21. Official Zoning District Map.](#)

[Sec. 16-22. Changes in the Official Zoning District Map.](#)

[Sec. 16-23. Replacement of the Official Zoning District Map.](#)

[Sec. 16-24. Interpretation of district boundaries.](#)

[Sec. 16-25. Medical marijuana prohibitions.](#)

[Sec. 16-26. Recreational marijuana prohibitions.](#)

[Secs. 16-27—16-40. Reserved.](#)

Sec. 16-21. Official Zoning District Map.

- (a) The Town is hereby divided into zoning districts as shown on the Official Zoning District Map which, together with all explanatory material thereon, is hereby adopted by reference and declared to be a part of this Chapter.
- (b) The Official Zoning District Map, which shall be located in the office of the Town Clerk, shall be identified by the signature of the Mayor attested by the Town Clerk, and shall bear the seal of the Town under the following words: "This is to certify that this is the Official Zoning District Map referred to in the Johnstown Municipal Code" together with the date of adoption of this Chapter.

(Prior code Appx. B, § 3.01)

Sec. 16-22. Changes in the Official Zoning District Map.

- (a) If, in accordance with the amendment provisions of this Chapter, changes are made in district boundaries or other matters shown on the Official Zoning District Map, such changes shall be made promptly after the amendment has been approved by the Town Council, together with an entry on the Official Zoning District Map noting the date of the change and a brief description of the nature of the change, which entry shall be signed by the Chairman of the Town Council and attested by the Town Clerk. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered upon the Official Zoning District Map. No amendment to this Chapter which involves matters shown on the Official Zoning District Map shall become effective until after such change and entry have been made on the map.
- (b) No changes of any nature shall be made on the Official Zoning District Map or matters shown thereon except in conformity with the procedures set forth in this Chapter. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Chapter and punishable as provided under this Code.

(Prior code Appx. B, § 3.02)

Sec. 16-23. Replacement of the Official Zoning District Map.

In the event that the Official Zoning District Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Town Council may, by resolution, adopt a new Official Zoning District Map which shall supersede the prior Official Zoning District Map. The new Official Zoning District Map may correct drafting or other errors or omissions in the prior Official Zoning District Map, but no such correction shall have the effect of amending the original Zoning Ordinance or any subsequent amendment thereof.

(Prior code Appx. B, § 3.03)

Sec. 16-24. Interpretation of district boundaries.

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning District Map, the following rules shall apply:

- (1) Boundaries indicated as approximately following the center lines of streets or highways shall be construed as following such center lines.

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- (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- (3) Boundaries indicated as approximately following Town limits shall be construed as following Town limits.
- (4) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- (5) Boundaries indicated as following shore lines shall be construed to follow such shore line, and in the event of change in the shore line shall be construed as moving with the actual shore line.
- (6) Boundaries indicated as approximately following the centerlines of streams, rivers or canals shall be construed to follow such centerlines.
- (7) Boundaries indicated as parallel to or extensions of features indicated in Subsections (1) through (6) above shall be so construed. Distances not specifically indicated on the Official Zoning District Map shall be determined by the scale of the map.
- (8) Where physical or cultural features existing in the ground are at variance with those shown on the Official Zoning Map or in circumstances not covered by Subsection (1) through (7) above, the Board of Adjustment shall interpret the district boundaries.

(Prior code Appx. B, § 3.04)

Sec. 16-25. Medical marijuana prohibitions.

- (a) Intent, authority and applicability.
 - (1) Intent. It is the intent of this Section to prohibit certain land uses related to medical marijuana, and, in furtherance of its intent, the Town Council makes the following findings:
 - a. The Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S., clarifies Colorado law regarding the scope and extent of Article XVIII, Section 14, of the Colorado Constitution.
 - b. The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."
 - c. The Colorado Medical Marijuana Code specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses...based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."
 - d. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, Section 14, of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.
 - e. As a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, no suitable location exists within the Town for the operation of medical marijuana centers, medical marijuana cultivation operations or medical marijuana-infused products manufacturing.
 - f. Patients and primary caregivers should otherwise be afforded the protections of Article XVIII, Section 14, of the Colorado Constitution, and Section 25-1.5-106, C.R.S., as further clarified under House Bill 10-1284 adopted by the Colorado Legislature in its 2010 Session and known as the Colorado Medical Marijuana Code.

- (2) Authority. The Town's authority to adopt this Section is found in: the Colorado Medical Marijuana Code, Section 12-43.3-101, et seq., C.R.S.; the Local Government Land Use Control Enabling Act, C.R.S., Section 29-20-101, et seq., C.R.S.; Section 31-23-101, et seq., C.R.S. (municipal zoning powers); and Section 31-15-501, C.R.S., (municipal authority to regulate businesses).
- (3) Applicability. This Article shall apply to all property within the Town.
- (b) Uses prohibited. It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation or a medical marijuana-infused products manufacturing facility in the Town.
- (c) Patients and primary caregivers. Nothing in this Section shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in Article XVIII, Section 14, of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, Section 14, of the Colorado Constitution, the Colorado Medical Marijuana Code, and rules promulgated thereunder.

(Ord. 2010-116 §1)

Sec. 16-26. Recreational marijuana prohibitions.

- (a) *Intent, authority and applicability.*
 - (1) *Intent.* The intent of this Section is to prohibit business uses related to recreational marijuana in the Town.
 - (2) *Authority.* The Town Council has authority to prohibit business uses related to recreational marijuana in the Town, deriving from, among other sources, Article XX, Section 6, of the Colorado Constitution, State statutes, including but not limited to C.R.S. § 31-15-401, and Article XVIII, Section 16, of the Colorado Constitution.
 - (3) *Applicability.* This Section shall apply to all property in the Town.
- (b) *Uses prohibited.*
 - (1) It shall be unlawful for any person to operate, cause to be operated or permit to be operated a recreational marijuana establishment in the Town.
 - (2) It shall be unlawful for any person to operate, cause to be operated or permit to be operated a marijuana consumption establishment in the Town.

(Ord. No. 2016-143, § 2, 9-19-2016)

Secs. 16-27—16-40. Reserved.

ARTICLE IV Administration and Enforcement

[Sec. 16-41. Administrative official.](#)

[Sec. 16-42. Building permits.](#)

[Sec. 16-43. Application for building permit.](#)

[Sec. 16-44. Certificates of zoning compliance.](#)

[Sec. 16-45. Expiration of building permit.](#)

[Sec. 16-46. Construction and use to be as provided in plans and permits.](#)

[Sec. 16-47. Complaints regarding violations.](#)

[Sec. 16-48. Public hearings.](#)

[Secs. 16-49—16-60. Reserved.](#)

Sec. 16-41. Administrative official.

- (a) An administrative official designated by the Town Council shall administer and enforce this Chapter. The administrative official may be provided with the assistance of such other persons as the Town Council may direct.
- (b) If the administrative official shall find that any of the provisions of this Chapter are being violated, he or she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Chapter to insure compliance with or prevent violation of its provisions.

(Prior code Appx. B, § 4.01)

Sec. 16-42. Building permits.

No building or other structure shall be erected, moved, added to or structurally altered without a permit therefor issued by the administrative official. No building permit shall be issued except in conformity with the provisions of this Chapter, except after written order from the Board of Adjustment.

(Prior code Appx. B, § 4.02)

Sec. 16-43. Application for building permit.

- (a) All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the administrative official, including existing or proposed building or alteration; existing or proposed uses of the building and land; the number of families or dwelling units the building is designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this Chapter.
- (b) One (1) copy of the plans shall be returned to the applicant by the administrative official, after he or she shall have marked such copy either as approved or disapproved and attested to the same by his or her signature on such copy. The second copy of the plans, similarly marked, shall be retained by the administrative official.

(Prior code Appx. B, § 4.03)

Sec. 16-44. Certificates of zoning compliance.

- (a) It shall be unlawful to use, occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of zoning compliance shall have been issued therefor by the administrative official stating that the proposed use of the building or land conforms to the requirements of this Chapter.

- (b) No permit for erection, alteration, moving or repair of any building shall be issued until an application has been made for a certificate of zoning compliance, and the certificate shall be issued in conformity with the provisions of this Chapter upon completion of the work.
- (c) The administrative official shall maintain a record of all certificates of zoning compliance, and copies shall be furnished upon request to any person.
- (d) Failure to obtain a certificate of zoning compliance shall be a violation of this Chapter and punishable under this Code.

(Prior code Appx. B, § 4.04)

Sec. 16-45. Expiration of building permit.

- (a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.
- (b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

(Prior code Appx. B, § 4.05)

Sec. 16-46. Construction and use to be as provided in plans and permits.

Building permits or certificates of zoning compliance issued on the basis of plans and applications approved by the administrative official authorize only the use, arrangement and construction set forth in such approved plans and applications, and no other use, arrangement or construction. Use arrangement or construction at variance with that authorized shall be deemed a violation of this Chapter, and punishable as provided by this Code.

(Prior code Appx. B, § 4.06)

Sec. 16-47. Complaints regarding violations.

Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a written complaint stating fully the cause and basis thereof. Such complaint shall be filed with the administrative official, who shall record properly the complaint, immediately investigate and take action thereon as provided by this Chapter.

(Prior code Appx. B, § 4.07)

Sec. 16-48. Public hearings.

- (a) No regulation, restriction or boundary of this Chapter shall become effective, nor shall any such regulation, restriction or boundary be amended until after a public hearing thereon, at which parties in interest and citizens shall have an opportunity to be heard.

- (b) Upon the filing of an application, petition or other document, the Town Clerk shall set a date for a public hearing, which date shall be not more than thirty (30) days from the date of submission of a complete application.
- (c) Not less than fifteen (15) days prior to the date set for the hearing, the hearing authority shall cause a notice stating the time, place and purpose of such hearing to be published once in a newspaper in general circulation in the County. When the hearing involves a proposed change in the zoning district classification of any property or the granting of a conditional use, a notice stating the time, place and purpose of such hearing shall be posted in the vicinity of such proposed change or conditional use.

(Prior code Appx. B, § 4.09; Ord. 542, § 1, 1996)

Secs. 16-49—16-60. Reserved.

ARTICLE V Amendments

[Sec. 16-61. Authority.](#)

[Sec. 16-62. Procedure.](#)

[Sec. 16-63. Protest of amendments.](#)

[Secs. 16-64—16-80. Reserved.](#)

Sec. 16-61. Authority.

The Town Council may, after first submitting the proposal to the Planning and Zoning Commission for report and recommendation, and after public notice and hearing as provided in this code, amend, supplement, change or repeal the regulations, restrictions and district boundaries set forth in this Chapter.

(Prior code Appx. B, § 5.01)

Sec. 16-62. Procedure.

- (a) *Initiation* . A proposal to amend the text or change the district mapping of this Chapter may be initiated by the Town Council on its own motion, by recommendation of the Planning and Zoning Commission, or by petition of one (1) or more property owners.
- (b) *Filing* . A petition for change or amendment submitted by a private property owner shall be prepared in triplicate on forms provided for the purpose and filed with the Town Clerk, and shall be accompanied by a fee of twenty-five dollars (\$25.00) to defray the cost of giving notice, investigation and other administrative processing.
- (c) *Information required* . In addition to all information required on the petition form, the petitioner shall also supply the following:
 - (1) Three (3) copies of a map prepared at a scale of one hundred (100) feet to one (1) inch or larger, showing the land in question, its location and the length and direction of each boundary thereof, the location and use of all buildings on such land, and the principal use of all properties within three hundred (300) feet of such land.
 - (2) The names and addresses of the owners of all properties within three hundred (300) feet of any part of the land included in the proposed change.

- (d) *Referral* . The Town Clerk shall transmit one (1) copy of the petition to the Planning and Zoning Commission. The Planning and Zoning Commission shall conduct a study and investigation upon the proposal.
- (e) *Public hearing* . The Planning and Zoning Commission shall give public hearing upon the petition as provided in this Code.
- (f) *Action* . As soon as possible after such public hearing, the Planning and Zoning Commission shall forward a written report and recommendation to the Town Council. Upon hearing the recommendation of the Planning and Zoning Commission, the Town Council shall act to approve, approve with modifications or disapprove the proposed change or amendment. Should the Town Council not concur in the recommendation of the Planning and Zoning Commission, it shall return the petition to the Planning and Zoning Commission for reconsideration before taking final action. An approved change shall be by appropriate ordinance, and necessary changes in the Official Zoning District Map shall be made promptly.

(Prior code Appx. B, § 5.02)

Sec. 16-63. Protest of amendments.

In case of a protest against a proposed change, signed by the owners of twenty percent (20%) or more, either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred (100) feet therefrom, or of those directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of the members of the Town Council.

(Prior code Appx. B, § 5.03)

Secs. 16-64—16-80. Reserved.

ARTICLE VI Board of Adjustment

[Sec. 16-81. Establishment.](#)

[Sec. 16-82. Proceedings.](#)

[Sec. 16-83. Powers and duties.](#)

[Sec. 16-84. Conditions.](#)

[Sec. 16-85. Decisions of the Board of Adjustment.](#)

[Sec. 16-86. Procedure.](#)

[Secs. 16-87—16-100. Reserved.](#)

Sec. 16-81. Establishment.

All powers, duties and authority of the Board of Adjustment, as expressed under state law and under the provisions of this Article are hereby vested in the Planning and Zoning Commission for the Town as established under Article X of Chapter 2 of this Code.

(Ord. 2004-726 §1)

Sec. 16-82. Proceedings.

The Board of Adjustment shall adopt rules necessary to the conduct of its affairs and in keeping with the provisions of this Chapter. Meetings shall be held at the call of the chairman and at such other times as the Board of Adjustment may determine. The chairman may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(Prior code Appx. B, § 6.02)

Sec. 16-83. Powers and duties.

The Board of Adjustment shall have the following powers and duties:

- (1) *Appeals* . To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the administrative official in the enforcement of this Chapter.
- (2) *Referred Matters* . To hear and decide all matters referred to it under the provisions of this Chapter.
- (3) *Variances* . To authorize upon appeal in specific cases such variances from the regulations or provisions of this Chapter as will not be contrary to the public interest, where due to special conditions a literal enforcement of the provisions of this Chapter would result in unnecessary hardship; so that the spirit of this Chapter shall be observed, public safety and welfare secured, and substantial justice done.

(Prior code Appx. B, § 6.03)

Sec. 16-84. Conditions.

In granting any variance, the Board of Adjustment may impose such conditions and requirements with respect to location, construction, maintenance and operation, in addition to any which may be stipulated in this Chapter, as deemed necessary for the protection of adjacent properties and the public interest and welfare. Violation of such conditions and requirements, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Chapter and shall be punishable under this Code.

(Prior code Appx. B, § 6.04)

Sec. 16-85. Decisions of the Board of Adjustment.

- (a) In exercising the above mentioned powers, the Board of Adjustment may, so long as such action is in conformity with the terms of this Chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have powers of the administrative official from whom the appeal is taken.
- (b) The concurring vote of four (4) members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter, or to effect any variation in the application of this Chapter. The grounds of every such determination shall be stated in writing.

(Prior code Appx. B, § 6.05)

Sec. 16-86. Procedure.

(a) *Filing* :

- (1) Appeals to the Board of Adjustment concerning interpretation or administration of this Chapter may be taken by any person aggrieved, or by any officer, department or board of the Town affected by any decision of the administrative official.
- (2) Such appeals shall be taken within a reasonable time, by filing with the administrative official and with the Board of Adjustment a notice of appeal specifying the grounds thereof. The administrative official shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken.

(b) *Stay of proceedings* . An appeal stays all proceedings in furtherance of the action appealed from unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal is filed with him or her that, by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

(c) *Hearing* . The Board of Adjustment shall give notice and hold a public hearing on the appeal as provided in this Code. At the hearing any party may appear in person or by an attorney representing him or her. The Board of Adjustment shall set forth its decision in writing within fifteen (15) days after completion of the hearing on the appeal.

(Prior code Appx. B, § 6.06)

Secs. 16-87—16-100. Reserved.

ARTICLE VII Conditional Use Grants

[Sec. 16-101. Intent.](#)

[Sec. 16-102. Approval of conditional use grants.](#)

[Sec. 16-103. Application to existing uses.](#)

[Sec. 16-104. Termination of conditional uses.](#)

[Sec. 16-105. Standards and requirements.](#)

[Sec. 16-106. Procedure.](#)

[Secs. 16-107—16-120. Reserved.](#)

Sec. 16-101. Intent.

The conditional use classification is intended to provide for the inclusion within a district of uses of such unique nature or character, or uses which are so dependent upon specific contemporary conditions, that predetermination of permissibility by right, or the detailing within the ordinance of specific standards, requirements or conditions necessary or appropriate to such permissibility are not practical; but which may be permitted in the district where listed subject to conditions and requirements as hereinafter specified.

(Prior code Appx. B, § 7.01)

Sec. 16-102. Approval of conditional use grants.

Uses listed as conditional uses may be permitted upon petition to the Planning and Zoning Commission for a conditional use grant and subject to approval of the Commission. The Planning and Zoning Commission shall base its determination on general considerations as to the effect of such permit on the health, safety, welfare and economic prosperity and specifically on the effect of such use upon the immediate neighborhood in which it would be located, including the considerations listed in Section 16-105 below. Approval shall only be for a specific location and shall terminate upon change in the use.

(Prior code Appx. B, § 7.02; Ord. 2003-709 §2)

Sec. 16-103. Application to existing uses.

A use which existed lawfully on a lot at the time the lot was placed in a district where such use would be permitted only upon approval of a conditional use grant shall automatically be granted conditional use status. In such cases, the grant of conditional use status shall be based upon the existing conditions at that time and any expansion or change in use shall require changing of the conditional use grant. Petition may be made at any time for expansion or other change of the conditional use grant, and such petition shall not prejudice the existing grant as herein authorized.

(Prior code Appx. B, § 7.03)

Sec. 16-104. Termination of conditional uses.

Where a permitted conditional use does not continue in conformity with the conditions of the original approval, or where a use is no longer compatible with the surrounding area, the conditional grant may be terminated by the Town Council upon referral to the Planning and Zoning Commission and public hearing thereon. Such use shall thereafter be classified as a legal non-conforming use; except that where the action is due to failure to comply with the conditions of the conditional grant, the Town Council may require complete termination of the use.

(Prior code Appx. B, § 7.04)

Sec. 16-105. Standards and requirements.

- (a) Approval of a conditional use grant shall be based on an evaluation of such factors as the following: the character and quality of the area in which the use will be located; the physical appearance of the use, including suitability of architectural and landscaping treatment; appropriate location of the building or buildings on the lot; adequate provision of parking, loading and circulation facilities; potential effect of the use upon off-site vehicular and pedestrian traffic circulation, with particular reference to potential traffic congestion; potential effect of the use on storm drainage in the area; adequacy of planting screens where necessary; provision of operational controls where necessary to avoid hazardous conditions or eliminate potential air or water pollutants or other noxious influences; and the general compatibility of the proposed use with the area in which it is to be located.
- (b) *Conformity with regulations* . Except as may be specifically otherwise provided, any conditional use shall conform to the lot size, building location, building size, open space and height limitation regulations of the district in which it is located.
- (c) *Accessory uses* . Uses and structures accessory to a principal conditional use shall be subject to appropriate regulations in the same manner as herein set forth for the principal conditional use.

(Prior code Appx. B, § 7.05)

Sec. 16-106. Procedure.

- (a) *Filing* . A petition for a conditional use grant shall be submitted in writing and filed with the Town Clerk, who shall promptly refer such petition of the Planning and Zoning Commission. Such petition shall be accompanied by building, site and operational plans as provided in Section 16-145(c) and by such other data and information as necessary for proper evaluation of the request.
- (b) *Hearing* . The Planning and Zoning Commission shall conduct a study and investigation on the petition and shall give public notice and hold a public hearing thereon as provided in Section 16-48.
- (c) *Determination* . Following public hearing, the Planning and Zoning Commission shall make a determination and set forth its decision in writing, indicating conditions of approval, or if the petition is disapproved, indicating the reason therefor.
- (d) *Recording* . When a conditional use grant is approved, such approval shall be appropriately noted on building permits and certificates of zoning compliance. Indication of such grant shall also be made on the Official Zoning District Map by appropriate symbol.

(Prior code Appx. B, § 7.06)

Secs. 16-107—16-120. Reserved.

ARTICLE VIII General Application of Regulations

[Sec. 16-121. Compliance with regulations.](#)

[Sec. 16-122. Structures other than buildings.](#)

[Sec. 16-123. Accessory uses and structures.](#)

[Sec. 16-124. Basic locational regulations.](#)

[Sec. 16-125. Legal nonconformity.](#)

[Secs. 16-126—16-140. Reserved.](#)

Sec. 16-121. Compliance with regulations.

Within the Town, the use of any land, the size and placement of lots, the use, location and type of structure thereon, and the provision of open spaces shall be in compliance with the regulation established herein and made applicable to the district or districts in which such land or structure is located.

(Prior code Appx. B, § 8.01)

Sec. 16-122. Structures other than buildings.

- (a) *Structures less than six (6) inches in height* . Structures not classified as buildings and less than six (6) inches in height from the surface of the ground shall not be subject to the setback, offset, building size or open space requirements of this Chapter except as may be specifically otherwise provided.
- (b) *Structures six (6) inches or more in height* . Structures not classified as buildings and six (6) inches or more in height from the surface of the ground shall be subject to the setback, offset height limitation and open space requirements of this Chapter except as may be specifically otherwise provided.

(Prior code Appx. B, § 8.02)

Sec. 16-123. Accessory uses and structures.

- (a) *General* . Any accessory use or structure shall conform to the applicable regulations of the district in which it is located except as specifically otherwise provided.
- (b) *Permanent structures* :
 - (1) Outdoor lighting installations shall not be permitted closer than three (3) feet to an abutting property line and, where not specifically otherwise regulated, shall not exceed fifteen (15) feet in height and shall be adequately shielded or hooded so that no excessive glare or illumination is cast upon the adjoining properties.
 - (2) Fences, walls and screening devices.
 - a. Fences, walls and other architectural screening devices not in excess of six (6) feet in height may be permitted except in the area of the front yard of the area of a parcel of land or lot considered to be the front portion thereof. Fences and other architectural screening devices are permissible in the front yard area such as opaque fence with a maximum height of thirty-six (36) inches and chain link fence with a maximum height of forty-two (42) inches.
 - b. It shall be unlawful for any person to construct or maintain on any property occupied as residential within the Town any fence, cellar or window guard containing barbs, barbed wire, sharpened nails or any other pointed or sharpened thing of metallic substance.
 - c. It shall be unlawful for any person to construct or maintain within the Town an electrical fence.
- (c) *Unenclosed storage* . No unenclosed storage of materials, equipment, supplies or vehicles shall be permitted where such storage is unsightly to the surrounding view.

(Prior code Appx. B, § 8.03; Ord. 471, 1992; Ord. 475, 1992)

Sec. 16-124. Basic locational regulations.

- (a) *Building must be on a lot* . Every building hereafter erected, structurally altered or relocated shall be placed on a lot as herein defined.
- (b) *One (1) building per lot* . Except as otherwise provided for multifamily dwellings and planned unit developments, only one (1) principal residence structure shall be permitted on a lot.
- (c) *Street access* . No lot shall hereafter be created or any building placed on a lot which does not abut on a public street or approved way except as hereinafter provided for planned unit developments.

(Prior code Appx. B, § 8.04)

Sec. 16-125. Legal nonconformity.

- (a) The existing lawful use of a building or premises at the time of the enactment of this Chapter or any amendment applicable thereto which is not in conformity with the provisions established by this Chapter may be continued in the manner and for the purposes then existent subject to the conditions hereinafter stated.
- (b) For the purpose of administration, such nonconformity shall be classified and regulated as follows:
 - (1) *Nonconforming structures* :

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- a. Subject to Subsection c below, no such structure shall be expanded or enlarged except in conformity with the regulations of the district in which it is located.
 - b. Subject to Subsection c below, when such structure is damaged to the extent of more than fifty percent (50%) of its current local assessed value, it shall not be restored except in conformity with the regulations of the district in which it is located.
 - c. A nonconforming structure which has been damaged by fire or other unavoidable cause may be restored to its original condition for the same use, provided that such work is commenced within six (6) months of such calamity. Moreover, upon the commencement of such work, it shall be diligently and continuously pursued until the work is completed.
- (2) *Nonconforming use of structures :*
- a. No such use shall be expanded or enlarged.
 - b. Upon petition to and approval of the Planning and Zoning Commission, such use may be changed to another use provided that the Planning and Zoning Commission determines that the new use would result in a greater, or no less, degree of conformity, and provided further that such new use shall thereafter determine the degree of legal nonconformity.
 - c. Where any such use is discontinued for a period of twelve (12) consecutive months or for eighteen (18) accumulative months during any three (3) year period, any future use of the structure shall conform to the regulations of the district in which it is located.
 - d. Subject to Subparagraph (1)c above, where the structure in which such use is carried on is damaged to the extent of more than fifty percent (50%) of its current local assessed value, it shall not be restored for use except in conformity with the regulations of the district in which it is located.
 - e. Subject to Subparagraph (1)c above, structural repairs and alterations to a structure housing such use shall not, as long as such use continues, exceed fifty percent (50%) of the local assessed value of the structure at the time the use became nonconforming.
- (3) *Nonconforming lots :*
- a. No building permit or certificate of zoning compliance shall be issued except in conformity with Article IV of this Chapter.
 - b. The size and shape of such lot shall not be altered in any way so as to increase the degree of nonconformity except with the approval of the Planning and Zoning Commission.
- (4) *Nonconforming use of land :*
- a. No such use shall be expanded or enlarged.
 - b. Upon petition to and approval of the Planning and Zoning Commission, such use may be changed to another use provided that the Planning and Zoning Commission determines that the new use would result in greater, or no less, degree of conformity, and provided further that such new use shall thereafter determine the degree of legal nonconformity.
 - c. Where any such use is discontinued for a period of twelve (12) consecutive months or for eighteen (18) accumulative months during any three (3) year period, any future use of the land shall conform to the regulations of the district in which it is located.

(Prior code Appx. B, § 8.05; Ord. 459, 1990)

Secs. 16-126—16-140. Reserved.

ARTICLE IX Supplementary District Regulations

[Sec. 16-141. Visibility at intersections.](#)

[Sec. 16-142. Home occupations.](#)

[Sec. 16-143. Off-street parking requirements.](#)

[Sec. 16-144. Off-street loading requirements.](#)

[Sec. 16-145. Approval of site development plans.](#)

[Secs. 16-146—16-160. Reserved.](#)

Sec. 16-141. Visibility at intersections.

No substantial impediment to visibility between the heights of three (3) and eight (8) feet shall be created or maintained at street intersections within a triangular area described as follows:

Beginning at the point of intersection of the edges of the driving surface, then to points twenty-five (25) feet along both intersecting edges, and then along a transverse line connecting these points.

(Prior code Appx. B, § 9.01)

Sec. 16-142. Home occupations.

(a) *General requirements* . In any district where home occupations are permitted as an accessory use, the establishment and continuance of a home occupation shall be subject to the following general requirements:

- (1) Such use shall be conducted entirely within a dwelling and carried on principally by the inhabitants thereof.
- (2) Such use shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the residential character thereof.
- (3) The total area used for such purposes shall not exceed the equivalent of one-half ($\frac{1}{2}$) the floor area, in square feet, of the first floor of the user's dwelling unit.
- (4) There shall be no advertising, display or other indications of home occupation on the premises.
- (5) There shall not be conducted on the premises the business of selling stocks, supplies or products, provided that incidental retail sales may be made in connection with the permitted home occupations.
- (6) There shall be no exterior storage on the premises of material used in the home occupation.
- (7) There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line, as a result of the home occupation.
- (8) For purposes of this Subsection, provided that all requirements contained herein are met, the following shall, by way of example, be considered home occupations: teaching, with musical instruction limited to two (2) pupils at a time; dressmaking or millinery; child care.

(b) *Excluded uses* . A home occupation shall not include the following: medical or dental clinic, funeral home, restaurant, antique shop, veterinarian's office or any use similar to the foregoing excluded uses.

(Prior code Appx. B, § 9.02)

Sec. 16-143. Off-street parking requirements.

Off-street parking space shall be provided for buildings and uses as hereinafter specified:

- (1) *Application to existing uses* . Provision of parking space shall not be required for uses in existence as of the date of enactment of this Chapter, but shall be required for any expansion of such use by the addition of primary floor area or other special expansion of building or use generating new parking demand.
- (2) *Location* . Parking areas shall be provided upon the same lot containing the use for which they are required or on separate lots within a five hundred (500) foot radius of the lot containing the use for which they are required. Such separate lots and the lot containing the use for which they are required shall be held under unified ownership or control, or the owner of the lot containing the use for which the off-street parking is required shall hold a parking easement in such separate lot.
- (3) *Surfacing* . Any off-street parking area, other than that provided for a residence, having a capacity for more than four (4) vehicles shall be hard surfaced and maintained in a reasonably dustless condition if it is within five hundred (500) feet of a residential district.
- (4) *Screening* . Any off-street parking area, other than that provided for a single-family residence, shall provide a planting screen, landscaped fence or wall at least four (4) feet in height along any side abutting or fronting on a residential district. Plans for such screen shall be submitted to the Planning and Zoning Commission for approval before installation.
- (5) *Standard dimension* . An individual parking space shall be at least nine (9) feet wide by twenty (20) feet long, and if covered shall have a minimum height clearance of seven (7) feet.
- (6) *Determination of need* . The number of parking spaces required shall be based upon the anticipated parking demand of individual uses and shall be as designated for specific uses and situations as follows:

<i>Use</i>	<i>Parking Requirements</i>
Single-family residence	2 spaces per dwelling unit
Multifamily residence	1.5 spaces per dwelling unit
Public assembly facilities provided for seated audiences (churches, theaters, auditoriums, etc.)	1 space for every 3 seats
Elementary schools (if the school includes an auditorium requirement shall govern if it is greater)	2 spaces for every classroom
Junior and senior high schools	Auditorium requirement of 1 space for every 5 students of maximum capacity
Hospitals	1 space for every 2 beds
Clinics	5 spaces for every practitioner on the staff

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Industrial uses	1 space for every 2 employees
Commercial office buildings	1 space for every 300 sq. ft. of G.L.A.
Retail stores	1 space for every 150 sq. ft. of G.L.A.
Customer services establishments	1 space for every 200 sq. ft. of G.L.A.
Restaurant or bar	1 space for every 100 sq. ft. of G.L.A.
Planned shopping center	1 space for every 150 sq. ft. of G.L.A.

- (7) *Uses not enumerated* . In any case where there is a question as to the parking requirements for a use or where such requirements are not specifically enumerated, the Planning and Zoning Commission shall determine the appropriate application of the parking requirements to the specific situation.

(Prior code Appx. B, § 9.03)

Sec. 16-144. Off-street loading requirements.

- (a) *Space required* . In any commercial or industrial district, off-street loading and unloading space shall be provided in addition to the required off-street parking area for every building used for commercial or industrial purposes, which building is in excess of three thousand (3,000) square feet in area exclusive of storage areas.
- (b) *Standard dimension* . An individual loading space shall be at least twelve (12) feet wide by forty-five (45) feet long and have a minimum height clearance of fourteen (14) feet.
- (c) *Determination of need* . The number of such spaces provided shall be based upon the operating characteristics of the individual use and shall be subject to approval by the Planning and Zoning Commission upon submittal of site and operational plans.
- (d) *Street servicing prohibited* . No building for commercial or industrial purposes shall hereafter be erected or placed on a lot in a manner requiring servicing directly from the abutting street.

(Prior code Appx. B, § 9.04)

Sec. 16-145. Approval of site development plans.

- (a) *Where required* . In the case of Planned Unit Developments, and other districts and uses where the character of which could have a substantial adverse effect upon the surrounding environment and community, such uses may be required, as a qualifying condition to their permissibility, to submit site development plans for review for Town approval.

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- (b) *Use by right not infringed* . Such required approval shall be limited solely to reasonable compliance with design, locational and operational requirements and, unless otherwise specifically provided, shall not involve the basic permissibility of the use where such use is permitted by right.
- (c) *Applicability* . The site development plan review required under this Section shall apply to:
 - (1) Any building, development or other project requiring design review by the Town as a condition of any zone district, approved Planned Unit Development or Annexation Agreement; and
 - (2) Except as provided in this Section, no application for a building permit for construction of or expansion of the building footprint of any building or structure shall be considered, approved or issued unless the proposed building, structure or expansion is shown on a development plan approved under this Article. This requirement shall not apply to any building shown on a plan substantially conforming to the requirements of this Article and approved by the Planning and Zoning Commission or the Town Council prior to January 1, 2010.
- (d) *Johnstown Review Committee* .
 - (1) *Established* . The Johnstown Review Committee is hereby established. In this Article, it may simply be referred to as "the JRC." In other ordinances and other articles of this Code it may be referred to as "the JRC" or by its full name. All such references shall be deemed to refer to the committee established under this Section.
 - (2) *Membership* . The Johnstown Review Committee shall consist of members of the Town staff, as designated by the Town Manager from time to time. The Town Manager may but shall not be required to appoint one (1) or more Town consultants to the Committee for review of particular types of projects or specific projects.
 - (3) *Authority and responsibility* . The Johnstown Review Committee shall have the following authority and responsibilities:
 - a. To review site development plans submitted in accordance with this Article;
 - b. To conduct reviews assigned to such a staff committee or any committee with a similar name under approved Planned Unit Development plans and Annexation Agreements; and Town.
 - c. To perform such other duties as may be assigned to it under other ordinances of the Town.
- (e) *Review and decision procedures* . The following procedures shall apply to development plan review under this Article or to the review of any other plan required to be reviewed by the Johnstown Review Committee (JRC):
 - (1) Types of reviews. All development plans subject to this Article shall be reviewed under one (1) of the following procedures:
 - a. Administrative. Any development plan for a site falling in a Planned Unit Development (PUD) which is subject to performance standards or design guidelines approved by the Town under an annexation agreement shall be subject to the Simple Process. The JRC shall be responsible for all reviews and decisions.
 - b. Planning and Zoning Commission Review. Any development plan for a site not subject to Subparagraph a. above, but that falls in the Central Business District or a Gateway Zoning District shall be subject to Planning and Zoning Commission Review. Under this process, the Town staff shall provide the initial review of the proposed development plan and make a recommendation to the Planning and Zoning Commission, which shall be responsible for all further reviews and decisions on such a development plan.
 - c. Full review. Any other development plan shall be subject to a Full Review. Under the Full Review process, Town staff shall provide the initial review of the proposed plan and make a recommendation to the Planning and Zoning Commission; the Planning and Zoning Commission shall make its own recommendation on the development plan. The recommendation of the Planning and Zoning Commission shall be sent forward to the Town

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Council, along with the application. The Town Council shall be responsible for all further reviews and decisions on such a development plan.

- (2) Application submittal and initial review. An applicant for site development plan review shall submit an application containing all of the information required under Section 16-154 of this Article to the Town Planner; the application shall include a cover sheet provided by the Town and shall be submitted in the number of copies and format specified on the cover sheet or accompanying instructions.
 - (3) If the JRC has the final review authority on a proposed development plan under Subparagraph 16-157(e)(1)a., it shall approve, approve with conditions or deny approval to a proposed development plan. Where practicable, it shall take action within forty-five (45) days of the complete application submittal.
 - (4) If the Planning and Zoning Commission is simply the recommending body on a proposed development plan under Paragraph 16-153(c)(3), it shall make a recommendation on the proposed development plan.
 - (5) If the Planning and Zoning Commission has the final review authority on a proposed development plan under Subparagraph 16-157(e)(1)b., it shall approve, approve with conditions or deny approval to a proposed development plan. Where practicable, it shall take action at the first meeting at which the proposed plan is considered. The Commission may, for good cause stated or on the request of the applicant, table a proposed development plan to the next meeting of the Commission. If the Commission grants conditional approval to a proposed development plan and the conditions are sufficiently complex that it believes that it needs to review the plan again, the conditions may include a requirement that a revised development plan, conforming to the stated conditions, be presented to the Commission for review.
 - (6) A development plan recommendation by the Planning and Zoning Commission shall be considered by the Town Council at the next meeting of the Town Council occurring at least ten (10) days after the meeting at which the Committee made its recommendation, unless the applicant shall request that the matter be deferred to a future meeting. The Town Council shall give due consideration to the respective recommendations of the Design Review Committee and the Planning and Zoning Commission, but shall retain the authority to approve, approve with conditions or deny approval to the proposed development plan based on the standards and guidelines of this Article, regardless of the recommendation of the other review bodies.
 - (7) Meetings at which development plans are reviewed shall be considered public meetings. The applicant and any person directly affected by the development plan, including owners of adjoining properties to which there will or may be pedestrian or vehicular connections, and public utilities, shall have the right to be heard. The review body may, in its discretion, choose to hear other persons.
 - (8) Decisions by the JRC and the Planning and Zoning Commission may be appealed by any person aggrieved to the Town Council by filing a notice of appeal with the Town Clerk within thirty (30) days of the action of the Committee. Decisions under this Article by the Town Council may be appealed to the District Court under Rule 106 of the Colorado Rules of Civil Procedure.
- (f) *Site development plans* .
- (1) Plans may be drawn with scaled dimensions and need not be an engineering drawing with calculations or dimensions and survey closures. The plan shall be prepared at a scale of not less than 1" = 100' and shall contain all information including but not limited to that required below:
 - a. Legal description of the site, referring to an approved subdivision;
 - b. Outer boundary lines of the site;
 - c. Existing and immediately surrounding development, including major streets, existing public sewers, public water supply and storm drainage systems;

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- d. Location and dimensions of all existing streets, alleys, utility easements, drainage areas, irrigation ditches and laterals and all other significant features;
- e. Existing and approved streets adjacent to the site; name, right-of-way width and location; type, width and elevation of surfacing; curbs, gutters, sidewalks and culverts;
- f. Location of all existing buildings and other structures on the site, indicating which buildings and structures will remain and which will be removed during the site development process;
- g. Location of all proposed buildings and other structures on the site, including any proposed expansions of existing structures;
- h. Location, dimensions and purpose of all existing or proposed easements and rights-of-way to be reserved or dedicated for public use, such as those for utilities, storm drainage or other purposes;
- i. A topographic map of ground elevations on the site based on the United States Geological Survey datum plane or an approved datum plane by the Planning and Zoning Commission showing contours at two-foot intervals;
- j. A drainage plan or, if the subdivision of which the lot is a part includes an approved drainage plan, relevant portions of the approved plan and any proposed modifications to it;
- k. The physical location of all proposed elements of the drainage system, including but not necessarily limited to ponds, swales, storm drains, collection and discharge facilities;
- l. A utilities plan, including location and size of existing utilities within and adjacent to the lot, including water, sewer, electricity, gas and telephone, and the location of existing and proposed utility easements through any portion of the site;
- m. A proposed landscaping plan, including calculations and plant materials lists showing that the proposed plan conforms to the Town's landscaping and buffering requirements;
- n. A proposed site circulation plan for vehicles, including but not necessarily limited to: access lanes for parking, fire and emergency access lanes, connections to adjoining development other than single-family dwellings; driveways and other access points to the public street system;
- o. A proposed site circulation plan for pedestrians, including but not necessarily limited to: safe pedestrian access from parking areas to buildings on the site; safe pedestrian access from buildings on the site to public sidewalks; safe pedestrian access from buildings on the site to adjoining land uses, including residential neighborhoods to which there may not be direct vehicular connections;
- p. A proposed parking plan, supported by parking calculations showing that the proposed plan conforms to off-street parking requirements of the Town;
- q. A proposed parking or storage plan for bicycles;
- r. For any development with proposed drive-up or drive-through facilities, proposed stacking areas, supported by calculations showing that the proposed plan conforms to stacking requirements of the Town;
- s. For any manufacturing, wholesale, retail, warehouse or similar use involving the manufacture, storage or sale of goods as a principal business activity, proposed loading areas;
- t. For any use for which outdoor sales or storage of goods is contemplated or may occur, proposed areas for outdoor sales, display or storage, including proposed screening of such areas;
- u. A plan which shows proposed outdoor lighting, including the size, type and height of fixtures. For development adjoining residential uses, a photometric analysis with an engineer's

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certification that the proposed lighting plan will meet a lighting level of 0.2 foot-candle or less at the property line;

- v. Building elevations and details for all sides of all buildings included in the project; for a project including multiple buildings following a general plan, the applicant may submit typical elevations and details;
 - w. A master signage plan showing the size, height, location, design and lighting of all signs that will or may require a permit. Incidental signs not requiring a permit (such as on-site traffic signs, "no parking" signs and other noncommercial signs) need not be shown on the plan. For a project including multiple tenants, the master signage plan shall indicate how total permitted signage is to be allotted among individual tenants or other users. The master signage plan included for review shall **not** include any reference to the message to be included on such signs; design shall be illustrated with representative, placeholder words; and
 - x. Such additional information as may reasonably be required to determine that the proposed development conforms to all applicable ordinances of the Town.
- (g) *Standards for review* . Site development plans may be approved if they are found to conform to all of the following standards:
- (1) *Zoning* . The location and height of all buildings on the development will conform to applicable height, bulk, yard, setback and building coverage standards effective in the zoning district affecting the development or set forth in an approved Planned Unit Development or similar plan for the site.
 - (2) *Design guidelines* . Conformance with approved performance standards or design guidelines.
 - (3) *Utilities* . The site design and proposed utility easements provide for safe and adequate access and connections to all utilities and allow for reasonable access for future repairs.
 - (4) *Stormwater and drainage* . The proposed stormwater and drainage design for the site conforms to the Johnstown Stormwater Master Plan and Public Improvement Design Criteria and Construction Regulations.
 - (5) *Parking* . The number, location and design of proposed parking spaces meet all of the following requirements:
 - a. The location, size and design conform to Section 16-143 of this Article or to any successor section controlling off-street parking;
 - b. The proposed parking areas will not be reduced by loading, stacking, outdoor sales or display of products, or any allowed locations for temporary structures for on-site storage;
 - c. The location and design are consistent with plans for safe and efficient pedestrian and vehicular circulation on the site; and
 - d. Any site required to have twenty (20) or more vehicular parking spaces shall provide one (1) bicycle parking space for each twenty (20) vehicular spaces; such bicycle parking spaces shall include bike racks or lockers that allow a user to lock a bike and shall be located within a short walking distance of the principal entrances to buildings on the site. With the approval of the review body, one (1) required vehicular parking space may be eliminated for each twenty (20) bicycle parking spaces provided.
 - (6) *Loading* . The size, location and design of proposed loading areas conform to Section 16-144 of this Article or to any successor section controlling off-street loading.
 - (7) *Stacking* . If any proposed use will involve drive-through or drive-up facilities, the development plan includes adequate stacking spaces (generally five [5] stacking spaces for each drive-through or drive-up lane) for such facilities, with such stacking spaces or areas located and designed so that they do not impair site circulation for vehicles or pedestrians and do not have the effect of reducing available parking spaces.

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- (8) *Landscaping* . The proposed landscaping conforms to the Town of Johnstown Landscape Standards and Specifications, adopted July 19, 2004, as such standards and specifications may be amended from time to time.
- (9) *Lighting* . The proposed lighting conforms to applicable provisions of this Chapter (some of which vary by zoning district).
- (10) *Signs* . The location, size and height of any freestanding signs will conform to the standards of Article XX of this Chapter.
- (11) *Circulation - vehicular* . The site design provides for safe and efficient vehicular circulation, including driveway connections conforming to the Town of Johnstown Transportation Plan, and including such shared driveways or cross-access easements and ways to adjoining uses (existing or future) as maybe practicable.
- (12) *Circulation - pedestrian* . The site design provides for safe and efficient pedestrian and vehicular circulation, including:
 - a. Safe walkways from parking areas to buildings on the site, minimizing the extent to which pedestrians must cross vehicular travel lanes and providing narrowed or distinctive pavement to increase the safety of such crossings;
 - b. Safe walkways between buildings on the site;
 - c. Connections to existing or planned public sidewalks on the same side of any streets adjoining the site; and
 - d. Pedestrian connections to adjoining residential neighborhoods that may not have direct vehicular connections to the site.
- (h) *Final version for file* . After approval of the site development plan, the applicant shall provide to the Town Planner a final copy for the records of the Town. That plan shall incorporate all changes, amendments and conditions to the development plan that resulted from the review process.
- (i) *Effect of approved site development plan* . After approval of a site development plan, the following actions may be taken by the applicant only if they are consistent with the approved development plan as to location, extent and design, as well as with all applicable ordinances of the Town:
 - (1) Construction of any building or other structure, including building elevation and design; if any proposed building differs from approved typical elevations, the revised elevations for the individual building may be submitted to the Town for separate review;
 - (2) Installation of any permanent sign or similar structure;
 - (3) Installation or placement of any accessory or temporary structure, including trailers and modular units used for storage or other purposes;
 - (4) Paving, layout or actual use of any parking area;
 - (5) Installation or permanent removal of any landscaping (routine replacement of landscaping materials with like materials is allowed);
 - (6) Installation or construction of any fence or wall;
 - (7) Outdoor display or sale of merchandise;
 - (8) Installation and operating of outdoor lighting on the site; or
 - (9) Any other site disturbance or construction that will permanently add, remove or significantly alter any visible physical feature of the site (routine excavations for repairs, allowed construction and other purposes consistent with the development plan shall not be affected).
- (j) *Standards for review* . The Johnstown Review Committee, or Planning and Zoning Commission and Town Council, as applicable, shall approve a proposed development plan application if and only if it conforms to all of the following standards:

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- (1) *Zoning* . The location and height of all buildings on the development will conform to applicable height, bulk, yard, setback and building coverage standards effective in the zoning district affecting the development or set forth in an approved Planned Unit Development or similar plan for the site.
- (2) *Utilities* . The site design and proposed utility easements provide for safe and adequate access and connections to all utilities and allow for reasonable access for future repairs.
- (3) *Stormwater and drainage* . The proposed stormwater and drainage design for the site conforms to the Johnstown Stormwater Master Plan and Public Improvement Design Criteria and Construction Regulations.
- (4) *Parking* . The number, location and design of proposed parking spaces meets all of the following requirements:
 - a. The location, size and design conform to Section 16-143 of this Article or to any successor section controlling off-street parking;
 - b. The proposed parking areas will not be reduced by loading, stacking, outdoor sales or display of products, or any allowed locations for temporary structures for onsite storage;
 - c. The location and design are consistent with plans for safe and efficient pedestrian and vehicular circulation on the site; and
 - d. Any site required to have twenty (20) or more vehicular parking spaces shall provide one (1) bicycle parking space for each twenty (20) vehicular spaces; such bicycle parking spaces shall include bike racks or lockers that allow a user to lock a bike and shall be located within a short walking distance of the principal entrances to buildings on the site. With the approval of the review body, one (1) required vehicular parking space may be eliminated for each twenty (20) bicycle parking spaces provided.
- (5) *Loading* . The size, location and design of proposed loading areas conform to Section 16-144 of this Article or to any successor section controlling off-street loading.
- (6) *Drive-through lane capacity* . If any proposed use will involve drive-through or drive-up facilities, the development plan shall provide adequate capacity (generally five [5] vehicles for each drive-through or drive-up lane) for such facilities, with such spaces or areas located and designed so that they do not impair site circulation for vehicles or pedestrians and do not have the effect of reducing available parking spaces.
- (7) *Landscaping* . The proposed landscaping conforms to the Town of Johnstown Landscape Standards and Specifications, adopted July 19, 2004, as such standards and specifications may be amended from time to time.
- (8) *Lighting* . The proposed lighting conforms to applicable provisions of this Chapter (some of which vary by zoning district).
- (9) *Signs* . The location, size and height of any freestanding signs will conform to the standards of Article XX of this Chapter.
- (10) *Circulation - vehicular* . The site design provides for safe and efficient vehicular circulation, including driveway connections conforming to the Town of Johnstown Transportation Plan, and including such shared driveways or cross-access easements and ways to adjoining uses (existing or future) as may be practicable.
- (11) *Circulation - pedestrian* . The site design provides for safe and efficient pedestrian and vehicular circulation, including:
 - a. Safe walkways from parking areas to buildings on the site, minimizing the extent to which pedestrians must cross vehicular travel lanes and providing narrowed or distinctive pavement to increase the safety of such crossings;
 - b. Safe walkways between buildings on the site;

- c. Connections to existing or planned public sidewalks on the same side of any streets adjoining the site; and
 - d. Pedestrian connections to adjoining residential neighborhoods that may not have direct vehicular connections to the site.
- (k) *Additional guidelines for review* . The Johnstown Review Committee, Planning and Zoning Commission or Town Council, as applicable, may consider the additional guidelines listed below in deciding whether to approve a proposed development plan. In case of any conflict between any ordinance, including the standards set forth in Sect. 16-158, and any of these guidelines, the ordinance shall control. Copies of any documents identified below must be readily available to applicants for development plan approval; if the Town cannot immediately produce and provide a copy of any such document to an applicant, the review body may not rely on that document in reviewing the applicant's proposed plan. Guidelines included under this Section include:
- (1) The Town of Johnstown Transportation Master Plan, as amended in 2008 and as amended from time to time;
 - (2) The Town of Johnstown Area Comprehensive Plan, as amended in 2006 and as amended from time to time;
 - (3) The Town of Johnstown Design Guidelines, as adopted in 2005 and as amended and updated from time to time;
 - (4) Downtown Design Guidelines as adopted in 2009 and as amended from time to time; and
 - (5) Any design or similar guidelines adopted under an annexation agreement or planned unit development approval that includes the site under review.

(Prior code Appx. B, § 9.05; Ord. 2010-117 §2)

Secs. 16-146—16-160. Reserved.

ARTICLE X Application of Individual Lot Regulations

[Sec. 16-161. General.](#)

[Sec. 16-162. Use regulations.](#)

[Sec. 16-163. Lot size.](#)

[Sec. 16-164. Density.](#)

[Sec. 16-165. Building location.](#)

[Sec. 16-166. Open space.](#)

[Secs. 16-167—16-180. Reserved.](#)

Sec. 16-161. General.

The regulations set by this Chapter within each district shall be held to be minimum requirements and shall apply to each class or kind of structure or land, except as hereinafter provided.

(Prior code Appx. B, § 10.01)

Sec. 16-162. Use regulations.

No structure or land shall be used and no structure shall be hereafter erected, structurally altered or relocated except for a use as permitted in compliance with the regulations hereinafter established for the district in which it is located.

(Prior code Appx. B, § 10.02)

Sec. 16-163. Lot size.

Minimum lot area . No building shall be erected on a lot of less area than hereinafter specified by the regulations of the district in which such building is located.

(Prior code Appx. B, § 10.03)

Sec. 16-164. Density.

- (a) *Purpose* . The regulatory techniques controlling the distribution of population throughout the community are intended to achieve the desired environmental character as set forth in the Comprehensive Development Plan and to achieve a practical economic and functional relationship between the residential use of land and its consequent impact upon traffic circulation, public utilities, community facilities and other service demands.
- (b) *Method* . In single-family residential development, the density is established by the minimum required lot size. In multifamily residential development, the determination of the number of allowable dwelling units on a given property being developed shall be made by dividing the net area of the parcel to be developed by the number of square feet required per dwelling unit.

(Prior code Appx. B, § 10.04)

Sec. 16-165. Building location.

- (a) *Setback* .
 - (1) No building shall hereafter be erected, structurally altered or relocated so that any portion thereof is closer to the base setback line than the minimum setback distance hereinafter specified by the regulations of the district in which it is located.
 - (2) The only structures permitted within such setback area shall be necessary highway and traffic signs, public utility lines, fences and screens, mailboxes and permitted accessory signs in the Neighborhood Commercial and Highway Service Districts.
- (b) *Offsets* . No building shall hereafter be erected, structurally altered or relocated so that any roofed or enclosed portion thereof is closer to any lot line than the offset distance hereinafter specified by the regulations for the district in which it is located except as follows:
 - (1) In the case of multifamily, commercial or industrial use structures, two (2) or more buildings on adjoining lots may be erected with common or directly adjoining walls, provided that the requirements of Building Codes relative to such construction are complied with and provided that at both ends of such "row" type buildings the applicable offset requirements shall be complied with.
 - (2) The required offset may be reduced on one (1) side of a structure provided that the offset on one (1) of the other sides is increased by an equivalent amount, and provided that the owners of any property adjoining the area of reduced offset shall file with the Town a copy of a recorded deed

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restriction stipulating that no building shall be erected on the property so as to reduce the combined offset in such case to a distance less than that resulting from the normal application of the minimum offset requirements to both properties except as permitted under Subparagraph (1) above.

- (c) *Maintenance and use of setback and offset areas* . Any such required setback or offset area shall be landscaped and kept clean and free from the accumulation of debris and refuse, and shall not be used for the storage or display of equipment, products, vehicles or any other material except as may be specifically otherwise permitted under this Chapter.
- (d) *Projections into setbacks and offsets* . Projections or parts of a structure may encroach into the required setbacks or offsets in the Residential SF-1 and SF-2 Districts not more than the distances listed in the following table:

<i>Projections</i>	<i>Setback</i>	<i>Offset</i>
Architectural features such as eaves, roof overhangs, chimneys, awnings, cantilevered window boxes and fireplaces can encroach no more than	2 ft	2 ft
Unenclosed or uncovered decks, porches, patios and landings ¹ at ground level can encroach no more than	2 ft	2 ft
Basement egress window wells	3 ft	3 ft

¹ A required landing at an exit door may encroach up to 3' into required offset.

A combination of projections such as a fireplace cantilever and its roof overhang shall not encroach more than a total of two (2) feet.

(Prior code Appx. B, § 10.05; Ord. 604 §1, 1999)

Sec. 16-166. Open space.

- (a) *Minimum open space per dwelling unit* . No building used in whole or in part for residential purposes shall be hereafter erected, structurally altered or relocated on a lot as to reduce the usable livability open space of such lot to less than that hereinafter specified by the regulations of the district in which such building is located.
- (b) *Usability of required open space* . To be considered usable, livability open space shall be readily accessible and of a size and shape which can be reasonably considered to provide for amenities and the necessities of light, air, play space, yard area, garden, etc., but shall not include parking area and drives.

(Prior code Appx. B, § 10.06)

Secs. 16-167—16-180. Reserved.

ARTICLE XI Single-Family Residential SF-1 District

[Sec. 16-181. Statement of intent.](#)

[Sec. 16-182. Use regulations.](#)

[Sec. 16-183. Density.](#)

[Sec. 16-184. Building location.](#)

[Sec. 16-185. Open space.](#)

[Sec. 16-186. Off-street parking requirements.](#)

[Secs. 16-187—16-200. Reserved.](#)

Sec. 16-181. Statement of intent.

This district is intended to provide for the development of single-family dwellings with a full complement of accessory uses. It is intended that such development be served by institutional uses and community facilities compatible with the character of the district.

(Prior code Appx. B, § 11.01)

Sec. 16-182. Use regulations.

A building or lot may be used for the following uses and no other:

- (1) Principal uses permitted by right:
 - a. Single-family detached dwellings;
 - b. Public parks and recreation areas; and
 - c. Public and private schools.
 - d. Family child-care homes.
- (2) Permitted accessory uses:
 - a. Private garages, carports and paved parking areas;
 - b. Private residential and private group outdoor recreational facilities, including by way of example, but not of limitation, swimming pools and tennis courts;
 - c. Home occupations, subject to the provisions of Section 16-142;
 - d. Service buildings and facilities normally incidental to the use of a public park or recreation area; and
 - e. Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (3) Conditional uses. The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII of this Chapter.
 - a. Child care centers;
 - b. Nursing homes and life care facilities;

- c. Places of worship;
- d. Private commercial outdoor recreational facilities;
- e. Public administrative offices and service buildings; and
- f. Public utility installations including transmission lines and substations.
- g. Farm animals as defined in Subsection 7-121(7) of this Code, and only upon newly annexed land for a limited period of time as determined by the Town Council, and in no event shall the numbers and types of animals be increased beyond those that could exist at the time of annexation under County regulations.

(Prior code Appx. B, § 11.02; Ord. 631, § 1, 2000; Ord. 2010-117 §3)

Sec. 16-183. Density.

The minimum lot area per dwelling unit is six thousand (6,000) square feet.

(Prior code Appx. B, § 11.03)

Sec. 16-184. Building location.

- (a) The minimum setback is twenty (20) feet.
- (b) The minimum offset is five (5) feet.

(Prior code Appx. B, § 11.04)

Sec. 16-185. Open space.

The minimum livability open space per dwelling unit is three thousand (3,000) square feet.

(Prior code Appx. B, § 11.05)

Sec. 16-186. Off-street parking requirements.

See Section 16-143.

(Prior code Appx. B, § 11.06)

Secs. 16-187—16-200. Reserved.

ARTICLE XII Single-Family Attached Residential SF-2 District

[Sec. 16-201. Statement of intent.](#)

[Sec. 16-202. Use regulations.](#)

[Sec. 16-203. Density.](#)

[Sec. 16-204. Building location.](#)

[Sec. 16-205. Open space.](#)

[Sec. 16-206. Off-street parking requirements.](#)

[Secs. 16-207—16-220. Reserved.](#)

Sec. 16-201. Statement of intent.

This district is intended to provide for residential development of single-family attached dwellings of the "duplex" or "townhouse" type, where all dwelling units have ground level occupancy and private entrances, at relatively low density, and where such development would be compatible with surrounding residential uses.

(Prior code Appx. B, § 12.01)

Sec. 16-202. Use regulations.

A building or lot may be used for the following purposes and no other:

- (1) Principal uses permitted by right:
 - a. Single-family attached dwellings of two (2) or more units, but not more than six (6) dwelling units per structure.
 - b. Public parks and recreation areas.
 - c. Public and private schools.
 - d. Group homes.
 - e. Family child-care homes.
- (2) Conditional uses: The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII of this Chapter:
 - a. Any conditional use permitted in the Single-Family Residential SF-1 District; or
 - b. Place of worship.

(Prior code Appx. B, § 12.02; Ord. 2010-117 §3)

Sec. 16-203. Density.

The minimum lot area per dwelling unit is four thousand five hundred (4,500) square feet.

(Prior code Appx. B, § 12.03)

Sec. 16-204. Building location.

- (a) The minimum setback is twenty (20) feet.
- (b) The minimum offset is five (5) feet.

(Prior code Appx. B, § 12.04)

Sec. 16-205. Open space.

The minimum livability open space per dwelling unit is two thousand (2,000) square feet.

(Prior code Appx. B, § 12.05)

Sec. 16-206. Off-street parking requirements.

See Section 16-143.

(Prior code Appx. B, § 12.06)

Secs. 16-207—16-220. Reserved.

ARTICLE XIII Multifamily Residential MF-1 District

[Sec. 16-221. Statement of intent.](#)

[Sec. 16-222. Use regulations.](#)

[Sec. 16-223. Density.](#)

[Sec. 16-224. Building location.](#)

[Sec. 16-225. Open space.](#)

[Sec. 16-226. Off-street parking requirements.](#)

[Secs. 16-227—16-240. Reserved.](#)

Sec. 16-221. Statement of intent.

This district is intended to provide for residential development of multifamily dwellings in areas where such development would be compatible with surrounding uses and when such intensive use would not create service problems.

(Prior code Appx. B, § 13.01)

Sec. 16-222. Use regulations.

A building or lot may be used for the following purposes and no other:

- (1) Principal uses permitted by right:
 - a. Multifamily dwellings of two (2) or more units;
 - b. Group homes;
 - c. Family child-care homes; and
 - d. Public parks and recreation areas.
- (2) Permitted accessory uses:
 - a. Private garages, carports and paved parking areas;

- b. Signs;
 - c. Private residential and private group outdoor recreational facilities;
 - d. Service buildings and facilities normally incidental to the use of a public park or recreation area; and
 - e. Any other structures or uses clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (3) Conditional uses. The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII:
- a. Private commercial outdoor recreational facilities;
 - b. Private lodge or club; and
 - c. Place of worship.

(Prior code Appx. B, § 13.02; Ord. 2010-117 §3)

Sec. 16-223. Density.

The minimum lot area per dwelling unit is three thousand (3,000) square feet.

(Prior code Appx. B, § 13.03)

Sec. 16-224. Building location.

- (a) The minimum setback is twenty (20) feet.
- (b) The minimum offset is six (6) inches for every foot of building height.

(Prior code Appx. B, § 13.04)

Sec. 16-225. Open space.

The minimum livability open space per dwelling unit is nine hundred (900) square feet.

(Prior code Appx. B, § 13.05)

Sec. 16-226. Off-street parking requirements.

See Section 16-143.

(Prior code Appx. B, § 13.06)

Secs. 16-227—16-240. Reserved.

ARTICLE XIV Central Business CB District

[Sec. 16-241. Statement of intent.](#)

[Sec. 16-242. Use regulations.](#)

[Sec. 16-243. Intensity of use.](#)

[Sec. 16-244. Building location.](#)

[Sec. 16-245. Open space.](#)

[Sec. 16-246. Special off-street parking requirements.](#)

[Sec. 16-247. Off-street loading requirements.](#)

Sec. 16-241. Statement of intent.

This district is intended to provide for the development of a concentration of commercial, office, recreational, cultural, entertainment and governmental facilities serving as the center of community activity with the walkable character, activity and concentration of development found in a traditional downtown area. It is the further intent of this district to conserve and enhance the historic qualities of existing central business area for the benefit of the community as a whole. Specialized housing for elderly residents is encouraged to take advantage of nearby shopping and services.

(Prior code Appx. B, § 14.01; Ord. 2010-117 §4)

Sec. 16-242. Use regulations.

The following uses shall be permitted in this district subject to approval by the Planning and Zoning Commission of a site development plan. Change of permitted uses and minor changes to site plans within existing properties and buildings is subject to administrative site development plan review for compliance with parking, loading and signage requirements.

- (1) Principal uses permitted by right:
 - a. Retail stores:
 1. Food store, supermarket;
 2. Food store, convenience with vehicle fuel sales;
 3. Delicatessen;
 4. Bakery goods store;
 5. Liquor store;
 6. Hardware store;
 7. Drugstore;
 8. Clothing and accessories store; and
 9. Media stores, including music, magazines and newspapers.
 - b. Customer service establishments:
 1. Barber and beauty shops;
 2. Ice cream shops;
 3. Restaurant and bar, excluding drive-up or drive-thru windows;
 4. Shoe repair shop;
 5. Laundromat and coin-operated dry cleaning establishment; and

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6. Fine arts or crafts studio, including a "live-work" space occupied by an artist or craftsperson and also used as a studio and/or sales gallery.
 - c. Business and professional offices, excluding special trades contractors;
 - d. Banks and savings and loans;
 - e. Medical and dental clinics;
 - f. Public administrative offices and service buildings;
 - g. Public utility offices;
 - h. Public library;
 - i. Private club or lodge subject to Paragraph (2) below regarding frontage;
 - j. Commercial lodging;
 - k. Theater, live stage or recorded media, subject to restrictions of Paragraph (2) below regarding frontage;
 - l. Places of worship, subject to Paragraph (2) below regarding frontage;
 - m. Passenger transportation terminals, not including trucking terminals;
 - n. Dwelling units located above the first floor; and
 - o. Elderly housing, including assisted living facilities and skilled nursing facilities.
 - p. Child day care center licensed and operated according to state law.
- (2) Conditions on public assembly uses. To maintain a pedestrian-friendly experience along the major streets of the CBD, any theater, club, lodge, religious institution or other place of public assembly located in the CBD district shall be subject to the following limitation. Such use shall not have more than fifty (50) feet of blank wall (i.e., no active storefront windows) along street frontage on the first floor.
- (3) Permitted accessory uses, subject to site development plan review:
- a. Signs;
 - b. Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business; and
 - c. Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (4) Conditional uses. The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII of this Chapter:
- a. Commercial parking facilities;
 - b. Gasoline service stations;
 - c. Motor vehicle repair and maintenance within an enclosed structure; and
 - d. Residential uses.

(Prior code Appx. B, § 14.02; Ord. 681-B, § 1, 2001; Ord. 2010-117 §4; Ord. No. 2017-147, § 1, 5-15-2017; Ord. No. 2017-148, § 1, 8-21-2017)

Sec. 16-243. Intensity of use.

The intensity of use of a site shall not exceed a floor/area ratio of three-to-one.

(Ord. 2010-117 §4)

Sec. 16-244. Building location.

There are no minimum or maximum setbacks in this district. There is no minimum offset in this district.

(Ord. 2010-117 §4)

Sec. 16-245. Open space.

There is no minimum required open space in this district, regardless of whether a building includes one (1) or more dwelling units.

(Ord. 2010-117 §4)

Sec. 16-246. Special off-street parking requirements.

The parking standards of Section 16-143 of this Chapter shall apply to uses in the CBD District, except as set forth in this Section. To maintain the walkable character of the CBD, it is the policy of the Town to discourage to the maximum extent practicable the location of off-street parking or garages with driveways onto South Parish and South First Streets. Alternative parking arrangements, including shared parking, off-site parking, reserved or otherwise designated public parking or other arrangements are encouraged and shall be considered for appropriateness and adequacy as part of the site plan review process. The Town may provide additional downtown public parking tied to a fee-in-lieu-of-parking spaces in which developers would contribute to the cost of constructing such parking. The Planning and Zoning Commission shall have the authority to reduce or otherwise adjust the off-street parking requirements as part of the site plan review process, provided that the variance does not exceed ten percent (10%).

(Prior code Appx. B, § 14.03; Ord. 2010-117 §4)

Sec. 16-247. Off-street loading requirements.

To maintain the walkable character of the CBD, loading for retail uses is allowed from streets and alleys. Other permitted uses shall provide off-street loading that conforms to the requirements of Section 16-144 of this Chapter, but off-street loading areas shall not be located along or with direct access to or from South Parish or South First Street.

(Prior code Appx. B, § 14.04; Ord. 2010-117 §4)

ARTICLE XIV-A Neighborhood Commercial NC District

[Sec. 16-248. Statement of intent.](#)

[Sec. 16-249. Use regulations.](#)

[Sec. 16-250. Intensity of use.](#)

[Sec. 16-251. Building location.](#)

[Sec. 16-252. Open space.](#)

[Sec. 16-253. Off-street parking requirements.](#)

[Sec. 16-254. Off-street loading requirements.](#)

Sec. 16-248. Statement of intent.

This district is intended to provide for the development of small, walkable, neighborhood-friendly commercial developments within or adjoining planned residential developments.

(Ord. 2010-117 §5)

Sec. 16-249. Use regulations.

A building or lot may be used for the following purpose and no other:

- (1) Principal uses permitted by right:
 - a. Retail stores;
 - b. Customer service establishments;
 - c. Business and professional offices;
 - d. Banks and savings and loans, without drive-up or drive-through facilities;
 - e. Medical and dental clinics (out-patient treatment only);
 - f. Public administrative offices and service buildings; and
 - g. Dwelling units above the first floor.
- (2) Size limitations. No single use in this district shall occupy more than three thousand (3,000) square feet of gross leasable area. No center or other combination of uses on a single site in this district shall occupy more than ten thousand (10,000) square feet of gross leasable area.
- (3) Permitted accessory uses. The following subject to approval by the Planning and Zoning Commission of development plans as provided in Section 16-145 of this Chapter:
 - a. Signs;
 - b. Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business;
 - c. Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (3) Conditional uses. The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII:
 - a. Accessory off-street parking areas.

(Ord. 2010-117 §5)

Sec. 16-250. Intensity of use.

The intensity of use of a site shall not exceed a floor/area ratio of two (2). Building height shall not exceed that of adjoining residential.

(Ord. 2010-117 §5)

Sec. 16-251. Building location.

The maximum front setback is five (5) feet. The minimum setback from any lot containing or zoned for a single-family dwelling is thirty (30) feet. The minimum offset is five feet.

(Ord. 2010-117 §5)

Sec. 16-252. Open space.

At least twenty percent (20%) of the area of any site shall be maintained as required open space.

(Ord. 2010-117 §5)

Sec. 16-253. Off-street parking requirements.

The off-street parking requirements of Section 16-143 of this Chapter shall apply to uses in the NC District, except as set forth in this Section. To maintain the walkable character of the NC District, it is the policy of the Town to discourage to the maximum extent practicable off-street parking areas that disrupt the pedestrian-oriented character of shopping in NC districts or the pedestrian connections to adjoining and nearby residential neighborhoods. Alternative parking arrangements, including shared parking, off-site parking, reserved or otherwise designated public parking or other arrangements are encouraged and shall be considered for appropriateness and adequacy as part of the site plan review process. Uses shall be credited with available on-street parking spaces directly in front of the proposed uses on the same side of the street. The Planning and Zoning Commission shall have the authority to reduce or otherwise adjust the off-street parking requirements as part of the site plan review process, provided that it finds that the parking needs of the proposed uses can be met without using on-street parking in front of existing or future single-family residential uses.

(Ord. 2010-117 §5)

Sec. 16-254. Off-street loading requirements.

The off-street loading requirements of Section 16-144 do not apply in this district; such loading areas are not permitted.

(Ord. 2010-117 §5)

ARTICLE XIV-B Planned Unit Development Village PUD-V District

[Sec. 16-255. Statement of intent.](#)

[Sec. 16-256. Use regulations.](#)

[Sec. 16-257. Intensity of use.](#)

[Sec. 16-258. Building location.](#)

[Sec. 16-259. Open space.](#)

[Sec. 16-260. Off-street parking requirements.](#)

[Sec. 16-260.1. Off-street loading requirements.](#)

Sec. 16-255. Statement of intent.

This district is intended to provide for sub-regional and community commercial developments as well as an assortment of medium-density housing options. Villages centers will typically occupy twenty (20) acres or more.

(Ord. 2010-117 §12)

Sec. 16-256. Use regulations.

A building or lot may be used for the following purposes and no other:

- (1) Principal uses permitted by right:
 - a. Retail stores.
 - b. Customer service establishments.
 - c. Business and professional offices.
 - d. Banks and savings and loans, with or without drive-up or drive-through facilities.
 - e. Medical and dental clinics (out-patient treatment only).
 - f. Public administrative offices and service buildings.
 - h. Neighborhood institutional uses.
- (3) Permitted accessory uses. The following subject to approval by Planning and Zoning Commission of development plans as provided in Section 16-145 of this Chapter:
 - a. Signs.
 - b. Residential quarters for the owner, proprietor, commercial tenant, employee or caretaker located in the same building as the business.
 - c. Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (3) Conditional uses. The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII of this Chapter:
 - a. Convenience store with gasoline sales.
 - b. Automobile and light truck service and repair excluding body and paint shops.

(Ord. 2010-117 §12)

Sec. 16-257. Intensity of use.

The intensity of use of a site shall not exceed a floor/area ratio of three (3). Building heights shall not exceed heights of adjoining existing development.

(Ord. 2010-117 §12)

Sec. 16-258. Building location.

The minimum setback and offset requirements shall be as approved in the development plans.

(Ord. 2010-117 §12)

Sec. 16-259. Open space.

At least twenty percent (20%) of the area of any site shall be maintained as required open space.

(Ord. 2010-117 §12)

Sec. 16-260. Off-street parking requirements.

The off-street parking requirements of Section 16-143 of this Chapter shall apply to uses in the district, except as set forth in this section. To maintain the walkable character of the district, it is the policy of the Town to discourage to the maximum extent practicable off-street parking areas that disrupt the pedestrian-oriented character of shopping in district or the pedestrian connections to adjoining and nearby residential neighborhoods. Alternative parking arrangements, including shared parking, off-site parking, reserved or otherwise designated public parking or other arrangements are encouraged and shall be considered for appropriateness and adequacy as part of the site plan review process. Uses shall be credited with available on-street parking spaces directly in front of the proposed uses on the same side of the street. The Planning and Zoning Commission shall have the authority to reduce or otherwise adjust the off-street parking requirements as part of the site plan review process, provided that it finds that the parking needs of the proposed uses can be met without using on-street parking in front of existing or future single-family residential uses.

(Ord. 2010-117 §12)

Sec. 16-260.1. Off-street loading requirements.

Off-street loading requirements shall be as established in the approved development plan.

(Ord. 2010-117 §12)

ARTICLE XV Industrial I District

[Sec. 16-261. Statement of intent.](#)

[Sec. 16-262. Use regulations.](#)

[Sec. 16-263. Limitation on external effects of uses.](#)

[Sec. 16-264. Lot size.](#)

[Sec. 16-265. Building location.](#)

[Sec. 16-266. Off-street parking requirements.](#)

[Sec. 16-267. Off-street loading requirements.](#)

[Secs. 16-268—16-270. Reserved.](#)

Sec. 16-261. Statement of intent.

This district is intended to identify and preserve land suitable for exclusive industrial use and to provide for the orderly grouping of light manufacturing or industrial operations in an appropriate setting. It is the further intent of this district to establish such regulatory controls as to reasonably assume a harmonious relationship between the industrial uses and the community.

(Prior code Appx. B, § 15.01)

Sec. 16-262. Use regulations.

- (a) *Principal uses permitted by right* . The following uses shall be permitted in this district subject to approval by the Planning and Zoning Commission of the building site and operational plans and subject to approval of such plans by the air pollution control and water pollution control sections of the State Department of Health, as provided in Section 16-145.
- (1) Manufacturing, assembly, processing and fabrication plants;
 - (2) Transportation terminals, including trucking;
 - (3) General warehousing;
 - (4) Experimental, testing and research laboratories;
 - (5) Printing and publishing houses and related activities;
 - (6) Automobile body repair shops;
 - (7) Special trades contractor specializing in one (1) or more trades of which the following are examples: plumbing and heating, painting and decorating, electrical work, glazing, insulation, carpentry and masonry; and
 - (8) Public utility offices and installations.
- (b) *Permitted accessory uses* :
- (1) Office, storage, power supply and other such uses normally auxiliary to the principal industrial use;
 - (2) Parking and service areas;
 - (3) Accessory signs;
 - (4) Residential quarters for guards or caretakers; and
 - (5) Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (c) *Conditional uses* . The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII:
- (1) Manufacture of asphalt or concrete;
 - (2) Packing houses;
 - (3) Drop forges or foundries;
 - (4) Storage of gasoline or any other flammable liquid as defined as those having a flash point below seventy-three degrees Fahrenheit (73°F) and having a boiling point below one hundred degrees Fahrenheit (100°F) where such storage is in excess of fifty thousand (50,000) gallons; and
 - (5) Nonaccessory signs.

(Prior code Appx. B, § 15.02; Ord. 533, § 1, 1996)

Sec. 16-263. Limitation on external effects of uses.

- (a) No use or activity shall be permitted to produce hazardous conditions or noxious influences, such as noise, vibration, heat, glare, radiation, fumes, smoke or other pollutant to a degree detrimental to existing or prospective adjacent uses or to existing or prospective adjacent residential and commercial districts.
- (b) All fuel, raw materials and products stored outdoors shall be enclosed by a solid fence or wall adequate to conceal such fuel, raw materials and products from adjacent residential and commercial districts.

(Prior code Appx. B, § 15.03)

Sec. 16-264. Lot size.

The minimum lot area is sixty thousand (60,000) square feet.

(Prior code Appx. B, § 15.04)

Sec. 16-265. Building location.

- (a) The minimum setback is thirty (30) feet.
- (b) The minimum offset is twenty (20) feet. Where an industrial district adjoins a residential district, structures located in the district shall be set back or offset a minimum distance of two hundred (200) feet and shall be permanently screened with a planting screen at least six (6) feet wide and fifteen (15) feet high.

(Prior code Appx. B, § 15.05)

Sec. 16-266. Off-street parking requirements.

See Section 16-143.

(Prior code Appx. B, § 15.06)

Sec. 16-267. Off-street loading requirements.

See Section 16-144.

(Prior code Appx. B, § 15.07)

Secs. 16-268—16-270. Reserved.

ARTICLE XV-A Gateway District

[Sec. 16-271. Statement of intent.](#)

[Sec. 16-272. Use regulations.](#)

[Sec. 16-273. Limitation on external effects of uses.](#)

[Sec. 16-274. Lot size.](#)

[Sec. 16-275. Building location.](#)

[Sec. 16-276. Off-street parking requirements.](#)

[Sec. 16-277. Off-street loading requirements.](#)

Sec. 16-271. Statement of intent.

This district is intended to identify and preserve land at an interstate highway interchange for light industrial and commercial uses and to provide for the orderly grouping of light industrial and commercial operations in an appropriate setting. It is the further intent of this district to establish such regulatory controls as to reasonably assume a harmonious relationship between the industrial and commercial uses and the community.

(Ord. 526, 1996)

Sec. 16-272. Use regulations.

- (a) *Principal uses permitted by right* . The following uses shall be permitted in this district subject to approval by the Planning and Zoning Commission of the building site and operational plans and subject to approval of such plans by the air pollution control and water pollution control sections of the State Department of Health, as provided in Section 16-145. These uses are permitted by right provided that they are conducted entirely within an enclosed structure and that all dust, fumes, odors, smoke, noise, lights and vibration are confined within the lot on which the use is located.
- (1) Manufacturing, assembly, processing and fabrication plants;
 - (2) Transportation terminals, including trucking;
 - (3) General warehousing;
 - (4) Experimental, testing and research laboratories;
 - (5) Printing and publishing houses and related activities;
 - (6) Automobile body repair shops;
 - (7) Special trades contractor specializing in one (1) or more trades of which the following are examples: plumbing and heating, decorating, electrical work, glazing, insulation, carpentry and masonry;
 - (8) Public utility offices and installations;
 - (9) Motor vehicle sales and rental;
 - (10) Motor vehicle repair and maintenance;
 - (11) Heavy equipment sales and rental including, but not limited to, farm implements, mobile homes, construction equipment and recreational vehicles;
 - (12) General administrative offices;
 - (13) Distribution centers
 - (14) Boat and RV storage; and
 - (15) Retail sales of products fully assembled or manufactured on the premises, provided that such use occupies no more than twenty-five percent (25%) of the total area of the primary use.

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- (b) *Permitted accessory uses* :
- (1) Office, storage, power supply and other such uses normally auxiliary to the principal industrial use;
 - (2) Parking and service areas;
 - (3) Accessory signs;
 - (4) Residential quarters for guards or caretakers; and
 - (5) Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (c) *Conditional uses* . The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII:
- (1) Manufacture of asphalt or concrete;
 - (2) Packing houses;
 - (3) Drop forges or foundries;
 - (4) Storage of gasoline or petroleum where such storage is in excess of fifty thousand (50,000) gallons;
 - (5) Nonaccessory signs;
 - (6) Restaurants;
 - (7) Service stations;
 - (8) Auction facility; and
 - (9) Indoor recreation facility. The following additional standards and limitations shall be applied in considering and granting this conditional use:
 - a. Approval shall apply only to a specified location.
 - b. Approval shall terminate upon change in the use or occupancy of the specific location.
 - c. Minimum off-street parking shall be based upon the applicant's anticipated use and a statistical study to be paid by the applicant. The applicant shall either restrict competitive events or provide adequate off-street parking and, if necessary, furnish written authorization to use adjoining property.

(Ord. 526, 1996; Ord. 2003-709 §3; Ord. 2004-722 §2; Ord. 2010-117 §7)

Sec. 16-273. Limitation on external effects of uses.

- (a) No use or activity shall be permitted to produce hazardous conditions or noxious influences, such as noise, vibration, heat, glare, radiation, fumes, smoke or other pollutant to a degree detrimental to existing or prospective adjacent uses or to existing or prospective adjacent residential and commercial districts.
- (b) All materials and products stored outdoors shall be fully concealed from view of persons in adjacent residential and commercial districts and public streets by a solid fence or wall up to eight (8) feet in overall height.

(Ord. 526, 1996; Ord. 2010-117 §7)

Sec. 16-274. Lot size.

The minimum lot area is sixty thousand (60,000) square feet.

(Ord. 526, 1996)

Sec. 16-275. Building location.

- (a) The minimum setback is thirty (30) feet.
- (b) The minimum offset is twenty (20) feet. Where an industrial district adjoins a residential district, structures located in the district shall be set back or offset a minimum distance of two hundred (200) feet and shall be permanently screened with a planting screen at least six (6) feet wide and fifteen (15) feet high.

(Ord. 526, 1996)

Sec. 16-276. Off-street parking requirements.

See Section 16-143.

(Ord. 526, 1996)

Sec. 16-277. Off-street loading requirements.

See Section 16-144.

(Ord. 526, 1996)

ARTICLE XV-B Gateway Commercial GC District

[Sec. 16-278. Statement of intent.](#)

[Sec. 16-279. Use regulations.](#)

[Sec. 16-280. Limitation on external effects of uses.](#)

[Sec. 16-281. Lot size.](#)

[Sec. 16-282. Building location.](#)

[Sec. 16-283. Off-street parking requirements.](#)

[Sec. 16-284. Off-street loading requirements.](#)

[Secs. 16-285—16-289. Reserved.](#)

Sec. 16-278. Statement of intent.

This district is intended to provide for a variety of highway-oriented, vehicle-oriented, high traffic generating commercial uses.

(Ord. 2010-117 §6)

Sec. 16-279. Use regulations.

(a) *Principal uses permitted by right* . The following uses shall be permitted in this district:

- (1) Food store, supermarket;
- (2) Food store, convenience with or without gasoline sales;
- (3) Delicatessen;
- (4) Bakery goods store;
- (5) Liquor store;
- (6) Retail sale of gasoline, auto supplies and parts;
- (7) Home improvement store, lumber yard, hardware store or any similar use;
- (8) Nursery and/or garden supply store;
- (9) Drugstore, with or without drive-up or drive-through facilities;
- (10) Media store;
- (11) Furniture store;
- (12) Appliance store; and
- (13) Customer service establishments:
 - a. Business and professional offices;
 - b. Banks and savings and loans, with or without drive-up or drive-through facilities;
 - c. Medical and dental clinics, including same-day surgery and similar facilities;
 - d. Public administrative offices and service buildings;
 - e. Public utility offices and facilities;
 - f. Private club or lodge;
 - g. Hotel or motel;
 - h. Multi-screen theater complex;
 - i. Place of worship;
 - j. Indoor recreational facilities, including but not limited to swimming pools, gymnasiums, dance studios and skating rinks;
 - k. Outdoor recreational facilities not involving the use of motorized vehicles other than golf carts;
 - l. Passenger transportation terminals, not including trucking terminals;
 - m. Printing and publishing houses and related activities;
 - n. Automobile and light truck service, not including body repair shops;
 - o. Public utility offices and installations; and
 - p. General administrative offices, except construction trade with service vehicles.

(b) *Permitted accessory uses* :

- (1) Office, storage, power supply and other such uses normally auxiliary to the principal industrial use;

- (2) Parking and service areas;
 - (3) Accessory signs;
 - (4) Residential quarters for guards or caretakers; and
 - (5) Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.
- (c) *Conditional uses* . The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII of this Chapter:
- (1) Auto, heavy truck and/or equipment sales and rental, including but not limited to farm implements, mobile homes, construction equipment and recreational vehicles; and
 - (2) Auto, heavy truck or equipment service.

(Ord. 2010-117 §6)

Sec. 16-280. Limitation on external effects of uses.

All fuel, raw materials and products stored outdoors shall be enclosed by a solid fence, wall or permanent landscape planting adequate to conceal such fuel, raw materials and products from adjacent residential and commercial districts and from adjacent streets.

(Ord. 2010-117 §6)

Sec. 16-281. Lot size.

The minimum lot area is thirty thousand (30,000) square feet.

(Ord. 2010-117 §6)

Sec. 16-282. Building location.

- (a) The minimum lot area is thirty thousand (30,000) square feet.
- (b) The minimum offset is twenty (20) feet. Where this district adjoins a residential district, structures located in this district shall be set back or offset a minimum distance of two hundred (200) feet and shall be permanently screened with a vegetative screen area at least six (6) feet wide and fifteen (15) feet high.

(Ord. 2010-117 §6)

Sec. 16-283. Off-street parking requirements.

See Section 16-143 of this Chapter.

(Ord. 2010-117 §6)

Sec. 16-284. Off-street loading requirements.

See Section 16-144 of this Chapter.

(Ord. 2010-117 §6)

Secs. 16-285—16-289. Reserved.

ARTICLE XV-C Holding Agricultural District

[Sec. 16-290. Statement of intent.](#)

[Sec. 16-291. Permitted uses.](#)

[Sec. 16-292. H-A District requirements. Secs. 16-293—16-294. Reserved](#)

Sec. 16-290. Statement of intent.

This district is for those properties which have been annexed to the Town and are either being used for agricultural purposes and/or which have no future land use proposed at the time of annexation and are in a transitional stage with regard to their ultimate development.

(Ord. 673, § 1, 2001)

Sec. 16-291. Permitted uses.

The following provisions and development standards shall apply in this district: Land use - single-family, farming, oil and gas operations. Existing uses cannot be expanded without prior approval of the Town Council.

(Ord. 673, § 1, 2001)

Sec. 16-292. H-A District requirements.

The following requirements shall apply in the H-A District:

- (1) One (1) single-family dwelling shall be permitted per forty-acre lot.
- (2) A mobile home may be permitted in lieu of a single-family dwelling for residential purposes, so long as the property remains in the H-A District and is subject to all applicable Building Code provisions. All mobile homes shall be removed at the time of development.
- (3) Existing direct access from county roads shall be permitted to continue until such time as the area redevelops, which shall then require all access to be taken from local streets and not county roads or arterial streets.

(Ord. 673, § 1, 2001)

Secs. 16-293—16-294. Reserved

ARTICLE XVI Recreation and Open Space O District

[Sec. 16-295. Statement of intent.](#)

[Sec. 16-296. Use regulations.](#)

[Sec. 16-297. Lot size.](#)

[Sec. 16-298. Off-street parking requirements.](#)

[Secs. 16-299—16-300. Reserved.](#)

Sec. 16-295. Statement of intent.

This district is intended to preserve land for recreational uses and public and private open space. Residential development of such areas would be subject to rezoning. However, residential subdivisions could encompass open space areas if the open space within such developments were planned to overlay the previous Recreation and Open Space District area.

(Prior code Appx. B, § 16.01)

Sec. 16-296. Use regulations.

(a) Principal uses permitted by right:

- (1) Public parks and recreation areas;
- (2) Public schools; and
- (3) Public, private, commercial and private group outdoor recreational facilities.

(b) Permitted accessory uses:

- (1) Service buildings and facilities normally incidental to the use of a public park and recreation area; and
- (2) Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right.

(c) Conditional uses: The following uses shall be permitted in this district upon approval of a conditional use grant as provided in Article VII:

- (1) Public administrative offices and service buildings; and
- (2) Public utility installations including transmission lines and substations.

(Prior code Appx. B, § 16.02)

Sec. 16-297. Lot size.

The minimum lot area is one hundred twenty thousand (120,000) square feet.

(Prior code Appx. B, § 16.03)

Sec. 16-298. Off-street parking requirements.

See Section 16-143.

(Prior code Appx. B, § 16.04)

Secs. 16-299—16-300. Reserved.

ARTICLE XVII Planned Unit Development

[Sec. 16-301. Purpose and intent.](#)

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Sec. 16-301. Purpose and intent.

- (a) The purpose of the PUD District is to facilitate greater flexibility resulting in higher quality development through more creative and imaginative design of the commercial, industrial and residential areas than is typically possible under conventional, restricted zoning regulations. Further, this Article is intended to promote more efficient and economical use of land while providing a greater number of usable and suitably located recreation facilities and other amenities. It is intended to provide measured design freedom by permitting the developer to best utilize the physical characteristics of the site by modifying minimum lot size, setbacks and other zoning and subdivision related restrictions; by encouraging high quality mixed use development; and by encouraging energy efficient design. Increased commercial and industrial floor area ratios may be permitted if such increases can be justified on the basis that the superior design makes the densities desirable with no reduction of amenities.

Finally, the information herein is intended to assist the developer in achieving compliance prior to incurring costs of complete design, while providing the Town with assurances that the project will retain the character presented at the time of concurrence.

If an existing project is covered by a unit development site plan approved prior to the effective date of the ordinance codified herein which is in substantial compliance with these PUD regulations and other applicable Town regulations and requirements, then it shall be "grandfathered" and not subject to additional requirements unless a major amendment is desired. All major amendments to the previously approved site plans shall meet the requirements of this Article.

- (b) The following classifications of Planned Unit Development shall be permitted where consistent with the designated land uses of the Comprehensive Plan:

PUD-R	Planned Unit Development Residential District
PUD-MU	Planned Unit Development Mixed Use District
PUD-V	Planned Unit Development Village Center District

The above-listed zoning clarifications may be established through initial zoning when petitioning for annexation. In addition, a PUD may be established in an existing residential, commercial or industrial zoning district as an overlay. Principal permitted uses and, subject to appropriate criteria, conditional and accessory uses of the underlying zoning district are permitted in the PUD; however, the restrictions, controls and incentives of the applicable PUD classification shall apply to the overlay. PUD-R may be processed as an overlay in the SF-1, SF-2 and MF-1 Districts; PUD-B in the CB District. The application of an overlay district does not require rezoning; therefore, the property shall retain its existing zoning classification. The PUD classification PUD-MU in all cases and in all other PUDs when associated with an annexation shall not be considered as an overlay district and, therefore, shall be subject to initial zoning or rezoning procedures.

(c) The following chart identifies whether the respective PUD districts may be used as an overlay or involves rezoning:

	<i>Overlay in Town</i>	<i>Rezone in Town</i>	<i>New Zone Annexation *</i>
PUD-R	yes	no	yes
PUD-MU	no	yes	yes
PUD-V	yes	yes	yes

* ;hg;The property owner has the option of requesting a straight base zone (e.g., SF-1, CB) or PUD zone at the time of annexation. The property owner is not required to initiate the PUD review and approval process in order to obtain PUD zoning along with an annexation petition. Reference should be made to the Town's annexation procedures to identify requirements for ultimate annexation.

(Ord. 99-615 §1; Ord. 2010-117 §8)

Sec. 16-302. Permitted uses.

(a) PUD-R, Planned Unit Development Residential District:

- (1) Intent. The PUD-R District is created to support private residential development by providing incentives encouraging the use of innovative design techniques in order to achieve high quality residential development.
- (2) Size. There is no minimum size for the PUD-R District.
- (3) Uses permitted. Within the PUD-R District, the following uses shall be permitted, subject to meeting all applicable criteria and regulations:
 - a. Any permitted use, conditional use and accessory use allowed in the SF-1, SF-2 and MF-1 districts.
 - b. Mobile home parks and subdivisions, provided that they are of not less than fifty (50) spaces and do not exceed a density of seven (7) units per acre.

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- c. Consumer goods and services including neighborhood commercial, provided such uses are secondary to the permitted uses; satisfy convenience center criteria as identified in the Comprehensive Plan; are designed to serve primarily the residents of the development; and are harmoniously incorporated into the total design of the PUD.
 - d. Churches, schools and other nonresidential, noncommercial uses provided such uses meet all requirements for lot area, width, height, yards and setbacks prescribed in the underlying district, or the standards of the zoning district which correspond to the land use designation of the Comprehensive Plan.
 - e. If applicable, any use not identified above, however permitted in the underlying zoning district.
- (b) PUD-I, Planned Unit Development Industrial Park District:
- (1) Intent. The PUD-I District is created to provide for the construction of planned office and/or industrial parks. It is intended to promote the grouping of office and/or industrial uses in such a manner so as to provide well planned access and parking areas, adequate fire and safety controls, landscaped open space, harmonious relationship between structures, and architectural controls. This district is intended to encourage compatibility between all areas similarly zoned by setting minimum design standards.
 - (2) Size. There is no minimum size for the PUD-I district.
 - (3) Principal permitted uses. Within a PUD-I district, the following uses shall be permitted subject to meeting all applicable criteria and regulation:
 - a. Any permitted, conditional or accessory use allowed in the Gateway and I-1 zones.
 - b. If applicable, any use not included above but permitted in the underlying zoning district.
- (c) PUD-B, Planned Unit Development Business District:
- (1) Intent. The PUD-B District is created to provide for construction of planned business and shopping centers. It is intended to promote the grouping of consumer oriented professional and business uses and to provide areas large enough to establish harmonious relationships between structures, people and motor vehicle impact with the use of well planned parking access, pedestrian walkways, courtyards, malls and landscaped open space.
 - (2) Size. There is no minimum size for the PUD-B district. Any business development which is substantially dependent upon shared access, parking and other facilities with other lots should be developed as a PUD.
 - (3) Uses permitted. Within the PUD-B District, the following uses shall be permitted, subject to meeting all applicable criteria and regulations:
 - a. Any nonresidential permitted use, conditional use or accessory use allowed in CB or SC Districts.
 - b. Residential uses, provided such use mix is found to be beneficial to the Town, consistent with the Comprehensive Plan and compatible with the surrounding uses.
 - c. If applicable, any use not included above, however permitted in the underlying zoning district.
- (d) PUD-MU, Planned Unit Development Mixed-Use District:
- (1) Intent. The PUD-MU Mixed Use District is created to allow the integration of higher-density residential, commercial and employment/light industrial development within an area so as to facilitate the formation of a self-sustaining project. Light industrial uses are permitted, provided that they complement the commercial uses and do not substantially negatively impact the residential uses. The following provisions apply to the PUD-MU District:

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- a. The developer must establish that a special type of business and professional community will be created in which the addition of residential units would be a benefit to the business and professional development and the citizens who occupy the residential units.
 - b. The land use arrangement, physical design and amenities of the PUD-MU District will be considered for their benefit to the citizens who would occupy the planned residential units.
 - c. The number of residential units that may be built is flexible, but said number must achieve an acceptable proportion with commercial development to allow the development to be self-supporting. A fiscal impact study may be required to determine if the plan is self-supporting.
 - d. Retail uses shall be consistent with the land use designation of the Comprehensive Plan or otherwise be consistent with the criteria for neighborhood or convenience commercial.
 - e. Mixing various types of residential units and neighborhood commercial uses is typically appropriate in a PUD MU. If larger or more intensive commercial uses or warehouse or industrial uses are included, it is the intent of the Town that they have access from arterial streets that do not pass through residential neighborhoods in the PUD, that truck access be isolated from typical pedestrian and light vehicle circulation patterns, and that such uses be buffered from residential and mixed-use neighborhoods with appropriate combinations of separation, berms, landscaping, walls and fences.
 - f. The following residential unit types are allowed in a PUD MU: any residential unit type allowed in the SF-2 District; any residential unit type allowed in the MF-1 District; in commercial areas of a MU PUD, residential uses above the first floor.
 - g. The following commercial uses are allowed in residential or mixed residential-commercial portions of a PUD MU: any commercial use allowed in the NB District; the size limit on individual establishments set forth in the NB District shall apply in the residential or mixed residential-commercial portions of a PUD MU, but the size limits imposed on centers and the setback requirements from other uses applicable to the NB District shall not apply in these sections of the PUD MU.
 - h. Commercial and industrial development within a PUD shall be located so as not to create undue traffic congestion or street hazards. Location of sufficient off-street parking and loading area shall be determined as appropriate to the particular PUD. Consideration shall be given to anticipated pedestrian, bicycle and vehicular impacts, adjacent development providing multiple use of off-street parking facilities and the types of commercial uses implicated.
 - i. Parking areas, service areas, buffers, entrances, exits, yards, courts, landscaping, graphics and lighting shall be designed as integrated portions of the total PUD.
- (2) Size. There is no minimum size for the PUD-MU District.
 - (3) Uses permitted. Within a PUD-MU District, the following uses shall be permitted subject to meeting all applicable criteria and regulations: any permitted, conditional or accessory uses allowed in PUD-R, PUD-B, PUD-NC, Gateway and Gateway Commercial Districts.
 - (4) Supplemental mixed use regulations:
 - a. Multifamily dwellings may be constructed above commercial uses, provided that there is separate access to dwelling units.
 - b. No commercial uses shall occupy the same floor as occupied by dwelling units.
- (e) PUD-V, Planned Unit Development Village District.

(Ord. 99-615 §1; Ord. 2010-117 §§8, 12)

Sec. 16-303. Declaration of policy; review criteria.

Planned Unit Developments provide a more flexible approach to the physical development of real property, providing an opportunity for creative development planning and building design, to the end that the public health, safety and general welfare will be better served by tailoring development to the unique or special characteristics of the subject property and surrounding area. The Town Administration, Planning and Zoning Commission and the Town Council shall evaluate all Planned Unit Development plans pursuant to the following criteria, which may be applicable to the particular circumstances, balancing and evaluating the implementation of such criteria to maximize, to the greatest practical extent, the community interest and welfare.

(1) Comprehensive Plan and Code requirements:

- a. Is the proposed development in accordance with all elements of the Comprehensive Plan including, but not restricted to, park and school sites, street location and classification?
- b. Have all applicable provisions of the subdivision and zoning regulations been met? If not, have the exceptions/variances requested been evaluated through the PUD process and found to contribute positively to the PUD design?
- c. For PUDs including exceptions to the height standards, have the following been satisfied?
 - 1. Benefit to the Town has been demonstrated, including what considerations the applicant is prepared to offer in exchange for resulting increased structure height.
 - 2. Proposed structures' effect upon adjacent properties is minimal with respect to compatibility of use and design, alternative energy access, visual access, and rights of privacy, light and air.
 - 3. Public services can be provided to the site at a level currently enjoyed by the area, or at adequate levels per existing Town policies and regulations.
 - 4. Mix of developed area within the site is appropriate, including building coverage, parking, landscaping, pedestrian area, vehicle area and screening.
 - 5. Project complies with all adopted Fire District regulations and standards.
- d. Have all material and procedural requirements of the Town Code been met?

(2) Public facilities:

- a. Is there present and available adequate capacity to serve the proposed development at appropriate service levels with the following utilities and facilities without negatively impacting the service levels of the surrounding neighborhoods, or have arrangements been made for extension and/or augmentation to adequately serve the proposed development and mitigate negative impacts on surrounding neighborhoods?

Water	Streets/Transportation System
Sewer	Gas
Electric	Telephone
Storm Drainage	

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- b. Does the proposed development comply with all standards, requirements and specifications for the following services, without a negative impact on existing services, or alternatively have exceptions been evaluated through the PUD process and found to contribute positively to the PUD design?

Water	Storm Drainage
Sewer	Floodplain
Electricity	Telephone
Gas	Streets/Pedestrian System
Ditch	Fire Protection
Public Transit	Cable Television
Refuse Collection	

(3) Neighborhood compatibility:

- a. Are the scale, building bulk and orientation, setbacks, landscaping and visual integrity of the proposed development appropriate for the development, sensitive to the immediate area, compatible with the character of the neighborhood and promote the stabilization of the surrounding neighborhood?
- b. Does the design and layout of the proposed development facilitate the development of adjacent property rather than limit design options for adjacent landowners?

(4) Resource protection:

- a. Does the proposed development preserve significant existing vegetation (i.e. large trees) and unique features of the site?
- b. If the project contains known areas of natural or geologic hazard, including unstable slopes, flood, high groundwater or soil conditions unfavorable to urban development, are special engineering precautions proposed to be taken to address satisfactorily those limitations, or have these areas been set aside appropriately restricted from development?
- c. Does the proposed development preserve significant scenic views from both on and off the site?
- d. Does the proposed development include design features or facilities to promote energy, water and other resource conservation?

(5) Land use:

- a. Is the land use mix appropriate given land use designations of the Comprehensive Plan, support facilities in the area, project design and PUD district intent?

- b. Do the land use specifications of the PUD meet the restrictions for permitted uses and appropriately address conditional use standards, goals and criteria for those uses which are specified in this Chapter as conditional in the underlying zoning district?
- c. Have the appropriate design standards been satisfied?
- d. Are the exceptions to standard requirements warranted by virtue of inclusion in the PUD of design elements and amenities exceeding minimum requirements?

(Ord. 99-615 §1)

Sec. 16-304. PUD review process.

All PUD applications shall be reviewed in accordance with the following procedure:

- (1) Pre-application procedure.
 - a. Prior to filing of an application for a PUD zoning district, the developer shall submit to the Planning and Zoning Commission an Outline Development Plan and data as specified in Section 17-81 of this Code, plus the following information:
 - 1. Evidence of unified control of the entire area proposed for development.
 - 2. A tentative schedule of development.
 - 3. Evidence of financial capability to complete the development as proposed.

This portion of the procedure may require a fee and a formal application for amendment.

- (2) The Planning and Zoning Commission and all appropriate referral agencies shall study the material received to determine its general acceptability and compliance with the Comprehensive Plan and the objectives of this Article.
- (3) Following such study, the Planning and Zoning Commission shall hold a conference with the applicant to discuss desirable changes to the Outline Development Plan.
- (4) Consideration of Preliminary Development Plan.
 - a. On reaching conclusions informally, as recommended in Subsection (1) above, regarding the acceptability of the plan or program as presented in the Outline Development Plan, the developer may make formal application to establish a PUD District in conjunction with annexation or to seek to invoke a PUD zoning as an overlay zone.
 - b. An application for invoking the overlay zone to establish a PUD District shall be filed with the Planning and Zoning Commission, and shall be accompanied by a fee sufficient to cover the costs of outside consultant review of the plans and in addition shall cover the cost of giving notice, review and processing of the application. The fee may be changed from time to time by resolution of the Town Council.
 - c. Material to be submitted with an application shall include the following:
 - 1. A Preliminary Plat and data for the entire property as specified in Section 17-82 of this Code, with such modifications and additions as required, including identification of building sites when used instead of or in conjunction with lots, common open space whether or not to be dedicated for public use and other matters as appropriate to planned unit development generally or the specific PUD. Specifically, the Preliminary Development Plat shall indicate sub-areas for phased development, if any, major off-street parking and loading areas location and use of structures in relation to building site lines, open space areas in relation to the use for which they are intended, and other information as required to establish a clear pattern of the relationship between structures, uses, circulation and open space.

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2. Indication as to order and timing of development, if development is to be in stages.
 3. Proposals for improvement and continuing maintenance and management of any private streets or ways or common open space not offered or accepted for dedication for general public use.
 4. A list of uses anticipated to be established in the PUD.
 5. Preliminary Home Owners Association documents.
 6. A current Ownership and Encumbrance report from a title company.
 7. A surrounding property owners list showing property owners within six hundred (600) feet of the subject property's boundaries as certified by a title company.
 8. Stamped, addressed legal sized envelopes addressed to all property owners specified on the certified property owners list.
 9. A typical site development plan showing building envelopes for residential and for commercial or industrial developments showing uses allowed, typical buildings, setbacks, landscaping, signage, off-street parking, off-street loading facilities, lighting and screening.
- d. The Planning and Zoning Commission shall review the Preliminary Development Plan and consult with other agencies as necessary to determine compliance with the requirements and standards of this Chapter and with the Outline Development Plan originally submitted by the applicant.
 - e. The Planning and Zoning Commission shall hold a public hearing on the proposal as provided in Article V of this Chapter.
 - f. As soon as possible after such public hearing, the Planning and Zoning Commission shall forward its recommendation to the Town Council indicating approval, approval with specific conditions or disapproval, and its reason therefor.
 - g. If the Town Council grants the application, such application shall relate to the Preliminary Development Plan, and shall include any conditions or modifications deemed necessary to bring the plan into full compliance with the requirements and intent of this Chapter.
- (5) Consideration of the Final Development Plan.
- a. Before any building permit can be issued in the PUD, a Final Development Plan and report shall be submitted and approved by the Planning and Zoning Commission and the Town Council. Such plan shall be in accordance with the Preliminary Development Plan as approved by the Town Council with such modifications required by the Town Council.
 - b. The Final Development Plan and the supplementary material shall include the following:
 1. A map or maps and other documents containing information required by Section 17-83 of this Code as well as refinements of the mapped requirements in Section 16-145(c), with modifications and additions as appropriate to planned unit development generally and to the specific PUD proposal.
 2. Plans for individual buildings or groups of buildings other than single-family dwellings including the following:
 - a) Plans of building sites indicating relationship to adjoining areas.
 - b) Floor plans of buildings, indicating horizontal dimensions and floor areas if available.
 - c) Elevations of the buildings involved, indicating height typical thereof.

- c. The Planning and Zoning Commission may authorize submittal of the Final Development in stages. Each stage may constitute only that portion of the approved Preliminary Development Plan that the developer proposes to record and develop at the time.
- d. Following review and approval of the Final Development Plan by the Town Council, individual lot developments submitted to the Town which comply with such approved typical development plans may be approved administratively by the Town. The Building Inspector may issue building permits and certificates of zoning compliance for structures and uses within the PUD.
- e. The Final Development Plan as approved by the Planning and Zoning Commission shall be binding and shall not be changed during the construction of the PUD except upon application to the appropriate agency under the following procedure:
 - 1. Minor changes in the location, siting, bulk or size of structures or improvements may be authorized by the Planning and Zoning Commission if required by circumstances not foreseen at the time the Final Development Plan was approved.
 - 2. All other changes in use, arrangements of blocks or streets, or significant changes in the provision of required open spaces must be made by the Town Council under the procedure provided by this Article for amendments.

(Ord. 99-615 §1)

Sec. 16-305. Development assurances.

The Town Council may require adequate assurance, in a form and manner which it approves, that the common open space, amenities and public improvements shown in the Final Development Plan will be provided, fully developed and perpetually maintained by a single ownership entity. The following methods of assurance are intended as illustrative, and they may be used singly or in combination or in conjunction with other similar methods:

- (1) The Town may accept an irrevocable letter of credit, cash escrow or other acceptable financial guarantee, in a form which complies with the requirements of the Town Attorney, and in an amount sufficient to ensure installation and completion of the public improvements and amenities associated with the Final Development Plan.
- (2) The unencumbered title to the land shown as common functional open space may be put in escrow. The escrow agreement shall provide that the land is to be held in escrow until the Town Council has certified to the escrow agent that the PUD has been completed, at which time the common functional open space is to be conveyed to the private association. The escrow agreement may provide for the release of common functional open space by the escrow agent in phases. The Town Council shall certify the completion of each stage of the PUD to the escrow agent. The escrow agreement shall provide that a portion of the functional open space shall be conveyed in the following manner if the PUD is not completed. In this event, the functional open space which is conveyed shall be no less than the percentage of the functional open space provided on the Final Development Plan as the dwelling units that have been built are to the total number of dwelling units which are permitted by the Final Development Plan.

(Ord. 99-615 §1)

Sec. 16-306. Design standards.

The following design standards shall be used during the review process as guidelines for evaluation of the PUD. If any specific standard causes extraordinary hardship or if the applicant demonstrates that

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the intent of the standard will be better accomplished by other appropriate means, such alternatives may be considered through the review process.

- (1) Density. The allowable number of residential dwelling units per acre or maximum allowable floor area ratio (FAR) in a PUD shall be established by the underlying zoning district designation or, if no other zoning exists on the subject site, the land use designation on the Comprehensive Plan.
 - a. Density increase. Density increases, as specified in the following paragraphs, may be allowed. Density increases shall not exceed fifty percent (50%) of the permitted maximum density. The Planning and Zoning Commission and the Town Council shall calculate the allowable density increase based on the sum of those items contained in the following chart, determined to be applicable for the proposed PUD. The amenities or public improvements listed below are illustrative of the kinds of factors which are eligible for density bonuses. The Planning and Zoning Commission and the Town Council may allow bonuses for other items which contribute to the public interest by providing a higher quality project. This list and the respective bonuses shall be reviewed and updated periodically to reflect the changing priorities and goals of the Town.

Maximum Density Increase	Amenity or Public Improvement in Excess of What is Required
3%	Alleys provided to access garages by means other than in front yard
3%	Sidewalk/trail to parks and public use areas
5%	"X" new jobs created by the principal use
3%	Dedicating land for a school site
3%	Dedicating land for a park site per Town standards for same
3%	If dwelling units or retail/office is located within CBD

- b. The Town Council may allow partial waiver of the park improvement fee based on a formula which determines if the park within the PUD satisfies the need to financially contribute towards neighborhood and community parks. The PUD must contain a dedication and/or development of a public park which meets the Comprehensive Plan standards.
- c. The Planning and Zoning Commission or Town Council may prohibit or limit an increase in density to avoid any of the following:
 - 1. Inconvenient or unsafe access to the PUD.
 - 2. Traffic congestion in the streets which adjoin the PUD.
 - 3. An excessive burden on park, recreation areas, schools, police, fire protection and public facilities which serve or are proposed to serve the PUD.
- d. The developer shall submit signed statements and drawings as necessary to justify density increases.

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- e. If a density increase is granted under provisions of this Section, the improvements shall be completed in accordance with a development schedule to be contained in the development plan or annexation agreement.
- (2) Density transfer.
- a. Density may not be transferred from:
 - 1. Any land not under the direct legal control of the property owner at the time of review, such as ditch right-of-way.
 - 2. Any land purchased by the Town or any other governmental entity.
 - 3. Any church sites.
 - 4. Any recreational facility designated to be operated as a commercial enterprise.
 - 5. Any land outside the PUD.
 - 6. Residential density may not be transferred from areas of the PUD set aside for commercial or industrial use.
 - b. Density may be transferred from:
 - 1. Any dedicated school sites.
 - 2. Any public open space, accepted by the Town, above the minimum requirement.
 - 3. Any common open space owned by a homeowners' association and made available to the general public.
 - 4. Dedicated land or easements for public sites such as water tanks, libraries, and fire stations, public greenways, detention/retention areas.

When density transfers are permitted, fees and raw water requirements which are based on land area shall be calculated, including the development area and all area from which density is transferred.

- (3) Parcel size. There shall be no minimum size for a PUD except as otherwise specified in the permitted uses section; however, it must be large enough to enable its development as a complete identifiable unit and, through the flexibility allowed by the PUD process, provide bona fide benefits to the residents/users of the PUD. Recommended minimum lot size for a detached single-family residential PUD is five thousand five hundred (5,500) square feet when less than forty percent (40%) open space is provided.
- (4) Open space.
- a. Residential Planned Unit Development. The minimum required open space in residential PUDs shall be thirty percent (30%) of the total site. The required open space shall be land areas not occupied by buildings, structures, parking areas, driveways, streets or alleys or required setbacks. Said open space shall be devoted to landscaping, walkways, recreational areas and uncovered facilities, and preservation of natural features.
 - b. Nonresidential developments. The minimum required landscaped open space area in the nonresidential portion of any PUD shall be fifteen percent (15%) of the total area of the site as defined in the above paragraph.
 - c. Physical surface characteristics. The Planning and Zoning Commission and the Town Council may determine that all or part of streams, ponds or drainage areas satisfy minimum open space requirements. In making this determination, the Town shall be guided by the following factors:
 - 1. The extent of such areas in relation to the area of the PUD.
 - 2. The degree to which these areas contribute to the quality, livability and amenity of the PUD.

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- d. Dimension and location. If there exists common open space in residential PUDs, a minimum of fifty percent (50%) shall be contiguous lands generally free from obtrusions which affect the intended functionality of the open space. Common open spaces shall be distributed equitably throughout the project in relation to the dwelling units of the residents to be served, and shall be reasonably accessible to all the PUD residents.
 - e. Natural amenities. The required open space may be left in its natural state if the Town determines that the natural landscape should be preserved. Areas devoted to natural flood control channels or drainage easements may be applied toward satisfying this portion of the total open space requirement.
 - f. Clustering. Clustering of dwelling units, commercial and industrial uses is encouraged as long as buffer yards, open space and emergency access are adequately planned. Buffer yards shall be required to separate different uses in order to eliminate or minimize potential interference and nuisances on adjacent properties. The size of the buffer yard shall be determined through the review process, based on its ability to achieve appropriate separation.
- (5) Covenants.
- a. A PUD shall be approved subject to the submission of relevant legal instruments, including covenants, declarations, articles of incorporation, bylaws and restrictive instruments of conveyance setting forth a plan or manner of architectural character and control and permanent care and maintenance of all common open space and other facilities provided by the Final Development Plan. No such instrument shall be accepted until approved by the Town Attorney, as to legal form and effect, and by the Town Planner as to suitability.
 - b. The common open space and other facilities provided shall be conveyed to a private association or some other entity having the authority and responsibility to maintain said facilities. Such facilities may be conveyed to the Town only if the recreation facility and/or open space are designated on the Comprehensive Plan or the Town determines it is in its best interest to own and maintain the facility or open space. If the common open space or recreational facilities are conveyed to a private association, the developer shall file with the Town, as a part of the aforementioned instruments, a declaration of covenants and restrictions which will govern the association. The provisions shall include, but not be limited to, the following:
 - 1. The private association must be established prior to sale of any unit(s).
 - 2. Membership must be mandatory for the original buyer and any successor.
 - 3. The private association or, if applicable, the developer shall be responsible for liability insurance, local taxes (if any), and the continuing maintenance of common open space and other related facilities.
 - 4. Each member of the association shall be assessed a pro rata share of the costs incurred by the association, unless the covenants provide for a different means of assessment.
 - 5. The private association must be able to adjust any assessments to meet changing needs.
 - c. The Town may also require dedication of development rights or scenic easements to assure that common open space shall be maintained. In the event the common open space and other facilities are not maintained in a manner consistent with the approved Final Development Plan, the Town may, at its option, cause such maintenance to be performed and assess the costs to the affected property owner(s) or responsible association, which assessment shall constitute a lien upon the property and shall be collected by assessment by certification to the County Treasurer for collection to be collected in the same manner as other taxes are collected.
- (6) Landscaping. A Landscape Plan, prepared pursuant to the Town's adopted landscape regulations, shall be required for all open space in a PUD, with the exception of those areas where

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the Town determines would be most beneficial to the project and the community if left in its natural or existing condition due to the area's natural beauty or uniqueness. Existing trees shall be preserved wherever practicable. The location of trees shall be considered when planning common open space, location of buildings, underground services, walks, paved areas, playgrounds and parking areas.

- (7) Traffic circulation.
 - a. Primary vehicular access points to the PUD shall be designed to provide smooth traffic flow with controlled turning movements and minimum hazards to vehicular, pedestrian and bicycle traffic. Local streets within the PUD shall not be connected to streets outside the development in such a manner as to encourage their use by through traffic.
 - b. Where appropriate, the internal circulation system shall provide pedestrian and bicycle paths that are physically separated from vehicular traffic to serve residential, nonresidential and recreational facilities provided in or adjacent to the PUD. Where designated bicycle paths exist adjacent to the PUD, safe, convenient access shall be provided. The Town may require, when necessary to achieve public safety pedestrian and/or bicycle overpass, underpass (eligible for bonus) or traffic signalization in the vicinity of parks, shopping areas or other uses that may generate considerable pedestrian and/or bicycle traffic.
- (8) Streets. The design of public streets within a PUD shall reflect the nature and function of the street. Existing Town standards of design and construction may be modified only as is deemed appropriate by the Town after recommendation by the Town Engineer, Planning Director and Fire District Chief based on unique circumstances. Right-of-way and pavement widths and street widths may be reduced through the review process where it is found that the development plan for the PUD provides for the separation of vehicular, pedestrian and bicycle traffic; that access for public safety and service vehicles is not impaired; that adequate off-street parking has been provided; and that such design will not impair public safety and the ability of the Town to provide its services in a standard fashion, or make it difficult for residents to utilize the standard public services.
- (9) Parking standards.
 - a. Parking shall generally be provided as per the off-street parking requirements found in this Chapter. In addition, the Town may determine that storage areas for boats, trailers, campers and other recreational vehicles be required, where the necessity for such facilities has been demonstrated and where such facilities will preserve the required off-street parking for the use of automobiles.
 - b. The Town may decrease or increase the number of required parking spaces based upon such factors as: the probable number of cars owned or required by the occupants anticipated; the parking demand resulting from any nonresidential uses; varying time periods of use; and the general location of the project.
 - c. All off-street parking areas, covered or open, in any PUD shall be screened by landscaping or otherwise from view from any public right-of-way, except in single-family projects. Parking setbacks from rights-of-way may be reduced if appropriate additional landscaping and berming is provided.
 - d. Only developers of commercial and/or industrial PUDs may be permitted to pay cash-in-lieu for up to twenty-five percent (25%) of the required number of parking stalls if, in the judgment of the Town staff and Planning and Zoning Commission, sufficient public parking exists in proximity to the PUD. The payment shall be based on the cost of constructing a standard hard surfaced 9' x 19' size parking stall.
 - e. Commercial and/or industrial projects may reduce the number of parking spaces if perpetual joint use parking is provided on- or off-site per standards of the parking provisions of this Code.

- f. Residential parking and garage design shall take into account visibility required for access from parking to the street. Generally, a distance of twenty-two (22) feet between garage door and back of walk will be considered adequate.
- (10) Perimeters. Where a PUD is adjacent to a public right-of-way, a permanent buffer yard, at least twenty (20) feet in width, shall be required along the abutting property line(s). Additional open space or buffer yard may be required based on a recommendation of the Town Planner in order to mitigate adverse impacts caused by the PUD. This area shall be kept free of buildings and structures and parking, and shall contain permanently maintained landscaping, unless screened or protected by natural features. If the design of this buffer area enhances the overall development plan, it may be included toward satisfying the common open space requirements as listed in Subsection (4) above.
- (11) Building spacing. No specific yard, setback, lot size or building height requirements shall be imposed (except those required by adopted uniform codes, contemplating matters such as building separation) in any Planned Unit Development District, provided that the spirit and intent of this Section are complied with in the Final Development Plan. The Town may determine that certain setbacks and/or building heights be required within all or a portion of a PUD, and in all cases the height specified in the base zoning district should be used as a guide for building within the PUD.
- (12) Noise attenuation. When a proposed PUD produces or is impacted by noise which will adversely affect the peace, tranquility and privacy of its inhabitants or the inhabitants of adjacent property, noise attenuation techniques and/or an acoustical analysis may be required. Said analysis shall be conducted by a qualified acoustical engineer and include a description of the noise environment and the construction or other methods necessary to attenuate the noise to an acceptable level. The aforementioned plans shall be submitted with the Preliminary Plan, and necessary mitigating measures may be required.
- (13) Signs.
 - a. Guidelines applicable to all PUD signage.
 - 1. The location and design of all signs required to be posted by this Section shall be approved by the Town prior to erection of the sign in the development and shall be generally in compliance with the Town Sign Code.
 - 2. All signs related to a multi-use structure shall provide a continuity of design to the aggregate, shall be proportioned to the building space allotted and shall be compatible in design with each other. Such continuity and proportion shall be subject to review by the Town.
 - 3. In addition to the previously identified PUD application procedures, the owner or the duly authorized agent of the multi-use structure shall provide a plan which identifies the general sign theme, consistent with Subsection (13)a2 above, for the structure and shall make this information available to all tenants in the structure.
 - 4. The Town may allow additional business or complex identification signs when there are two (2) separate building fronts having independent entrances not visible from one (1) location. No more than twenty (20) square feet of signage per business may be visible on any building from any one (1) location. This provision applies to all signs unless specifically excluded elsewhere in this Chapter.
 - 5. Combination of signs. Each business activity shall be authorized to utilize within the limits established by this Chapter, a combination of two (2) of the following: (a) one (1) wall sign; (b) one (1) canopy sign; (c) one (1) freestanding sign; and (d) one (1) projecting sign. A business activity shall be limited to no more than two (2) signs herein defined, and a maximum aggregate area of each sign shall not exceed two hundred (200) square feet.

6. Hanging panels. Freestanding signs and projecting signs with the exception of multiuse signs may include a maximum of two (2) additional hanging panels per freestanding or projecting sign. All hanging panels suspended from projecting signs shall clear grade by a minimum of eight (8) feet. The maximum aggregate area of the freestanding sign together with the hanging panels shall not exceed two hundred (200) square feet. The maximum aggregate area of the projecting sign, together with the hanging panels, shall not exceed one hundred (100) square feet in area.
 7. The owner and/or developer of the PUD shall be responsible for the maintenance and, when necessary, the replacement of all signs required by this Subsection. The owner(s) and/or developer(s) shall maintain all temporary signs located at major entrances until ninety percent (90%) of the Certificates of Occupancy for the PUD have been issued, at which time the Town may require removal. The requirements of this Subsection shall apply to all successor developers.
- b. Temporary signs.
1. A PUD containing more than one (1) of the following uses: single-family, multifamily, office/commercial and industrial shall be required to erect one (1) or more project layout signs on the property, subject to the following specifications:
 - a) Each sign shall be a low profile type, the bottom of which shall not exceed six (6) feet in height.
 - b) Each sign shall be a minimum of twenty (20) square feet, but not greater than forty (40) square feet, in area.
 - c) A sign shall be located near all of the PUD's major entrances which shall display a map clearly indicating all proposed uses, their respective locations, common open space and, in the case of any residential use, the proposed density.
 2. Real estate signs. One (1) real estate sign authorized per lot or per activity: eight (8) square feet maximum for residential uses and up to thirty-two (32) square feet for commercial or industrial use.
- c. Permanent signs.
1. Complex identification signs. Each multiuse structure shall be permitted one (1) complex identification sign containing only the name of the structure and/or including the names of the individual businesses therein or a description of the types of businesses therein. Complex identification signs shall not exceed fifty (50) square feet and may be freestanding or wall mounted.
 2. Individual business signs. Businesses or activities in multiuse structures shall also be allowed one (1) wall or canopy sign or ground sign for each activity or business owning or leasing space within the multiuse structure. Wall signs shall be placed on the ground floor. The total sign area for all such signs shall not exceed twenty (20) square feet.
 3. Freestanding signs site requirements.
 - a) The activity or business shall be accessible by automobile, and shall have off-street parking on premises.
 - b) The building or structure in which the activity is conducted must be set back a minimum of twenty (20) feet from the designed right-of-way as required, based on the street classification.
 - c) All signs shall be located on the lot of the advertised use.
 - d) All signs shall be set back from property line a distance equal to their height, except that a ground sign six (6) feet in height shall be allowed to be placed one (1) foot from the property line.

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4. A single activity or business not in a multiuse structure shall be permitted no more than one (1) freestanding sign which meets the site requirements provided by this Subsection, and which shall not exceed twelve (12) feet above grade.
 5. All new ground signs shall be placed in an appropriately landscaped planter or area and shall not exceed six (6) feet in height. No freestanding sign shall be placed in a location that will obstruct other legal conforming signs.
 6. Other signage plans may be proposed by an applicant and approved by the Town to be implemented by the applicant in its covenant review with written approval being submitted to the Town by the PUD's architectural control committee prior to Town review of same.
- d. Prohibited signs. Certain signs shall be prohibited in any PUD, including but not limited to: flashing/moving signs, animated signs, unsafe signs, roof signs, signs which cause radio or television interference and signs in the restricted site triangle at corners.
- (14) Architectural review.
- a. In order to preserve and protect the natural beauty of the Town's setting and to attain the objectives identified in the Comprehensive Plan, the exterior design of all new development shall be subject to the following architectural review guidelines and process. Submissions shall be made in three (3) design phases:
 1. Concept Plan (presented at Pre-application conference) - this sets the overall format for architectural information. This requires only basic information dealing with the most general massing information and appearance for the buildings. More than one (1) plan may be submitted.
 2. Schematic Design (submitted with Preliminary Development Plan) - including preliminary (scale plans and illustrative) elevations, and optional perspectives, and/or models as well as a Preliminary Development Plan. Schematic Design information begins to define the parameters of the project and give the flavor of the project and its relationship to its context. The purpose of this phase is to determine the overall function of the components, general configuration and general massing. If the applicant is intending to receive administrative approval of the Final Development Plan, then the design development information contained in the second paragraph below should be submitted with the Preliminary Development Plan.
 3. Design Development submitted with Final Development Plans, including scale plans and elevations (one-eighth [1/8] inch or appropriate), and optional prospective and models; as well as a site plan suitable for approval of the concepts and items that are likely to portray what will be built.
 4. A set of the proposed covenants, final building and site information shall be provided. The purpose of design development is to further define the approved schematic plans and to determine materials, textures and other design items.
 5. The developer is responsible for presenting specific building features such as roof slopes, colors and materials, through the use of covenants for the development. A set of suggested guidelines is available from the Town for the developer to use in establishing basic items which would be uniform for all covenants.
 - b. Architectural guideline checklist. The recommendations of the staff and the Planning and Zoning Commission shall be based on the guidelines prescribed in this Section. If a development project is to be built in phases, each phase shall be subject to the design guidelines prescribed in this Section. The applicant shall demonstrate that the architecture of the PUD is harmonious with adjacent development and will make a positive contribution to the visual integrity and aesthetics of the Johnstown community by addressing the following elements:
 1. Intended overall appearance.

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- a) Buildings (identify architectural type).
- b) Grounds (e.g. landscaping, parking, entrance treatment).
- c) Other site development (e.g. signage, lighting).
2. Building colors and materials (type and durability of exterior surfacing materials and colors).
3. Phasing of buildings.
4. Configuration of buildings (e.g. shape, height, form, entry location(s), service area).
5. Unique architectural features.
6. Features which may require exceptions from Town code requirements (e.g. height, bulk as defined in Town regulations).
7. Roof criteria (type of material, pitch, overhang).
8. Architectural features which may have an impact upon energy conservation (e.g. solar orientation, shading devices, active/passive system).
9. Fenestration information/general specifications.
10. Accessory structures (type, location, connections).
11. Scale (relationship to other buildings and the site).
 - a) Commercial.
 - b) Residential.
 - c) Industrial.
12. Privacy (method(s) of achieving screening, separation, barrier).
 - a) Impact upon neighborhood.
 - b) Within the PUD.
13. Service areas.
 - a) Utilities (e.g. underground meters in cabinets, transformer screening).
 - b) Storage (auxiliary buildings).
 - c) Trash storage/pickup (enclosed/screened).
 - d) Vehicular (long or short term).
 - e) Loading docks (design and appearance).

The above checklist is illustrative only, as the applicant is responsible to design the PUD based upon consideration of items that need to be addressed. This allows for change, variety, creativity, economics, energy requirements, marketing strategies, site conditions and other variables to be addressed. If any of the items in the above checklist are inappropriate as suggested by the applicant, then the Town Planner may determine them to be not applicable (N/A). For very small projects the Town Planner may waive some or all of the architectural review guidelines.

Once architectural controls are adopted, the owner's association architectural control committee shall review all building and site plans in nonresidential PUDs and shall submit written approval of the same by it to the Town prior to the Town beginning its review process.

(Ord. 99-615 §1)

Secs. 16-307—16-320. Reserved.

ARTICLE XVIII Planned Mobile Home Park Development Regulations

[Sec. 16-321. Statement of intent.](#)

[Sec. 16-322. Where permitted.](#)

[Sec. 16-323. Locational restrictions.](#)

[Sec. 16-324. Use regulations.](#)

[Sec. 16-325. Minimum area requirement.](#)

[Sec. 16-326. Site planning - internal.](#)

[Secs. 16-327—16-340. Reserved.](#)

Sec. 16-321. Statement of intent.

The Planned Mobile Home Park Development (hereinafter called PD-M) provision is intended to encourage the unified planning and development of permanent mobile home parks providing all facilities and amenities appropriate to the needs of residents. It is the further intent to provide for the orderly grouping of mobile homes, accessory uses and common facilities within the park, and to provide such regulatory controls as will assure a harmonious relationship between the mobile home park and adjoining residential uses.

(Prior code Appx. B, § 17.1-01)

Sec. 16-322. Where permitted.

Subject to the general requirements set forth in this Chapter, and additional requirements set forth herein, a PD-M may be established in any area indicated as a Planned Mobile Home Park Development residential area on the proposed land use plan.

(Prior code Appx. B, § 17.1-02)

Sec. 16-323. Locational restrictions.

- (a) Any mobile home parked on any lot, parcel or tract in the Town, but not included within an approved PD-M, shall, after a period of forty-five (45) days, have the wheels removed and placed on a suitable permanent foundation, and be subject to all requirements of the district of its location.
- (b) A mobile home may be parked within a PD-M, provided that, within nine (9) months from the initial date of locating the mobile home, the wheels thereof shall be removed and the mobile home shall be placed on a suitable permanent foundation and shall be subject to all ordinances affecting real property and improvements thereto.

(Prior code Appx. B, § 17.1-03)

Sec. 16-324. Use regulations.

Permitted uses are:

- (1) Mobile home dwelling units as herein defined;
- (2) Single-family dwelling for occupancy by the mobile home park owner, manager or caretaker; and
- (3) Common uses and uses accessory to mobile home dwelling units, including recreation facilities for the use of residents of the park only, management offices, laundry rooms, tenant storage lockers, parking areas, and garbage and trash disposal facilities.

(Prior code Appx. B, § 17.1-04)

Sec. 16-325. Minimum area requirement.

The minimum required land area for a PD-M shall be five (5) contiguous acres.

(Prior code Appx. B, § 17.1-05)

Sec. 16-326. Site planning - internal.

- (a) *General requirements*. The site, including mobile home stands, structures and all site improvements, shall be harmoniously and effectively organized in relation to topography, the shape of the tract, and the shape, size and position of structures, with consideration for usability of space, appearance and livability. An informal park type of arrangement, with grouping or clustering of mobile home dwelling units, and which conforms to the terrain and natural landscape features, is preferable to a rigid, stylized pattern.
- (b) *Streets and access ways* :
 - (1) Paved streets at least twenty-two (22) feet in width shall extend from the existing street system as necessary to provide convenient access to each mobile home stand and to common facilities and uses. Private streets shall be permitted in a PD-M.
 - (2) Convenient access shall be provided to each mobile home stand by an access way at least fifteen (15) feet in width. Such access way shall be reserved for maneuvering mobile homes into position and shall be kept free of trees and other immovable obstructions, but need not be paved. Temporary planks or steel mats may be used during the placement of a mobile home.
- (c) *Pedestrian access* :
 - (1) Pedestrian walkways, at least two (2) feet in width and having an all-weather surface shall be provided for access to each mobile home from a paved street or paved a driveway or parking area connected to a public street.
 - (2) Common walkways at least three (3) feet in width and having an all-weather surface shall be provided for access to common facilities and uses from each mobile home group or cluster. Walkways through the interiors of blocks are preferable to walkways adjacent to streets.
- (d) *Parking* :
 - (1) Parking areas shall be located off street and shall have an all-weather surface. One (1) parking space may be located on each lot or the space immediately adjacent to the mobile home stand, and the remainder shall be located in parkway bays adjacent to the street or adjacent to a vehicular access way connected to a street.

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- (2) Parking spaces shall be provided at the rate of at least one (1) car for each mobile home, plus one (1) additional car space for each four (4) mobile home lots or spaces to provide for guest parking and delivery and service vehicles.
- (e) *Mobile home spaces and stands :*
- (1) Each mobile home shall be contained within a space or lot having a minimum area of three thousand (3,000) square feet for single-wide mobile homes, and a minimum area of four thousand (4,000) square feet for double-wide or expandable mobile homes.
 - (2) The maximum density of mobile homes within the PD-M shall be eight (8) single-wide mobile homes per acre, and six (6) double-wide mobile homes per acre.
 - (3) Within each space or lot allocated to a mobile home, there shall be provided a mobile home stand for the purposes of satisfactory placement of the mobile home and retention of the mobile home in the allocated space in satisfactory relationship to its surroundings.
 - (4) Mobile home stands shall have minimum dimensions equal to those of the mobile home to be placed on them.
 - (5) Mobile home stands shall be constructed of appropriate material on properly graded and compacted areas so as to be durable for the support of the maximum anticipated loads under all weather conditions.
 - (6) The space between the lower edge of the mobile home unit and the mobile home stand shall be completely enclosed with suitable and uniform material.
- (f) *Distances between stands, structures and uses :*
- (1) The minimum distance from the line or corner of any mobile home stand to a street pavement, common parking bay or common walk shall be eight (8) feet.
 - (2) The minimum distance from the line or corner of any mobile home stand to a boundary line of the PD-M shall be twenty (20) feet.
 - (3) The minimum distance from the line or corner of any mobile home stand to any permanent building or structure for common use shall be twenty (20) feet.
 - (4) Permanent buildings and structures for common facilities, and dwelling units other than mobile homes shall be set back and offset from the PD-M boundaries a minimum distance of twenty (20) feet.
- (g) *Common facilities and uses :*
- (1) No less than eight percent (8%) of the total land area of the PD-M shall be devoted to space for common facilities and uses, such as laundry, swimming pool or recreation and play areas.
 - (2) Laundry, recreation rooms, management offices and other common facilities may be consolidated in a single building if the single location will adequately serve all mobile home units.
- (h) *Storage :*
- (1) Tenant storage facilities shall be provided for materials which cannot be conveniently stored in a mobile home. A minimum of thirty-two (32) square feet of storage space shall be provided for each mobile home unit.
 - (2) Storage facilities may be located adjacent to the mobile homes, or in common compounds within a reasonable distance from the mobile homes. Storage facilities shall be designed in a manner that will enhance the park, and shall be constructed of suitable weather-resistant materials appropriate under the use and maintenance contemplated.
- (i) *Landscaping :*

- (1) Lawn and ground cover, which may include aggregates, shall be provided on all common ground areas except those covered by structures, paved or surfaced areas, and except those undisturbed areas, such as watercourses, left in their natural state.
- (2) Screen planting and/or fencing at least six (6) feet in height, shall be provided where necessary for screening purposes, such as around the PD-M boundary lines, refuse collection points, common recreation areas and playgrounds, and at such other points as necessary for screening of objectionable views.

(Prior code Appx. B, § 17.1-06)

Secs. 16-327—16-340. Reserved.

ARTICLE XIX Telecommunications Towers and Antennas

[Sec. 16-341. Definitions.](#)

[Sec. 16-342. Purpose.](#)

[Sec. 16-343. Applicability.](#)

[Sec. 16-344. General requirements.](#)

[Sec. 16-345. Specific requirements.](#)

[Sec. 16-346. Applications.](#)

[Sec. 16-347. Inventory and tracking.](#)

[Sec. 16-348. Separation allowances.](#)

[Sec. 16-349. Location exceptions.](#)

[Secs. 16-350—16-360. Reserved.](#)

Sec. 16-341. Definitions.

- (a) *Alternative tower structure* means manmade trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures, and camouflages or conceals the presence of antennas and/or towers. This term also includes any antenna or antenna array attached to the alternative tower structure.
- (b) *Antenna* means any exterior transmitting or receiving devices mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.
- (c) *Backhaul network* means the lines that connect a provider's tower/cell sites to one (1) or more cellular telephone switching offices, and/or long distance providers, or the public switched telephone network.
- (d) *FAA* means Federal Aviation Administration.
- (e) *FCC* means Federal Communications Commission.
- (f) *Telecommunications facilities* means the plant, equipment and property, including but not limited to, cables, wires, conduits, ducts, pedestals, antennas, towers, alternative tower structures, electronics and other appurtenances used to transmit, receive, distribute, provide or offer telecommunications services.

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- (g) *Telecommunications service* means the providing or offering for rent, sale or lease, or in exchange for other value received, of the transmittal of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities, with or without benefit of any closed transmission medium.
- (h) *Telecommunications support facilities* means support buildings, structures and equipment cabinets containing electrical and mechanical equipment and devices used for the reception of or transmission of voice, data, image, graphic and video programming information between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.
- (i) *Tower* means any structure 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 and other similar structures. This term also includes any antenna or antenna array attached to the tower structure.
- (j) *Tower height* means, when referring to a tower or other alternative tower structure, the distance measured from the lowest point within ten (10) feet of the structure to the highest point on the tower or other alternative tower structure, including the base pad and any antenna.

(Ord. 575 §1, 1997)

Sec. 16-342. Purpose.

The purpose of this Section is to establish regulations for telecommunications facilities. The goals of this Section are:

- (1) To protect residential areas and lands by minimizing adverse impacts of towers;
- (2) To encourage the location of towers in nonresidential zone districts;
- (3) To minimize the total number of towers in the community;
- (4) To encourage the joint use of new and existing tower locations;
- (5) To ensure that towers are located in areas that minimize adverse impacts;
- (6) To ensure that towers and antennas are configured in a way that minimizes adverse visual impacts by careful design, appropriate siting, landscape screening and innovative camouflaging techniques;
- (7) To enhance the ability to provide telecommunications services to the community quickly, effectively and efficiently;
- (8) To consider public health and safety of telecommunications facilities;
- (9) To avoid damage to adjacent properties from tower failure through careful engineering and locating of tower structures;
- (10) To encourage the attachment of antennas to existing structures; and
- (11) To facilitate the provision of telecommunications services throughout the Town.

(Ord. 575 §1, 1997)

Sec. 16-343. Applicability.

These regulations shall apply to all towers and antennas as defined, except:

- (1) Any tower or antenna, not more than seventy (70) feet in height, owned and operated by a federally licensed amateur radio station operator or used exclusively as a receive only facility; but

to the extent possible, without precluding the use, it must use materials, colors and screening that create compatibility with the surrounding neighborhood.

- (2) Antennas designed to receive direct over-the-air broadcast services (DBS), including direct-to-home satellite services, or designed to receive over-the-air video programming services, including multichannel multipoint distributor services (MMD), television broadcast signals (TVBS), instructional television, fixed services, and local multipoint distributor services that are one (1) meter or less in diameter or diagonal measurement.

(Ord. 575 §1, 1997)

Sec. 16-344. General requirements.

- (a) Towers, antennas and telecommunications support facilities shall be regulated and permitted pursuant to this Section and shall not be considered utilities;
- (b) Towers are allowed in nonresidential zone districts and shall:
 - (1) Be considered a permitted use, and the existence of another structure or use on the same zone lot shall not preclude the installation of a tower;
 - (2) Comply with the regulations contained herein and the zone district regulations for permitted structures in the zone district in which it is located. The dimensions of the entire zone lot shall apply and not the dimensions of the leased parcel; and
 - (3) Have a diameter of not more than forty-eight (48) inches measured at the base of the tower.
- (c) Antennas not attached to a tower and their associated telecommunications support facilities may be located in any zone district on:
 - (1) Any nonresidential structure; or
 - (2) Be considered a permitted use, and the existence of another structure or use on the same zone lot shall not preclude the installation of an antenna.
- (d) Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of the issue date of the notice to remove the tower or antenna.
- (e) Antennas, towers and alternative tower structures, their associated antennas and arrays and telecommunications support facilities shall be subject to design review and approval. Applicants may submit their designs for pre-approval subject to the same procedures outlined herein. Designs for antennas, towers, alternative tower structures, their associated antennas and arrays and telecommunications support facilities shall be submitted to the Zoning Administrator for design review by the Planning Office. Upon submission of a complete application for design review, the Zoning Administrator shall establish a schedule for processing the application. Design review shall be completed within thirty (30) days of the date designated in the schedule, except that the review period may be extended by an amount of time equal to any delay caused by the applicant. In reviewing the design of towers, the Planning Office shall consider the goals and requirements set forth in this Section. After completion of design review, the Planning Office shall make recommendations to the Zoning Administrator. Within seven (7) days after receiving recommendations from the Planning Office, the Zoning Administrator shall approve, approve with conditions or deny the application. A reasonable design review fee shall be assessed at the time of submittal.

(Ord. 575 §1, 1997)

Sec. 16-345. Specific requirements.

Towers and/or antennas shall meet the following requirements:

- (1) Towers and/or antennas
 - a. The design of antennas and telecommunications support facilities shall use materials, colors, textures, screening and landscaping that create compatibility with the natural setting and surrounding structures;
 - b. Signs shall be limited to those signs required for cautionary or advisory purposes only; and
 - c. The mass of antennas or an antenna on a tower shall not exceed four hundred fifty (450) cubic feet per user, with no one (1) dimension exceeding fourteen (14) feet per user. The mass shall be determined by the appropriate volumetric calculations using the smallest regular rectilinear, cuboidal, conical, cylindrical or pyramidal geometric shapes encompassing the entire perimeter of the array.
- (2) Towers
 - a. *Setbacks* : The minimum zone district setback requirements shall apply to all towers;
 - b. *Height* : The height and bulk of the tower shall be controlled by the district regulations of the zone district in which the tower is located, but in no case shall it exceed the following maximum heights:
 1. Single users - not more than seventy-five (75) feet in height; or
 2. Two (2) or more users - not more than ninety (90) feet in height.
 - c. *Color* : Towers shall be finished in a neutral color to reduce visual obtrusiveness, subject to any applicable standards of the FAA;
 - d. Support facilities associated with towers shall:
 1. Not contain more than three hundred and fifty (350) square feet of gross floor area or be more than twelve (12) feet in height per user;
 2. Maintain the minimum setback and bulk plane requirements of the zone district in which it is located;
 3. Provide solid view-obscuring security fencing not less than six (6) feet in height; and
 4. Provide landscaping in accordance with the following requirements:
 - a) The tower compound shall be landscaped with a buffer of plant materials that effectively screens the view of the tower base and compound from property used for residences. The standard buffer shall consist of a landscaped strip at least five (5) feet wide outside the perimeter of the compound and shall provide for and maintain minimal landscaping on the remainder of the zone lot;
 - b) In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived; and
 - c) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. Towers located on large, wooded lots, natural growth around the property perimeter may be considered a sufficient buffer.
 - e. *Lighting* : Towers shall not be artificially illuminated unless required by the FAA or other governmental regulation. Ground level security lighting not more than twenty (20) feet in height may be permitted if designed to minimize impacts on adjacent properties.
 - f. *Separation requirements* : The following separation requirements shall apply to all towers:
 1. Tower separation shall be measured from the base of the tower to the lot line of the off-site uses and/or designated areas as specified in Table 1, except as otherwise provided

in Table 1. If the requested separation distance is greater than or equal to the distance in this Subsection, the Zoning Administrator can proceed to process the application hereunder. If the requested separation distance is less than the separation distances provided in Table 1, but more than or equal to one hundred (100) feet, the provisions of Section 16-348 below shall apply.

Table 1
Tower Separation From Certain Uses and Zones.

<i>Off-site Use/Designated Area</i>	<i>Separation Distance</i>
Single or two-unit dwellings	500 feet or three (3) times the height of the tower, whichever is greater
Vacant platted or unplatted residentially zoned land	500 feet or three (3) times the height of the tower, whichever is greater
Existing multi-family residential units	500 feet or the height of the tower, whichever is the greater
Parks	1000 feet
Non-residentially zoned lands with non-residential uses	None; only setbacks apply

2. Separation distances between towers shall be maintained and measured between the proposed tower and preexisting towers. The separation distances shall be measured by drawing or following a straight line between the base of the existing tower and the base of the proposed tower, pursuant to a site plan of the proposed tower. If the requested tower separation distance is greater than or equal to the distance in this Subsection the Zoning Administrator can proceed to process the application hereunder. If the requested tower separation is less than the separation distance as provided in Table 2, but more than or equal to five hundred (500) feet, the provisions of Section 16-348, below shall apply.

Table 2
Minimum Separation Between Towers (in feet) Existing Towers-Types

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	<i>Lattice</i>	<i>Guyed</i>	<i>Monopole 75 feet in height or greater</i>	<i>Monopole not more than 75 feet in height</i>
Lattice	2500	2500	1500	1000
Guyed	2500	2500	1500	1000
Monopole 75 feet in height or greater	1500	1500	1500	1000
Monopole not more than 75 feet in height	1000	1000	1000	1000

3. Antennas installed on a structure other than a tower:

- a) *Height and bulk plane* : Height and bulk of the antenna shall be controlled by the district regulations of the zone district in which it is located, except that antennas shall not extend more than fourteen (14) feet beyond the highest point of the building or structure to which it is attached;
- b) *Telecommunications support facilities* :
 - 1) Telecommunications support facilities may be located on the roof of a building;
 - 2) The antenna and telecommunications support facilities shall be a neutral color that is identical to, or closely compatible with, the color of the supporting structure;
 - 3) The telecommunications support facilities shall not contain more than three hundred and fifty (350) square feet of gross floor area or be more than twelve (12) feet in height per user; and
 - 4) If the telecommunications support facilities are located at grade, they shall comply with all the same requirements as those for towers in the preceding Subsection (2)f1.

(Ord. 575 §1, 1997)

Sec. 16-346. Applications.

- (a) Every applicant for a tower shall provide the Zoning Administrator with:
 - (1) The first application for a permit by a provider, or an applicant for a provider shall include an inventory of all of that provider's existing towers, antennas, or sites approved for towers or antennas, that are either within the Town or within one thousand (1,000) feet of the border thereof, and the provider shall also comply with the inventory and tracking requirement of this Section;

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- (2) This identification of its backhaul providers, updated on at least an annual basis, and the method of providing backhaul, wired or wireless;
 - (3) A vicinity map drawn to scale showing adjacent land uses that require separation and zoning within one thousand (1,000) feet, including those in adjacent municipalities and Weld County;
 - (4) Upon the request of the Zoning Administrator or a member of the Town Council, or their designees, the telecommunications provider shall meet with the requesting official and provide them with information concerning the proposed system design, which information shall not be reduced to writing and shall be treated as a confidential trade secret; and
 - (5) A scaled set of plans containing the following information:
 - a. Location and legal description of the proposed site;
 - b. Type and height of the proposed tower;
 - c. On-site land uses and zoning;
 - d. Adjacent roadways;
 - e. Proposed means of access;
 - f. Setbacks from property lines;
 - g. Architectural elevation drawings of the proposed tower and any other telecommunications support facilities;
 - h. Site topography;
 - i. Parking;
 - j. A landscape plan showing specific landscape materials; and
 - k. The method of fencing, finished color and, if applicable, the method of camouflage and illumination.
 - (6) An affidavit from the owner of the property acknowledging that the owner of the property is responsible for the removal of a tower that is abandoned or is unused for a period of twelve (12) months.
- (b) Every applicant for an antenna shall provide the Zoning Administrator with the information required in Section 16-346(5) where applicable.
- (c) The Zoning Administrator may share information, except for the confidential proposed system design, with other applicants applying for administrative approvals or use exceptions under this Section or other organizations seeking to locate towers/antennas in the Town, except that the Zoning Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(Ord. 575 §1, 1997)

Sec. 16-347. Inventory and tracking.

- (a) The Zoning Administrator shall compile a list of towers and maintain and update the same from information furnished by all service providers. The Zoning Administrator shall issue a registration number to be affixed to and displayed on each tower. A reasonable fee as determined by the Zoning Administrator shall be assessed for an initial registration and annual inspection fees.
- (b) Collocation: Antennas may be attached to an existing tower which is in compliance with all requirements of this Article and the requirements of Section 16-345(2)f2 and Table 2 shall not apply, as long as the height of the tower is not increased. The new antenna and any telecommunications support facilities must comply with all applicable regulations in Section 16-345(1) and (2). A tower may

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be modified or reconstructed to accommodate the collocation of additional antennas under the following conditions:

- (1) The tower shall be the same type as the existing tower, unless the tower is replaced by a monopole not more than forty-eight (48) inches in diameter;
- (2) An existing tower, to accommodate the collocation of an additional antenna, may be modified or rebuilt only once to a taller height, not to exceed thirty (30) feet more than the tower's existing height;
- (3) The additional height referred to in Subsection (b)(2) shall not require an additional distance separation as set forth in Table 2 of Section 16-345(2)f2. The tower's pre-modification height shall be used to calculate distance separations;
- (4) The existing tower shall comply with the separations from certain uses and zones in Table I of Section 16-345(2)f2;
- (5) If a tower is replaced to accommodate collocation, only one (1) tower may remain on the zone lot;
- (6) If a tower is relocated on-site in compliance with all setback requirements, and within a twenty-five (25) feet radius of its existing location, under the terms and conditions of this Section, it shall not be deemed a violation of the separation requirements of Section 16-345(2)f.

(Ord. 575 §1, 1997)

Sec. 16-348. Separation allowances.

The following provisions shall govern applications where the requested separations are less than the minimum requirements in Tables 1 and 2 of Sections 16-345 (2)f1 and 16-345 (2)f2 above, but greater than or equal to one hundred (100) feet for Section 16-345 (2)f1 and greater than or equal to five hundred (500) feet for Section 16-345(2)f2.

- (1) Submittal requirements: In addition to the application requirements of Section 13-346 and a reasonable review fee, the Zoning Administrator may require that the applicant submit for review the following information or items if applicable:
 - a. Legal description of the zone lot and leased parcel (if applicable);
 - b. The setback distance between the base of the proposed tower and the nearest residential dwelling unit, platted residentially zoned properties and unplatted residentially zoned properties;
 - c. The separation distance from other towers located within one thousand (1,000) feet of the base of the proposed tower shall be shown on an updated site plan or map. The applicant shall also identify the type of construction of the existing tower(s) and the owner/operator of the existing tower(s), if known;
 - d. A notarized statement by the applicant as to whether construction of the tower will accommodate collocation of additional antennas for future use;
 - e. A description of the suitability of the use of existing towers, other structures, locations or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower; and
 - f. Such other information as is deemed by the Zoning Administrator to be necessary to render a determination.
- (2) Notification and certification requirements: Using a notice form supplied by the Zoning Administrator, the applicant shall promptly notify all property owners within five hundred (500) feet of the proposed tower and registered neighborhood organizations whose boundaries contain or

are within two hundred (200) feet of the proposed tower. Such notice shall indicate the boundaries of the property included in the application, shall explain the character and dimensions of the proposed telecommunications tower, the nature and applicable separation distances and shall give directions for submitting written comments. The said notice shall also include notice of a date not less than thirty (30) days after the delivery of the notice which has been set by the Zoning Administrator for consideration of the application and any written comments related thereto and that a public hearing may be requested. The applicant shall also file a statement with the Zoning Administrator stating how and on what date the applicant has so notified said adjoining property owners and registered neighborhood organizations. The Zoning Administrator may solicit comments from other appropriate public agencies.

- (3) Posting requirements: In addition to the written notice required above, the applicant shall post the property in a conspicuous location or locations determined by the Zoning Administrator with a sign provided by the Zoning Administrator. The posted notices shall contain the same information as the written notices and shall be in number, size and location as required by the Zoning Administrator. Such posted notices shall be removed by the applicant within forty-five (45) days after their posting; failure to remove such notices in a timely manner shall constitute a violation of this Article.
- (4) If no public meeting is requested: If no timely request for a public meeting in accordance with Section 16-348(5) is received, the Zoning Administrator shall consider the written comments of all interested parties and the factors contained in this Subsection.
 - a. Findings required: The Zoning Administrator may approve or approve with conditions the application providing findings are made that the proposed telecommunications towers will:
 1. Not substantially or permanently injure the appropriate uses of adjacent property;
 2. Maintain the separation distances between towers and certain uses contained in Table 1 of Section 16-345(2)f1 of at least one hundred (100) feet and a distance of at least five hundred (500) feet from any other tower if the tower has a diameter or width of less than forty-eight (48) inches;
 3. Maintain a setback distance of two thousand five hundred (2,500) feet from a residential district or residential structure, if the tower has a diameter or width of more than forty-eight (48) inches; and
 4. Meet all Zone District regulations.
 - b. Considerations. The Zoning Administrator shall consider the following factors in determining whether the application meets the goals contained in Section 16-342.
 1. Height of the proposed tower;
 2. Proximity of the tower to residential structures and residential district boundaries;
 3. Nature of uses on adjacent and nearby properties;
 4. Surrounding topography;
 5. Surrounding tree coverage and foliage;
 6. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 7. Proposed ingress and egress; and
 8. Availability of suitable existing towers, other structures, or alternative technologies not requiring the use of towers or structures.
 - c. Conditions: In approving with conditions, the Zoning Administrator may place such conditions on the approval as deemed necessary to advance the goals contained in Section 16-342. Such conditions may include but are not limited to:

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1. Moving the location of the tower to a more appropriate site;
 2. Using a different technology that will lessen the impact of the tower;
 3. Requiring an appropriate alternative tower structure; or
 4. Other actions which will disguise or otherwise lessen the impact of the tower.
- (5) If a public hearing is requested: If a request for a public hearing is received from three property owners within five hundred (500) feet of the proposed tower or from a registered neighborhood association whose boundaries contain or are within two hundred (200) feet of the proposed tower, the Zoning Administrator shall refer the application to the Town Clerk to arrange for a public hearing to be held within thirty (30) days from the date of request.
- a. Notification and posting: All persons submitting comments or requests for a public hearing and all neighborhood organizations whose boundaries contain or are within two hundred (200) feet of the location of the proposed tower shall be notified of the date, time and location of the public hearing. The applicant shall post the property in a conspicuous location or locations determined by the Zoning Administrator with a sign provided by the Zoning Administrator. Such sign shall describe the proposed construction and the date, time and location of the public hearing. The property shall be posted for fifteen (15) days prior to the hearing date. Such posted notices shall be removed by the applicant within forty-five (45) days after their posting; failure to remove such notices in a timely manner shall constitute a violation of this Article.
 - b. Recommendation: Within fifteen (15) days of the public hearing, the Town Council shall approve, approve with conditions or deny the application. In making its decision, the Town Council shall consider the comments at the public hearing and the purposes and goals of Section 16-342 and the provisions of Subsections (4)a. and b.

(Ord. 575 §1, 1997)

Sec. 16-349. Location exceptions.

The Town Council shall have the power to grant in specific cases, subject to terms and conditions fixed by the Town Council, the placement of towers and their associated telecommunications support facilities in residential zone districts, within one hundred (100) feet of a residential zone district or within five hundred (500) feet of another tower.

- (1) Findings required: No exception hereunder shall be granted unless the Town Council finds that the proposed tower is necessary and essential to providing the applicant's telecommunications service.
- (2) Conditions: In granting such exception the Town Council shall place such conditions on the exception as will advance the goals contained in Section 16-342. Such conditions may include but are not limited to:
 - a. Moving the location of the tower or antenna to a more appropriate available site;
 - b. Using a different technology that will lessen the impact of the tower antenna;
 - c. Requiring an appropriate alternative tower structure; or
 - d. Other actions which will disguise or otherwise lessen the impact of the tower or antenna.

(Ord. 575 §1, 1997)

Secs. 16-350—16-360. Reserved.

ARTICLE XX Sign Code

[Sec. 16-361. Intent and purpose.](#)

[Sec. 16-362. Definitions.](#)

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[Sec. 16-370. Enforcement and penalties.](#)

[Secs. 16-371—16-390. Reserved.](#)

Sec. 16-361. Intent and purpose.

The purpose of this Article is as follows:

- (1) To protect the public from signs which are structurally unsafe;
- (2) To promote traffic safety and the free movement of traffic, and protect the public from the hazardous conditions which result from signs that obscure or distract the vision of motorists, bicyclists and pedestrians;
- (3) To facilitate easy, safe and pleasant communication between people and their surroundings;
- (4) To conserve the character and economic value of buildings and neighborhoods;
- (5) To provide a balance between legitimate identification and advertising needs and the visual discord which signs sometimes cause, and to provide a sense of balance or proportion between a sign and the building or property which it serves;
- (6) To encourage the erection of signs which are legible in their surroundings, compatible with the visual character of the surrounding area, appropriate to the activities identified; and
- (7) To ensure that adequate and effective advertising signage opportunities exist within a regulatory framework which protects the constitutionally guaranteed right of free speech.

(Ord. 682, § 1, 2001)

Sec. 16-362. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Address signs means any sign designed to identify a particular parcel of land, provided such contains only the street address and name of the owner of the property or the name of the property

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and does not exceed two (2) square feet in area for residential land uses and five (5) square feet in area for nonresidential land uses.

Animated sign means a moving sign that utilizes motion, implied or actual, in a horizontal or vertical plane or both. The only animated type of signs that are permitted are "time and temperature" and "barber pole" signs.

Approved wall area means an exterior wall of a building with a public pedestrian entrance and facing a public street, alley or parking lot which provides parking for the subject building

Arcade sign means any sign projecting beneath and attached to the underside of any balcony, canopy, awning or other structural overhang or passageway.

Artistic mural or sculpture means a freestanding statue or sculpture, a graphic illustration or design, an architectural design or an architectural design or relief applied directly to or incorporated within a wall of a building, which does not advertise or promote a particular business, service or product. A company, firm, association, society, etc., logo is not considered within the scope of this definition and is not considered a sign.

Awning means a temporary hood, cover or shelter which may be fixed or retractable, and which projects from the exterior wall of a building over a window, walk, door or similar building feature. An awning is often constructed of fabric, metal or glass and is not supported by the ground.

Billboard means any sign in excess of fifty (50) square feet in size utilized to advertise a product or service that is not produced or conducted on the same property as the sign.

Building front means the exterior walls of a building facing a public street or streets or other public right-of-way other than alleys, or one (1) exterior wall containing the primary entrance to the building if not directly facing upon a public street.

Building identification signs means signs which identify by name or number individual buildings within institutional or residential building group complexes which are limited to signs attached to the building, not more than two (2) signs per building, and not more than four (4) square feet each. These signs may be illuminated or nonilluminated.

Bulletin board means a sign which announces meeting times or special events of public interest such as a church service, civic meeting or similar event.

Canopy means a roof-like structure serving the purpose of protecting vehicles and/or pedestrians and which may be freestanding or attached to a building, is provided with supports, and is open on three (3) sides if attached and on all sides if freestanding.

Under canopy signs means signs affixed underneath a canopy or awning advertising the business or products sold within the building. Such signs are not to exceed two (2) square feet.

Changeable copy sign means a sign, either illuminated or nonilluminated, which is designed so that the message or any part of the message may be periodically changed, either mechanically or electronically. However, such change in message occurs no sooner than every fifteen (15) seconds. Any sign wherein the message changes sooner than fifteen (15) seconds shall be considered a flashing sign.

Commemorative plaques means any memorial or commemorative plaque or tablet that contains the primary name of a building, the date of erection and use of the building, when the sign is built into the building, mounted flat against the wall of the building, or is designed to designate any particular location of historical significance as determined by the Town.

Construction signs means a temporary sign not exceeding thirty-two (32) square feet announcing subdivision, development, construction or other improvement of a property by a builder, contractor or other person furnishing services, materials or labor to said premises. For the purposes of this Code, a *construction sign* shall not be considered to be a "real estate sign" as defined herein and shall contain only project name; developer, architect, builder, and/or consultants; lending institution and opening date.

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Courtesy signs means nonilluminated or indirectly illuminated signs which identify, as a courtesy to customers, items such as "credit cards accepted" and "redemption stamps offered," and which are not to exceed four (4) square feet per face or eight (8) square feet in total area. Such signs may be attached to the building as projecting or wall signs, suspended from a canopy or included as an integral part of a freestanding sign.

Development means a single lot, parcel or tract of land or portions or combinations of lots, parcels or tracts of land which are held in single or common ownership and which exist as a distinct functional entity. Multi-use buildings and multiple building complexes which are held in singular or common ownership, either by individual, corporation, partnership or other legally recognized entity, shall be considered a *development* for the purpose of signage.

Erect means to build, construct, attach, hang, place, suspend, affix, relocate or reconstruct any sign or sign-supporting structure.

Flags means the flag, pennant or insignia of any nation, organization of nations, state, county, town, any religious, civic, or fraternal organization or any educational institution.

Flashing sign means a sign that is illuminated with intermittent lighting, animated lighting or with varying intensities of light at intervals of fifteen (15) seconds or less, including a moving light or lights.

Freestanding sign means a sign that is permanent and self-supporting, being nondependent upon support from a building or other structure, including signs placed upon fences or nonsupporting walls.

Garage sale sign means a sign advertising the existence of a garage sale for the sale of personal property and advertising the date, time and location of the garage sale, with such signs having a maximum area of six (6) square feet, a maximum height of three (3) feet and a minimum setback of ten (10) feet, posted for the period of three (3) days prior and three (3) days following the date of the garage sale. Such signs shall not block or interfere with traffic visibility.

Gasoline price sign means for gasoline or service stations, two (2) signs listing only the prices and types of gasoline available are permitted with each sign, not to exceed ten (10) square feet in area or six (6) feet in height.

Holiday decorations means temporary decorations or displays when such are clearly incidental to and are customarily and commonly associated with any national, local or religious holiday or celebration.

Illuminated sign means a sign that is illuminated with constant intensities of light of a nonvarying nature. There are three (3) types of illuminated lights as follows:

- a. *Direct illumination* means lighting by means of an unshielded light source which is effectively visible as a part of the sign. Neon lighting is considered direct lighting.
- b. *Indirect illumination* means lighting which illuminates the front of a sign or the entire building façade upon which the sign is displayed, the source of the light being shielded from public view and from surrounding properties. *Indirect illumination* does not include lighting which is primarily used for purposes other than sign illumination, such as parking lot light.
- c. *Internal illumination* means lighting by means of a light source which is within a sign having a translucent background and which silhouettes opaque letters or designs, or lighting within or behind letters or designs which are themselves made of translucent or opaque material.

Informational and directional signs means a freestanding or wall-type sign, not located within public street right-of-way, which gives necessary direction or nonadvertising information to motor vehicle operators or pedestrians, such as entrance, exit, parking limitations or location of onsite buildings or facilities. Such sign will be related to the permitted use on the lot on which the sign is located, provided that each sign does not exceed two (2) square feet in total area and is nonilluminated, internally illuminated or indirectly illuminated. This category shall be interpreted to

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include such signs as "No Smoking," "Restroom," "No Solicitors," "Self Service," "Vacancy," "Entrance," "Exit" and similar informational signs located at least five (5) feet from the property line.

- a. *Informational directional sign, off-premises* is a single- or double-faced sign designed to give direction to a church, school, philanthropic organization or similar use of a nonretail or business nature. Such signs may contain only the name of the organization, direction and number of blocks. Such signs shall be metal, no more than two (2) square feet and mounted on minimum two-inch square steel pole. The bottom of the sign shall be a minimum of seven (7) feet above grade. Such signs may be located in the right-of-way.

Interior or window signs means signs within any structure or attached to the inside of any window of a structure.

Kiosk/plaza signs means freestanding signs not more than twelve (12) feet in height, owned or leased by the Town and located in public rights-of-way or on private property with the property owner's written permission, for the purpose of directing the public to development projects, business and/or public facilities as approved by the Town Manager.

Lot means a tract, building site, parcel or portion of land separated from other parcels or portions by description, as on a subdivision plat of record or survey map or by metes and bounds, for the purpose of sale, lease or use.

Nonconforming sign means a sign which does not conform with the regulations set forth in this Article, but which did meet the requirements of the regulations existing at the date of its erection.

Painted sign means a sign that is painted directly onto the exterior surface of a building, wall or structure.

Political sign means a noncommercial sign, which is exempt from permit requirements, erected or placed so as to advertise, announce, declare or state a political message, whether relating to a political campaign or election or any other issue of public concern which is protected by the First Amendment's right of free speech. Such a sign is subject to all applicable provisions of this code.

Portable sign means any sign which is supported by one (1) or more uprights or braces upon the ground and which is of portable design.

Projecting sign means a sign which is affixed to any building, wall or structure and which extends beyond the building wall more than fifteen (15) inches.

Public information sign means a sign giving only information about public places owned and operated by federal, state or local government.

Public sign means an official sign that is required by law or ordinance or is necessary for public information. Any sign erected by any governmental agency including, but not limited to, federal, state, county and town governments, school and recreation districts, but not including private water and sanitary sewer districts, is a *public sign*.

Real estate signs means temporary, nonilluminated real estate signs indicating the availability for sale, rent or lease of a specific lot, building or portion of a building upon which such signs are erected or displayed, which do not exceed six (6) square feet in total area and four (4) feet in height for residential properties or twenty (20) square feet in total area and six (6) feet in height for nonresidential properties and which are located on properties to be sold, limited to one (1) such sign per street frontage. Such signs shall not remain in place more than seven (7) days following sale or rental of the subject property.

Revolving sign means a sign utilizing an axis point to pivot the sign surface. *Revolving signs* are specifically prohibited.

Roof sign means a sign erected, constructed and maintained above the eaves and attached to the roof of a building. *Roof signs* are specifically prohibited.

Semipublic sign means a sign giving information as to church location, educational institutions or service club locations.

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Shopping center identification signs means a freestanding or wall sign which identifies all or some of the tenants in a multi-tenant building.

Sight distance triangle means that area formed by drawing a straight line back from intersecting property lines twenty-five (25) feet from said intersection and connecting same with a separate line, creating a triangle.

Sign means any object or device or part thereof situated outdoors or indoors, viewed from outdoors by the general public, which object or device or the effect produced thereby is used to advertise, announce, identify, declare, demonstrate, display, instruct, direct or attract attention by means including, but not limited to, words, letters, figures, designs, fixtures, colors, motion, illumination, sound or projecting images.

Sign permit means a building permit issued for the erection, construction, enlargement, alteration, repair, relocation, improvement, removal, conversion or demolition of any sign issued pursuant to the building code of the Town or this sign code.

Sign structure means any supports, uprights, braces or framework of a sign which does not include any portion of the sign message.

Special event signs means signs in conjunction with and in conformance with the Colorado Revised Statutes regarding special events such as philanthropic campaign, church, circus, carnival or community celebrations, provided that such signs are removed within ten (10) days of the termination of the event of which they are a part.

Street frontage means for the purpose of signage, frontage upon a street is obtained by ownership, easement or leasehold only if used for vehicular access to the property, or if not used for vehicular access, only if such street frontage is at least fifty (50) feet in width. Where the regulations allow "one sign per street frontage," the intent is that the sign allowed is placed upon or facing the street, unless specifically otherwise permitted.

Surface area of sign means the total area enclosed by the shortest eight (8) straight lines that can be drawn around the entire sign, including any architectural embellishment or background material or color forming an integral part of the display and used to differentiate the sign from its surroundings. Sign support structures which do not bear advertising material shall be excluded in computation of sign area. Signs without backing (i.e. freestanding, projecting, A-frame or pedestal signs) are allowed the maximum square footage for each side for double-faced signs; however, signs having more than two (2) sides or faces shall not exceed the total face area allowed for a double-faced sign.

Temporary sign means any sign, banner, pennant, valance or other outdoor advertising sign constructed of light fabric, cardboard, wallboard, plywood, sheet metal, paper or other light materials, with or without a frame, intended or designed to be displayed for a limited period of time.

Traffic directional signs means private traffic directional signs guiding or directing vehicular or pedestrian traffic onto or off of a lot or within a lot, when such do not exceed three (3) square feet per sign per face in area and eight (8) feet in height, do not contain any advertising or trade name identification and are nonilluminated, internally or indirectly illuminated. Private traffic control signals shall conform to the standards of the Colorado Manual of Uniform Traffic Control Devices and exceed three (3) square feet per face in area but shall not exceed seven (7) square feet per face. Such signs shall not exceed four (4) feet in height and shall be set back at least five (5) feet from the property line.

Unlawful sign means any sign or outdoor advertising device erected in the absence of a permit required by this Article, or in violation of any of the limitations, prohibitions or requirements of this Article.

Unsafe sign means any sign or advertising structure found unsafe or insecure or creating a hazard or menace to the public safety, health and welfare.

Wall sign means a sign constructed of durable materials or painted and which is permanently affixed to an exterior surface of any building, wall or structure and which does not extend more than

fifteen (15) inches beyond the building wall, except that signage placed upon marquees, canopies or awnings shall be considered as *wall signs* .

Warning signs means temporary or permanent signs erected by public utility companies or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices.

(Ord. 682, §1, 2001; Ord. 2005-730 §1)

Sec. 16-363. Permit requirements.

No sign or modification to an existing sign shall be erected, placed or displayed outdoors within the Town limits until a permit for such sign has been issued by the Town, unless such sign is exempt from a permit in accordance with this Article. Permit fees shall be in accordance with the fee schedule adopted by the Town at the time of the permit request.

(Ord. 682, § 1, 2001)

Sec. 16-364. General provisions.

- (a) Nonconforming signs. The lawful use of a sign existing at the effective date of the ordinance from which this Article is derived may be continued, although such use does not conform to the provisions of this Article, subject to the following provisions:
 - (1) Rebuilding, enlargement, relocation, extension, replacement or reconstruction of a nonconforming sign is prohibited unless such sign is brought into conformance with this Article.
 - (2) In the event the use of a nonconforming sign is discontinued for a period of sixty (60) consecutive days, the nonconforming sign shall thereafter conform to the provisions of the zoning district in which it is located or be removed. For the purpose of this Section, the term "discontinued" shall apply to uses which customarily operate on a continuous basis versus a seasonal basis. Seasonal uses shall be subject to a twelve-month period of nonuse prior to requiring full compliance with these regulations.
 - (3) A nonconforming sign that is destroyed or damaged more than fifty (50) percent of its net worth due to natural causes may not be reconstructed except in accordance with the provisions of this Article; however, any sign destroyed or damaged to any extent by vandalism or other unnatural cause may be rebuilt to its original state within two (2) months or be reconstructed in conformance with this Article.
 - (4) Normal maintenance such as painting and message replacement within sixty (60) days of prior use which does not require modification of the sign structure, supports or members shall be allowed.

In order to provide an incentive for removal of nonconforming signs, permit fees and Town use tax may be waived where a nonconforming sign is removed and replaced by a sign conforming with these regulations. Authorization for the waiver of use tax is to be approved by the Town Administrator or designee.

- (b) Discontinued business, etc. Whenever a use of land and/or building using an identification sign is discontinued, except for seasonal uses, the sign shall be removed or obscured by the person owning the property within thirty (30) days after the discontinuance of such use. Any such sign which is nonconforming to these regulations and which is not used to advertise an active business within sixty (60) days of discontinuance shall be removed or otherwise brought into compliance.
- (c) Removal or reconstruction of dangerous signs. All signs which are prohibited in this Article relating to obstruction to view at street intersections, all illuminated signs that are erected in such a location that

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a traffic signal light is in a direct line between the sign and oncoming traffic, all signs that employ a lighting or control mechanism which causes radio, radar or television interference, any sign so erected, constructed or maintained as to obstruct or be attached to any fire escape, window, door or opening used as a means of egress or ingress or for firefighting purposes or so placed as to interfere with any opening required for light or ventilation, and any other signs that are unsafe or dilapidated shall conform to the provisions of this Article either by removal or reconstruction, whichever applies, within sixty (60) days after the owner of such sign is notified for the violation.

- (d) Location of certain signs. All signs, except public signs, semipublic signs and public information signs, allowed by this Article shall be located on the lot for which they advertise. Unless otherwise allowed by this Article, there shall be no sign advertising on the public right-of-way.
- (e) Attachment to public structures. Attachment of any sign to utility poles or other poles or structures within public rights-of-way is prohibited, except as approved by the Town Council.
- (f) Conformance to building code. The design of all sign structure members and foundation shall conform to the requirements of the building code relative to allowable stresses, materials and engineering standards. Loads, both vertical and horizontal, shall not produce stresses exceeding those specified in the building code, and material construction shall be of the quality and grade required by the building code. All signs and structures shall be of the quality and grade required by this Article and/or by the building code. All signs and structures shall be designed and constructed to meet the Town-adopted code for same.
- (g) Exterior signs only. No more than a total of three (3) signs per use is allowed.
- (h) Sign setback requirements:
 - (1) From adjacent properties — ten (10) feet where adjacent to residential-zoned properties; no setback where adjacent to nonresidential-zoned properties. Where a sign exists on an adjacent property and that sign is within twenty (20) feet of the proposed location of a new sign on the adjacent property, an offset, either vertical or horizontal, shall be required, such that the existing sign is not visually blocked by the new sign.
 - (2) From a public right-of-way - one (1) foot setback up to six (6) feet in vertical height; one (1) foot for every foot of height greater than six (6) feet.
- (i) Landscaping requirement. for new development or redevelopment, all freestanding signs shall be placed within a landscaped planter base.

(Ord. 682, § 1, 2001)

Sec. 16-365. Signs not subject to permit.

The following signs, which shall be nonilluminated unless specifically stated to the contrary, are permitted in all zoning districts and require no permit for erection:

- (1) Public signs, as defined in Section 16-362.
- (2) Interior or window signs, as defined in Section 16-362.
- (3) Commemorative plaques, as defined in Section 16-362.
- (4) Address signs, as defined in Section 16-362.
- (5) Special event signs, as defined in Section 16-362.
- (6) Real estate signs, as defined in Section 16-362.
- (7) Building identification signs, as defined in Section 16-362.
- (8) Information and directional signs:

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- a. Traffic directional signs: Private traffic directional signs guiding or directing vehicular or pedestrian traffic onto or off of a lot or within a lot, when such do not exceed three (3) square feet per sign face in area and eight (8) feet in height, do not contain any advertising or trade name or color identification and are nonilluminated. Private traffic control signals shall conform to the standards of the Colorado Manual of Uniform Traffic Control Devices and exceed three (3) square feet per face in area but shall not exceed seven (7) square feet per face. Such signs shall not exceed four (4) feet in height and shall be set back at least five (5) feet from the property line and shall not be located in the sight distance triangle. (An example might be a "no parking" sign.)
 - b. Signs commonly associated with and limited to information and directions related to the permitted use on the lot on which the sign is located, provided that each such sign does not exceed two (2) square feet in total area and is nonilluminated, internally illuminated or indirectly illuminated. Such signs shall contain no advertising color schemes or logos of the proposed business. This category shall be interpreted to include such signs as "No Smoking," "Restroom," "No Solicitors," "Self Service," "Vacancy," "Entrance," "Exit" and similar informational signs located at least five (5) feet from the property line and not in the sight distance triangle.
 - c. Off-premises informational directional signs. A single- or double-faced sign designed to give direction to a church, school, philanthropic organization or similar use of a nonretail or business nature. Such sign may contain only the name of the organization, direction and number of blocks. Such sign shall be metal, no more than two (2) square feet, and shall be mounted on a minimum two-inch square steel pole. The bottom of the sign shall be a minimum of seven (7) feet above grade. Such signs may be located in the right-of-way but not within the sight distance triangle and shall be subject to a revocable permit authorizing the use of the right-of-way for same.
- (9) Courtesy signs: Nonilluminated or indirectly illuminated signs which identify, as a courtesy to customers, items such as "credit cards accepted" and "redemption stamps offered," are not to exceed four (4) square feet per face or eight (8) square feet in total area. Such signs may be attached to the building as wall signs, suspended from a canopy or included as an integral part of a freestanding sign.
 - (10) Flags: The flag, pennant or insignia of any nation, organization of nations, state, county, Town, any religious, civic or fraternal organization or any educational institution not to exceed twenty (20) square feet.
 - (11) Holiday decorations, as defined in Section 16-362.
 - (12) Warning signs, as defined in Section 16-362.
 - (13) Kiosk/plaza sign.

(Ord. 682 §1, 2001; Ord. 2005-730 §1)

Sec. 16-366. Signs requiring a permit.

A permit is required for the following signs:

- (1) Animated. Size of sign is based upon the sign type (i.e., freestanding, wall or projecting).
- (2) Arcade.
 - a. Nonresidential uses.
 - b. Maximum height cannot exceed bottom of eave, balcony, canopy, awning or other structural overhang or passageway to which it is attached.
 - c. Minimum height, seven (7) feet above grade.

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- d. Maximum one (1) per building entrance for nonresidential uses.
 - e. Maximum area, four (4) square feet for nonresidential uses.
 - f. Must be placed on an approved wall area.
- (3) Awning sign.
- a. Permitted on the bottom eighteen (18) inches of 1st floor awnings.
 - b. Allowed at 0.5 square feet per linear foot of awning.
 - c. Maximum of twelve-inch letter height.
 - d. Maximum of one (1) per awning.
 - e. Must be located on an approved wall area.
 - f. May be illuminated.
- (4) Bulletin boards.
- a. Nonresidential, nonagricultural and multiple-family uses only.
 - b. Maximum area, thirty-two (32) square feet.
 - c. Maximum height, eight (8) feet.
 - d. Maximum one (1) per street frontage.
 - e. Must be set back a minimum of ten (10) feet from any private property line and from a public right-of-way; one (1) foot setback for signs up to six (6) feet in vertical height; one (1) foot for every foot of height greater than six (6) feet.
- (5) Freestanding residential districts:
- a. Permitted in residential zones only.
 - b. Maximum sign area is one hundred (100) square feet.
 - c. Maximum of one (1) per street frontage, said street being on the boundary of the development.
 - d. Maximum height all residential districts, six (6) feet.
 - e. Maximum height in all multiple family use districts, twelve (12) feet.
 - f. Must be set back from any private property line and from a public right-of-way one (1) foot setback for signs up to six (6) feet in vertical height; one (1) foot for every foot of height greater than six (6) feet.
 - g. May be illuminated.
- (6) Residential development entryway signs:
- a. One (1) for each major entryway;
 - b. Not to exceed twenty (20) square feet in area or six (6) feet in height;
 - c. Freestanding-type signs must be set back onto the property a minimum of ten (10) feet, unless incorporated into a traffic island entrance, then twenty-five (25) feet back from the face of the street curb and three (3) feet from the edge of the traffic island;
 - d. Fence or wall-incorporated-type signs may be placed parallel with and at the property line following the same height and sight distance requirements as for a wall or fence.
 - e. Subject to a revocable permit in favor of the Town if situated in the right-of-way.
- (7) Freestanding nonresidential districts:
- a. Maximum height: Twenty-five (25) feet.

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- b. Maximum number of signs per development: one (1) per street frontage, not to exceed two (2) per development, except as may be permitted by a master sign plan approved by the Town Council.
- c. All such signs shall be set back from the property line a distance equal to the height of the sign, except a sign six (6) feet in height shall be set back from the property line a distance of one (1) foot.
- d. Maximum sign area: based upon the following table.

**Maximum Sign Area
(Square Feet = s.f.)**

<i>Floor area of Building</i>	<i>Single Use Development</i>	<i>Multiple Use Development</i>
0—1,500 s.f.	35 s.f.	60 s.f.
1,500—5,000 s.f.	35 s.f. plus 1 s.f. per each additional 50 s.f. of floor area over 1,501.	60 s.f. plus 1 s.f. per each additional 40 s.f. of floor area over 1,501.
5,000—50,000 s.f.	100 s.f. plus 1 s.f. per each additional 1,000 s.f. of floor area over 50,001 up to a maximum size of 300 s.f.	300 s.f. plus 1 s.f. per each additional 1,000 s.f. of floor area over 50,001 up to a maximum size of 400 s.f.

- (8) Illuminated signs:
 - a. Within one hundred (100) feet of residential use or district, internal lighting only.
 - b. Over one hundred (100) feet from a residential district, any type of lighting source is allowed, except search or flashing lights, or directed so that the light shall not adversely affect surrounding premises or safe vision on public or private roadways, including highways.
- (9) Portable:
 - a. A-frame or pedestal style only;
 - b. Maximum area: Six (6) square feet;
 - c. One (1) per street frontage;
 - d. Must be set back a minimum of ten (10) feet from the street right-of-way line if over forty-two (42) inches or two (2) feet if forty-two (42) inches high or less;
 - e. Must be anchored to the ground or weighted sufficiently to prevent movement by force of wind.
 - f. May not interfere or block pedestrian or vehicular traffic.
- (10) Projecting:
 - a. Maximum height: top of wall or parapet; not to be roof-mounted;

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- b. Maximum projection: Shall be in accordance with building codes, requirements for "Construction in Public Right-of-Way."
 - c. Maximum size: Two (2) square foot for each one (1) foot of height of the building wall to which the sign is to be attached;
 - d. Projecting and wall sign not permissible on same wall;
 - e. Maximum number: One (1) per street frontage.
- (11) Public information: As defined with the approval of the Town Administrator or designee.
- (12) Temporary subdivision signs:
- a. Temporary model home signs:
 - 1. One (1) per model home;
 - 2. Not to exceed twelve (12) square feet each and not over six (6) feet in height if a freestanding type; and
 - 3. Must be set back from property lines a minimum of ten (10) feet or a distance equal to height, whichever is greater.
 - b. Temporary residential subdivision signs:
 - 1. Temporary signs are prohibited upon public rights-of-way. Temporary signs found by an enforcement officer to be located within Town rights-of-way shall be removed by such enforcement officer with no requirement of notice.
 - 2. Construction signs shall not exceed thirty-two (32) square feet and twelve (12) feet in height. One (1) per street frontage is allowed between the time a building permit is issued and the time a certificate of occupancy is obtained.
 - 3. Political and real estate signs may be located on property only by permission of the landowner.
 - c. Temporary commercial/industrial signs:
 - 1. Banners are permitted for any nonresidentially zoned or used property to advertise special events or sales subject to the following provisions:
 - a) May be placed upon a building wall or roof or a fence but shall not be attached to landscaping, freestanding posts or utility poles;
 - b) The total size allowed for any single banner or total combination of multiple banners shall be determined using the same criteria that applies to wall signs. If the banner is to be affixed to a fence, size shall be the same as if it was attached to the nearest adjacent building wall having street frontage;
 - c) Any banner that becomes discolored, ragged, shredded, detached, etc., shall be removed or repaired.
 - 2. Pennants, streamers and similar devices, and balloons or other inflatable devices, shall be permitted upon nonresidentially zoned or used properties only, subject to the following provisions:
 - a) Any one (1) or a concurrent or successive combination of pennants, streamers or balloons or other inflatable devices shall be permitted to advertise special events or sales not more than five (5) times per year for up to thirty (30) days or seven (7) times per year for up to fifteen (15) days each time;
 - b) Such devices shall be securely anchored or attached as to prevent dislocation, entanglement or encroachment onto adjacent properties or public streets, or undue hazard to motorists or pedestrians;

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- c) Roof mounting may be permitted by the Town Administrator or designee.
 - d) It is not the intent of these regulations to prohibit or unreasonably regulate or to require permits for the legitimate display of traditional winter holiday season decorations; provided, however, that such display occurs between November 15 (year-end) and January 15 (new-year), and provided that such decorations or display is installed and maintained in a safe manner.
- (13) Under canopy signs.
- a. Minimum clearance from the sidewalk is eight (8) feet.
 - b. One (1) sign per frontage.
 - c. Not counted against other allowed signage.
- (14) Wall or painted:
- a. Maximum area to be no larger than two (2) square feet for every linear foot of the side of the building having a public entrance and facing a public street, alley or parking lot to which it is affixed. Signs affixed to attached or detached canopies and marquees or awnings shall be considered wall signs and shall be calculated based upon the length of the wall to which they are attached or adjacent.
 - b. Each ground floor tenant or use shall have the right of wall signage upon any wall which fronts upon a public street, or if not fronting upon a public street, upon any wall which fronts upon a major interior drive having direct access to a public street. For uses that have a rear entry or delivery door, one (1) nonilluminated wall sign per use, not to exceed ten (10) square feet, is permitted.
 - c. For buildings with flat roofs, wall signs shall not extend above the top of parapet or mansard, shall not extend more than three (3) feet above the deck line.
 - d. May not extend more than fifteen (15) inches beyond the surface of the wall and may not extend beyond the side of the wall.
 - e. Commercial, industrial, multiple-family, public and semipublic uses only.
 - f. Cannot be used on the same wall as a projecting sign.
 - g. Must be placed on an approved wall area.

(Ord. 682, § 1, 2001)

Sec. 16-367. Master sign plan.

- (a) The Planning and Zoning Commission may approve a master sign plan for planned unit developments of any size and for any existing or proposed business center or office complex of at least two (2) acres or more in size which are under unified control either by ownership, legal association or leasehold.
- (b) The intent and purpose is to encourage well planned and designed signage within a large multiple building or multiple use complex which expresses unification and integration by elements of architectural style, size, color, placement and lighting, while at the same time allowing for reasonable individual business identification. An additional purpose is to encourage the elimination of existing nonconforming signs. The Planning and Zoning Commission may grant a bonus for well designed plans up to a one hundred percent (100%) increase in the number of signs and/or fifty percent (50%) increase in the maximum square footage, and/or may permit signs in locations other than normally permitted, based upon a finding that the proposed master sign plan substantially meets the intent and purpose of this Subsection relating to unification and integration of signage.
- (c) Once approved at a public hearing by the Planning and Zoning Commission, all master sign plans shall be recorded with the Weld or Larimer County recorder's office and shall constitute a covenant

and must be complied with by all owners, proprietors, lessees or assigns, whether current or future. No substantial variation from the plan shall be permitted without the Planning and Zoning Commission's approval. Approval procedures under this provision shall be subject to those requirements for a conditional use, as set forth in this Zoning Ordinance.

(Ord. 682, § 1, 2001)

Sec. 16-368. Prohibited signs.

The following signs are prohibited:

- (1) Any sign which would violate sight distance triangle requirements.
- (2) Any nonpublic sign on the right-of-way or on a property other than that which it advertises.
- (3) Any sign which, even though in general conformance with the standards and requirements of this sign code, is a dangerous sign due to interference with a traffic control device by being in direct line between the control device and oncoming traffic or otherwise in visual competition with a traffic control device or resembling a traffic control device.
- (4) Any sign that is erected in such a location as to interfere with motor vehicle traffic.
- (5) Any sign employing a lighting or control mechanism which causes radio, radar, television, or telecommunication interference.
- (6) Any sign so erected, constructed or maintained as to obstruct or be attached to any fire escape, window, door or opening used as a means of egress or ingress or for firefighting purposes, or any sign so placed as to interfere with any opening required for light or ventilation.
- (7) Flashing, blinking or other moving signs and searchlights/klieg lights.
- (8) Animated signs, including revolving, whirling, twirling or any other sign which uses motion, either implied or actual, except that barber poles (not exceeding five (5) feet in length which are not roof-mounted), windmills and time and temperature signs are permitted.
- (9) Structurally unsafe signs as determined by the chief building official, based upon criteria established in the adopted Town codes regulating same.
- (10) Roof signs.
- (11) Wheeled advertising devices, except for currently licensed, operative vehicles which are primarily used by their owners for service, delivery or general transportation on a regular basis.
- (12) Any merchandise displayed outside of a building in such a way as to attract attention when viewed by the general public by placement upon a pole, a fence, a platform, roof or other similar device or structure shall be considered as a sign and shall be prohibited unless otherwise approved by the Planning and Zoning Commission. This shall not, however, be construed to prohibit merchandise customarily stored outside of buildings and placed upon shelves or tables, such as automobiles, campers, boats, plant materials, produce or lumber.
- (13) Any sign regulated by the State of Colorado Department of Transportation rules and regulations pertaining to outdoor advertising not approved by the CDOT.

(Ord. 682, § 1, 2001)

Sec. 16-369. Supersession.

If the terms and provisions of this Article conflict with other Town Municipal Code requirements, the most stringent shall apply.

(Ord. 682, § 1, 2001)

Sec. 16-370. Enforcement and penalties.

- (a) A person who violates the requirements of this Section shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of not more than one (1) year, or by both such fine and imprisonment.
- (b) Specific authority is granted to the enforcement officer to remove, or have removed, the following signs:
 - (1) Signs which are prohibited as stated in this Article;
 - (2) Unlawful temporary or portable signs as defined in this Article.

(Ord. 682, § 1, 2001; Ord. 2005-730 §1)

Secs. 16-371—16-390. Reserved.

CHAPTER 17 Subdivisions

ARTICLE I - Purpose; Definitions

ARTICLE II - Applicability of Regulations

ARTICLE III - Variances and Modifications

ARTICLE IV - Dedication and Reservation of Land

ARTICLE V - Subdivision Procedure

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ARTICLE VII - Design Standards

ARTICLE VIII - Required Improvements

ARTICLE IX - Planned Unit Development

ARTICLE X - Local Improvement Districts

ARTICLE XI - Oil and Gas Exploration and Production

ARTICLE XII - Impact Fees

ARTICLE XIII - Vested Property Rights

ARTICLE XIV - Flood Damage Prevention

ARTICLE XV - Street Maintenance Fees

ARTICLE I Purpose; Definitions

[Sec. 17-1. Declaration of purpose.](#)

[Sec. 17-2. Definitions.](#)

[Secs. 17-3—17-10. Reserved.](#)

Sec. 17-1. Declaration of purpose.

- (a) The following regulations have been prepared and enacted in accordance with Section 31-23-101, *et seq.*, C.R.S., for the purpose of promoting the health, safety and general welfare of the present and future inhabitants.
- (b) To these ends, such regulations are intended to assure efficient circulation, adequate improvements, sufficient open space and basic order in subdivision design by providing for the proper arrangement of streets in relation to other existing or planned streets; for adequate and convenient open spaces for traffic circulation, utilities, emergency access, recreation, light and air; for the avoidance of population

congestion; and for the establishment of standards for the design and construction of improvements herein required.

(Prior code Appx. C, § I)

Sec. 17-2. Definitions.

(a) The language set forth in the text of this Article shall be interpreted in accordance with the following rules of construction:

- (1) The singular number includes the plural and the plural the singular.
- (2) The present tense includes the past and future tenses, and the future the present.
- (3) The word *shall* is mandatory, while the word *may* is permissive.
- (4) The masculine gender includes the feminine and neuter.

(b) The following words and terms, wherever they occur in this Article shall be construed as herein defined:

Block means a parcel of land bounded on all sides by a street or streets.

Comprehensive plan means a plan for guiding and controlling the physical development of land use and circulation facilities and any amendment or extension of such a plan.

Consumer means any person contacted as a potential purchaser, lessee or renter as well as one who actually purchases, leases or rents property in the subdivision.

Dedication means a grant by the owner of a right to use land to the public in general involving a transfer of property rights and an acceptance of the dedicated property by the appropriate public agency.

Easement means a dedication of land for a specified use, such as providing access for maintenance of utilities.

Lot means a parcel of land intended for transfer of ownership or building development, having its full frontage on a public street.

Person means an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership. The word *person* also means a municipality or state agency.

Plat means a map, drawing or chart upon which the subdivider presents proposals for the physical development of a subdivision, and which he or she submits for approval and intends to record in final form.

Reservation means a legal obligation to keep property free from development for a stated period of time, not involving any transfer of property rights.

Rights-of-way means the width between property lines of a street.

Street means a way for vehicular traffic, further classified and defined as follows:

- a. Arterial streets are those which permit the relatively rapid and unimpeded movement of large volumes of traffic from one (1) part of the community to another.
- b. Collector streets are those which collect traffic from local streets and carry it to arterial streets or to local traffic generators such as neighborhood shopping centers and schools. Collector streets include the principal entrance streets to a residential development, those streets linking such adjacent developments, and those streets providing circulation within such developments.

- c. Local streets are those used primarily for direct access to properties abutting the right-of-way. Local streets carry traffic having an origin or destination within the development and do not carry through traffic.

Subdivider or developer means any person, individual, firm, partnership, association, corporation, estate, trust or any other group or combination acting as a unit, dividing or proposing to divide land so as to constitute a subdivision as herein defined, including any agent of the subdivider.

Subdivision means:

- a. The division of a parcel of land into two (2) or more parcels, sites or lots for the purpose, whether immediate or future, of transfer of ownership or building development, provided that the division of land into parcels of more than five (5) acres which does not involve the creation of any new streets or easements of access shall be exempted; or
- b. The improvement of one (1) or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets, except private streets serving industrial structures; the division or allocation of land as open spaces for common use by owners, occupants or lease holders or as easements for the extension and maintenance of public sewerage, water, storm drainage or other public utilities or facilities.

(Prior code Appx. C, § X)

Secs. 17-3—17-10. Reserved.

ARTICLE II Applicability of Regulations

[Sec. 17-11. Control.](#)

[Sec. 17-12. Jurisdiction.](#)

[Sec. 17-13. Fees.](#)

[Sec. 17-14. Interpretation.](#)

[Secs. 17-15—17-30. Reserved.](#)

Sec. 17-11. Control.

These regulations shall be held to be minimum requirements and shall apply to those subdivisions of land where streets are constructed to give access to newly created lots. Any and all such subdivisions shall be submitted in the form of plats or plans to the Planning Commission and the Board of Trustees for their approval or disapproval. The dedication to public use of any street, utility system or site shall also be governed by these regulations. No final plat on a subdivision shall be approved and accepted by the Board of Trustees unless it conforms to this Chapter.

(Prior code Appx. C, § II[1])

Sec. 17-12. Jurisdiction.

The territory within which these regulations are applicable shall include all land located within the legal boundaries, and all land located within three (3) miles of the corporate limits and not located in any other municipality for purposes of control with reference to the plan for major streets only.

(Prior code Appx. C, § II[2])

Sec. 17-13. Fees.

- (a) There shall be required a fee for each plat submitted for approval. The following fees shall be paid at the time of submission of such plats to the Planning Commission:
- (1) Preliminary plat and final plat: engineer's study of preliminary and final plats, five hundred dollars (\$500.00).
 - (2) All plats an additional twenty-five dollars (\$25.00) for each filing.
 - (3) Recording fee required by the County Clerk and Recorder.
- (b) The subdivider shall pay all fees as specified prior to approval of the final plat by the Planning Commission.

(Prior code Appx. C, § II[3]; Ord. 463, § 1, 1991; Ord. 491, 1994)

Sec. 17-14. Interpretation.

On the interpretation and application of the provisions of this Chapter, the following shall govern:

- (1) The provision herein contained shall be regarded as minimum requirements for the protection of the public health, safety and welfare.
- (2) Whenever a provision of this Chapter and any provision in any other law of the Town cover the same subject matter, whichever is the most restrictive or imposes the higher standard or requirement shall govern.

(Prior code Appx. C, § XI[2])

Secs. 17-15—17-30. Reserved.

ARTICLE III Variances and Modifications

[Sec. 17-31. Procedure.](#)

[Sec. 17-32. Criteria for grant of variances or modifications.](#)

[Sec. 17-33. Conditions.](#)

[Secs. 17-34—17-50. Reserved.](#)

Sec. 17-31. Procedure.

Applications for variances or modifications of these regulations shall be submitted to the Planning Commission. Such application shall include a statement setting forth the nature and extent of the requested variance or modification, together with evidence supporting the need for such variance.

(Prior code Appx. C, § IX[1])

Sec. 17-32. Criteria for grant of variances or modifications.

Hardship: Where the Planning and Zoning Commission and the Board of Trustees find that extraordinary hardships may result from strict compliance with these regulations, they may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variance is based on a finding that unusual topography or other exceptional conditions not caused by the subdivider make such variance necessary; and that the granting thereof will not have the effect of nullifying the intent and purpose of these regulations.

(Prior code Appx. C, Sec IX[2])

Sec. 17-33. Conditions.

In granting variances and modifications, the Planning and Zoning Commission and the Board of Trustees may require such conditions as will, in their judgment, secure substantially the objectives of the requirements and standards so varied or modified.

(Prior code Appx. C, § IX[3])

Secs. 17-34—17-50. Reserved.

ARTICLE IV Dedication and Reservation of Land

[Sec. 17-51. Dedication.](#)

[Sec. 17-52. Reservation.](#)

[Sec. 17-53. School site dedication.](#)

[Secs. 17-54—17-60. Reserved.](#)

Sec. 17-51. Dedication.

- (a) Dedication of land, free of all liens and encumbrances, for park and recreation areas shall be required in each new subdivision or other designation. The subdivider shall allocate and convey no less than ten percent (10%) of the gross land area, exclusive of streets, alleys and utility easements, of the proposed subdivision for such public purposes. Specific sites to be dedicated for parks shall be subject to approval by the Planning and Zoning Commission and Board of Trustees upon consultation with appropriate public agencies having jurisdiction.
- (b) In addition to such conveyance of land as set forth under Subsection (a) above, a park fee of five hundred dollars (\$500.00) per lot shall be collected at the time the building permit is issued from the party obtaining said building permit. Such five-hundred-dollar fee shall be deposited in a special fund to be accounted for separately and used only for improvements to parks and not for land acquisition.

(Prior code Appx. C, § VII[1]; Ord. 492, 1994; Ord. 691 § 1, 2002)

Sec. 17-52. Reservation.

- (a) Reservation by covenant, in lieu of dedication, may be permitted in some cases such as a Planned Unit Development where land is to be used for recreational or amenity purposes by the property owners.
- (b) Reservation of land within a subdivision may be required for the duration of the preliminary plat approval in order to afford the appropriate public agency the opportunity to coordinate its acquisition of public land with the development of the subdivision. An agreement shall be entered into between the subdivider and the public agency regarding the timing and method of acquisition.

(Prior code Appx. C, § VII[2])

Sec. 17-53. School site dedication.

Dedication of land or payments in lieu thereof for school purposes shall be required for each new subdivision or residential land development within the Town. The subdivider or developer shall be required to allocate land or make payments in lieu thereof for the appropriate value in accordance with an agreement entered into between Weld County School District RE-5J and the Town, such payment to be pursuant to the current methodology as indicated in such intergovernmental agreement.

(Ord. 98-589 §1)

Secs. 17-54—17-60. Reserved.

ARTICLE V Subdivision Procedure

[Sec. 17-61. Pre-application procedure.](#)

[Sec. 17-62. Conditional approval of Preliminary Plat.](#)

[Sec. 17-63. Approval of Final Plat.](#)

[Sec. 17-64. Resubdivision procedures.](#)

[Secs. 17-65—17-80. Reserved.](#)

Sec. 17-61. Pre-application procedure.

- (a) Prior to the filing of application for approval of a Preliminary Plat, the subdivider shall submit to the Planning and Zoning Commission an Outline Development Plan as specified in Section 17-81. This procedure shall not require formal application, fee or filing of plat with the Planning and Zoning Commission.
- (b) The Planning and Zoning Commission shall review the Outline Development Plan to determine its general acceptability and compliance with the objectives and standards of these regulations, and shall hold conference with the subdivider to discuss desirable modifications of the plan.

(Prior code Appx. C, § III[1])

Sec. 17-62. Conditional approval of Preliminary Plat.

- (a) Upon formal application, the subdivider shall submit to the Planning and Zoning Commission ten (10) copies of a Preliminary Plat, together with supplementary material as specified in Section 17-82. The Preliminary Plat shall be submitted together with written application for conditional approval at least twenty (20) days prior to the Planning and Zoning Commission meeting at which it is to be considered. Notice of the hearing before the Planning and Zoning Commission shall be posted on the property and published in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing before the Planning and Zoning Commission.
- (b) Upon receipt of the Preliminary Plat, the Planning and Zoning Commission shall transmit copies to public agencies having jurisdiction and utility companies, who shall examine the plan and report their recommendations thereon to the Planning and Zoning Commission.
- (c) The Planning and Zoning Commission shall review the Preliminary Plat for compliance with these regulations and negotiate with the subdivider on the type and extent of improvements to be installed and on modifications deemed advisable.
- (d) Within thirty (30) days following submittal, the Planning and Zoning Commission shall inform the subdivider of its approval or disapproval, stating the conditions of approval, if any, or if disapproved, stating the reasons therefor. The Planning and Zoning Commission shall then forward to the Board of Trustees, for final approval, its recommendations. Any conditions must be met before submittal of a final plat.
- (e) Conditional approval of the Preliminary Plat shall be deemed a tentative expression or approval of the general layout as submitted or modified, pending approval of the Final Plat. The Planning and Zoning Commission shall then forward its recommendations to the Board of Trustees to be considered at a public hearing, and prior to the hearing before the Board of Trustees there shall be given notice by posting on the property and publication in a newspaper of general circulation within the Town at least ten (10) days prior to the hearing.

(Prior code Appx. C, § III[2]; Ord. 569 §1, 1997; Ord. 99-598 §1)

Sec. 17-63. Approval of Final Plat.

- (a) A Final Plat, containing the information specified in Section 17-83, shall be submitted to the Planning and Zoning Commission within twelve (12) months after approval of the Preliminary Plat; otherwise such approval shall become null and void unless an extension of time is applied for and granted by the Planning and Zoning Commission. Notice of the hearing before the Planning and Zoning Commission shall be posted on the property and published in a newspaper of general circulation in the Town at least ten (10) days prior to the hearing before the Planning and Zoning Commission.
- (b) The Final Plat as submitted shall conform substantially with the Preliminary Plat as approved, and may constitute only that portion of the approved Preliminary Plat which the subdivider proposes to record and develop at the time. In the case of partial submission, the approval of the remaining portion of the preliminary plat shall automatically gain an extension of twelve (12) months before another phase of the plat must be submitted in final form.
- (c) Following review, the Planning and Zoning Commission shall act to approve or disapprove the Final Plat, and send its recommendations to the Board of Trustees for its approval or disapproval of the Final Plat. If the Plat is disapproved, the reasons therefor shall be stated in writing and a copy furnished to the subdivider. Prior to such hearing of the Board of Trustees, notice of such hearing shall be posted on the property and published in a newspaper of general circulation within the Town at least ten (10) days prior to the hearing. Only upon approval and recording of the Final Plat, with the County Clerk and Recorder, shall the Town issue building permits for structures within the subdivision.

(Prior code Appx. C, § III[3]; Ord. 99-598 §2)

Sec. 17-64. Resubdivision procedures.

- (a) Resubdivision of land or changes to a recorded plat shall be considered a subdivision, and it shall comply with these regulations, with the following exceptions. Lot lines may be revised from those shown on the recorded plat, provided that in making such changes:
 - (1) No lot or parcel of land shall be created or sold that is less than the minimum requirements for area or dimension as established by these regulations, the zoning ordinance or other applicable regulations or ordinances;
 - (2) Drainage easements or rights-of-way reserved for drainage shall not be changed, unless supported by complete engineering data;
 - (3) Street locations and street rights-of-way shall not be changed; and
 - (4) The plat shall not be altered in any way which will adversely affect the character of the plat filed.
 - (5) For a lot line adjustment meeting the foregoing requirements, an administrative review by the Town Planner without a formal hearing shall be sufficient. A revised plat with signatures of both the Town Planner and the Mayor shall be filed and recorded with the records of the County Clerk and Recorder.
- (b) A copy of all final plat revisions shall be resubmitted to the Planning and Zoning Commission and the Board of Trustees for their review.
- (c) Where the resubdivision complies with the appropriate requirements of these regulations, a plat indicating the resubdivision shall be submitted to the Planning and Zoning Commission and the Board of Trustees for their endorsements, prior to the filing of such plat with the County Clerk and Recorder. Such plats shall specifically indicate the revisions being made compared to the previously recorded plat.

(Ord. 567 §1, 1997; Ord. 99-610 §1)

Secs. 17-65—17-80. Reserved.

ARTICLE VI Plats and Data

[Sec. 17-81. Outline Development Plan and data.](#)

[Sec. 17-82. Preliminary Plat and data.](#)

[Sec. 17-83. Final Plat and data.](#)

[Secs. 17-84—17-100. Reserved.](#)

Sec. 17-81. Outline Development Plan and data.

The Outline Development Plan and data shall contain the following information presented in generalized and schematic form:

- (1) Location map: The location map shall be prepared on a published sheet map or zoning map and shall indicate clearly the relationship of the proposed subdivision to the surrounding area within one-quarter (¼) mile of the subdivision's boundaries. The map shall show existing development including major streets, existing public sewers, public water supply and storm drainage systems; major land use concentration; principal places of employment; community facilities such as schools and parks; zoning on and adjacent to the tract; school districts, taxing districts and other

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special districts, if any. The location map shall include a title, scale, total acreage of the tract, north arrow and date. Scale not less than 1" = 600 feet.

- (2) Sketch plan: The sketch plan may be a free-hand drawing at suitable scale not less than 1" = 200 feet, in a legible medium, and shall clearly show the following: the proposed layout of streets and lots in relation to topographic conditions and natural landscape features on the site; the proposed location and extent of major open spaces and public sites; general locations of utilities, easements and installations; proposed land uses; and indication of building types, with approximate location of major buildings exclusive of single-family residential dwellings.
- (3) General development information: This information shall describe or outline the existing conditions of the site and the proposed development as necessary to supplement the drawings required in Subsections (1) and (2) above, and shall include information on existing covenants, land characteristics and information describing the development proposal, such as number of residential lots or dwelling units, typical lot width and depth, price ranges of lots and dwelling units, proposed protective covenants, proposed utilities and street improvements.

(Prior code Appx. C, § IV[1])

Sec. 17-82. Preliminary Plat and data.

- (a) The Preliminary Plat may be drawn with scaled dimensions and need not be an engineering drawing with calculations or dimensions and survey closures. The Preliminary Plat shall be prepared at a scale of not less than 1" = 100'; shall show all existing conditions required in Section 17-81, and shall contain all information including but not limited to that required below:
 - (1) Outer boundary lines of the tract.
 - (2) Location and dimensions of all existing streets, alleys, utility easements, drainage areas, irrigation ditches and laterals and all other significant features.
 - (3) Proposed streets on and adjacent to the tract; name, right-of-way width and location; type, width and elevation of surfacing; curbs, gutters, sidewalks and culverts.
 - (4) Lot lines, lot numbers and block numbers.
 - (5) Location, dimensions and purpose of all other proposed easements and rights-of-way to be reserved or dedicated for public use, such as schools, parks, playgrounds, etc.
 - (6) Location and acreage of sites, if any, for multi-family dwellings, shopping centers, community facilities, industry or other use exclusive of single-family dwellings.
 - (7) Site data, including number of residential lots and typical lot size.
 - (8) Name of proposed subdivision; names and addresses of owners, subdividers, designers and engineers; date; scale; north arrow; and legal description of tract.
- (b) A drainage plan shall be submitted along with the Preliminary Plat and shall show all information including but not limited to that required below:
 - (1) A topographic map of ground elevations on the tract based on the United States Geological Survey datum plane or an approved datum plane by the Planning Commission showing contours at two (2) foot intervals.
 - (2) A map showing the method of moving storm runoff water through the subdivision. The map should show runoff concentrations in acres of drainage area on each street entering each intersection. (This may be combined with the topographic map.) Flow arrows should clearly show the complete runoff flow pattern at each intersection. For storm drainage facilities not on or adjacent to the tract, indicate the direction and distance to, size and invert elevation or nearest extensions of such utilities.

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- (c) A utilities plan shall be submitted showing:
 - (1) Location and size of existing utilities within and adjacent to the subdivision, including water, sewer, electricity, gas and telephone.
 - (2) Proposed utility system including water mains, fire hydrants, sewers, other utility mains (electricity, gas, telephone) and any other services that shall supply the subdivision. All utilities must be constructed within approved easements.
 - (3) Utility clearance record showing approval by utility companies that service can be supplied (form supplied by Town).
- (d) Supplemental data shall be submitted as follows:
 - (1) Subsurface conditions on the tract; location and results of tests made to ascertain subsurface soil, rock and ground water conditions.
 - (2) Draft of proposed covenants whereby the subdivider proposes to regulate land use in the subdivision and otherwise protect the proposed development.
 - (3) Such additional information as may be required by the Planning Commission in order to determine that the subdivision can be constructed without an adverse effect on the surrounding area, and by reason of its location or design, will not cast an undue burden on public utilities and community facilities.
 - (4) Application for rezoning if required for the development of the subdivision.

(Prior code Appx. C, § IV[2])

Sec. 17-83. Final Plat and data.

- (a) Final Plat: The Final Plat shall be an engineering drawing prepared to normal engineering tolerances of accuracy with calculated rather than scale dimension. The exterior lines of the Final Plat shall join or close. The Plat shall be drawn in permanent ink on reproducible linen or mylar with outer dimensions of twenty-four (24) inches by thirty-six (36) inches and shall be at a scale of 1" = 100'. The Final Plat may constitute the entire approved Preliminary Plat or any logical portion of the approved Preliminary Plat proposed for immediate recording. The Final Plat shall conform to the approved Preliminary Plat and shall include all changes and additions as required by the Planning Commission and shall show the following:
 - (1) Primary control point, description and "ties" to such control points to which all dimensions, angles, bearings and similar data on the plat shall be referred.
 - (2) Tract boundary lines; right-of-way lines of streets, easements and other rights-of-way; property lines of residential lots and other sites; with accurate dimensions, bearings or deflection angles and radii, arcs and central angles of all curves. All dimensions, both linear and angular, shall be determined by an accurate control survey in the field which must balance and close within a limit of one (1) in ten thousand (10,000). No final plat showing plus or minus dimensions will be approved.
 - (3) Total acreage and surveyed legal description of the subdivision.
 - (4) Name and right-of-way width of each street or other right-of-way.
 - (5) Location, dimensions and purpose of any easements.
 - (6) Numbers to identify each block, lot and/or site.
 - (7) Purpose for which sites, other than residential lots, are dedicated or reserved.
 - (8) Location and description of all monuments, both found and set.
 - (9) Names of record owners of adjoining unplatted land.

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- (10) Reference to recorded subdivision plats of adjoining platted land by record name, date and number.
 - (11) Signature and seal of land surveyor registered in the State certifying to the accuracy of the survey and plat, including a statement explaining how bearings, if used, were determined.
 - (12) Signature block for certification of approval by the Planning Commission and Board of Trustees, with signatures by the Chairman of the Planning Commission and the Mayor.
 - (13) Certification of title showing that the applicant is the land owner.
 - (14) Statement by the subdivider dedicating streets, rights-of-way, easements and public sites.
 - (15) Title under which the subdivision is to be recorded, scale, north arrow and date.
- (b) Other documents required at the time of submission of the Final Plat shall be:
- (1) Complete engineering plans and specifications for all public facilities to be installed, including water and sewer utilities, streets and related improvements, bridges and storm drainage.
 - (2) Agreements made with ditch companies when needed.
 - (3) Clearance record showing approval by the Health Department and utility companies (form supplied by Town).
 - (4) A financial statement, a copy of which shall be available for public inspection at Town Hall and shall include:
 - a. Name and address of each person having an interest in the subdivision or development and the extent of such interest.
 - b. A statement of the condition of the title to the land comprising the subdivision or development, including all encumbrances, deed restrictions and covenants applicable thereto.
 - c. A statement of the general terms and conditions including the range of selling prices or nets at which it is proposed to dispose of lots, dwellings or structures.
 - d. In the case of a subdivision development or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrances and the steps, if any, taken to protect the purchase in such eventuality.
 - e. Copies of all forms of conveyance to be used in selling or leasing lots, dwellings or structures.
 - f. Such certified and uncertified financial statements of the developer as the Planning Commission and Board of Trustees may require and such other information, documents and certifications as the Commission and Board of Trustees may require as being reasonably necessary or appropriate for the protection of consumers.
 - (5) A performance bond drawn and posted in favor of the Town, which bond shall be of sufficient amount to assure completion of all required improvements.
 - (6) Protective covenants in form for recording.
 - (7) Such other certificates, affidavits, endorsements or deductions as may be required by the Planning Commission or Board of Trustees in the enforcement of these regulations.

(Prior code Appx. C, § IV[3])

Secs. 17-84—17-100. Reserved.

ARTICLE VII Design Standards

[Sec. 17-101. General site considerations.](#)

[Sec. 17-102. Streets.](#)

[Sec. 17-103. Utility easements.](#)

[Sec. 17-104. Blocks.](#)

[Secs. 17-105—17-110. Reserved.](#)

Sec. 17-101. General site considerations.

- (a) A proposed subdivision shall be in general compliance with respect to adequate dedication and/or reservation of major street rights-of-way, major utility easements and open spaces for schools and recreation areas.
- (b) A proposed subdivision shall not, by reason of its location or design, cast an undue burden on public utility systems and community facilities on or adjacent to the tract. Where extension and enlargement of public utility systems and community facilities is necessary, the subdivider shall make provision to off-set higher net public cost or earlier incursion of public cost necessitated by the subdivision. Due consideration shall be given to the difference between anticipated public costs of installation, operation and maintenance and anticipated public revenue derived from the fully developed subdivision in determining added net public cost.
- (c) No land shall be subdivided in areas where soil, subsoil or flooding conditions are a potential danger to health and safety.
- (d) Drainage areas wherever possible shall be left in a natural state, and no encroachment shall be made on the natural channel. Multiple use of drainage and park facilities as, for example, through use of retention ponds is encouraged. A plan to prevent water pollution shall be submitted and adhere to wherever any modification of topography is required during construction within one hundred (100) feet of any stream, ditch or drainage channel.
- (e) Provision shall be made to preserve groves of trees, streams, unusually attractive topography and other desirable natural landscape features. Provision shall be made for the perpetual maintenance of such features through private covenants or other means acceptable to the Planning Commission and Board of Trustees.
- (f) A proposed subdivision shall be designed in such manner as to be coordinated with adjoining subdivisions with respect to the alignment of street rights-of-way and utility and drainage easements and open spaces.
- (g) Where a subdivision borders a railroad right-of-way, freeway or arterial street, a landscaped buffer area shall be provided for adequate reduction of noise.

(Prior code Appx. C, § V[1])

Sec. 17-102. Streets.

- (a) Arrangement of streets:

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- (1) The arrangement, extent, width, type and location of all streets shall be designed in relation to existing or planned streets, to topographic conditions, to public convenience and safety, and to the proposed use of land to be served.
 - (2) Local streets shall be arranged so that their use by through traffic will be discouraged.
 - (3) Arterial streets shall not be intersected by local streets. Collector streets shall not intersect arterial streets at intervals of less than one thousand three hundred twenty (1,320) feet.
 - (4) Streets shall be extended to the boundaries of the property, except where such extension is prevented by topography or other physical conditions, or where the connection of streets with existing or probable future streets is deemed unnecessary for the advantageous development of adjacent properties.
 - (5) Where future extension of a street is anticipated, a temporary turn-around having a minimum outside diameter of eighty (80) feet shall be provided.
- (b) Closed-end streets:
- (1) The maximum allowable length of closed-end streets in single-family residential and multi-family residential developments shall be six hundred (600) feet.
 - (2) Closed-end streets shall be provided with circular turnarounds having a minimum outside right-of-way diameter of one hundred twenty (120) feet, and a minimum pavement diameter of ninety (90) feet.
- (c) Intersection. Streets shall intersect at right angles.
- (d) Half streets. The dedication of a half street shall not be accepted unless:
- (1) The subdivider obtains for the Town a dedication from the abutting landowner of the other one-half (½) of the street; and
 - (2) The subdivider obtains from the abutting landowner an agreement in a form satisfactory to the Town which guarantees the cost of the improvements and construction of the same on the half street within a time suitable to the Town; and
 - (3) The subdivider guarantees the construction of the improvements on the half street which he or she is dedicating.
- (e) Perimeter streets. When the plan dedicates a street which ends on the plat or is on the perimeter of the plat, the subdivider shall convey the last foot of the streets on the terminal end or outside border of the plat to the Town in fee simple and such shall be designated as outlets; the Town shall put the same to public use for public road and access purposes when, within its sole and absolute discretion, it deems advisable.
- (f) Right-of-way, pavement and sidewalk widths shall be as follows:

Minimum widths in feet, by street type:

<i>Type</i>	<i>Right-of-way</i>	<i>Pavement</i>	<i>Sidewalk</i>
Arterial	100	48 (divided)	5
Collector	80	40*	5
Local	60	36*	4
Alley	20	15	—

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* Measured from flow line of gutter to flow line of gutter.

(g) Horizontal alignment:

(1) Where street centerlines deflect from each other at any point by more than fifteen degrees (15°), they shall be connected by horizontal curves having minimum radii as follows:

Local streets	100 feet
Collector streets	200 feet
Arterial streets	400 feet

(2) A tangent not less than one hundred (100) feet long shall be provided between reverse curves on collector and arterial streets.

(3) Cross streets which cannot be directly aligned at intersections shall be separated by a horizontal offset of not less than one hundred twenty-five (125) feet between centerlines, provided that this requirement shall not apply to the alignment of short, opposing closed-end streets.

(h) Vertical alignment:

(1) No vertical grade shall be less than two-tenths percent (0.2%) in order to facilitate adequate drainage.

(2) Maximum percent of street grade, except as provided below*:

Local streets	8%
Collector streets	7%
Arterial streets	5%

* ;hg;Where a horizontal curve occurs on a grade of over five percent (5%), the maximum allowable percent of grade on the curve shall be reduced by five-tenths percent (0.5%) of each fifty (50) feet that the curve radius is less than four hundred (400) feet.

*;hg;Streets grades shall not exceed four percent (4.0%) for a distance extending at least forty (40) feet in each direction from a street intersection.

- (i) Street names. Names of new streets shall not duplicate names of existing streets, provided that new streets which are extensions of, or which are in alignment with, existing streets shall bear the names of such streets.

(Prior code Appx. C, § V[2])

Sec. 17-103. Utility easements.

- (a) Where necessary for installation and maintenance of utility systems, easements of at least ten (10) feet in width shall be reserved along rear lot lines, or at other locations which will not interfere with the siting of buildings.
- (b) Where a subdivision is traversed by a water course, drainage way or stream, there shall be provided a perpetual drainage easement conforming substantially with the lines of such water course, and of such width as necessary and adequate to carry off the predictable volume of storm water drainage from a twenty-five (25) year frequency storm.
- (c) In general, utility systems shall be arranged and located in such manner as to avoid cross connections, minimize trenching and adequately separate incompatible systems.

(Prior code Appx. C, § V[3])

Sec. 17-104. Blocks.

- (a) Lot size, width, depth, shape, orientation and minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated, and shall facilitate the placement of buildings with sufficient access, outdoor space, privacy and view.
- (b) Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for off-street parking, landscaping and loading areas required by the type of use and development contemplated.
- (c) Corner lots for residential use shall have extra width to accommodate the required building setback line on both street frontages.
- (d) Each lot shall be provided with satisfactory access to an existing public street.
- (e) Double frontage and reverse frontage lots shall not be permitted except where essential to provide separation of residential properties from arterial streets or commercial uses, or to overcome specific disadvantages of topography and orientation.
- (f) A planting screen easement, across which there shall be no right of access, shall be provided along the property line of lots abutting an arterial street. A statement dissolving right of access from individual lots to the arterial street shall be included with the Final Plat.
- (g) Insofar as is practical, side lot lines shall be at right angles to straight streets and radial to curved streets.

(Prior code Appx. C, § V[4])

Secs. 17-105—17-110. Reserved.

ARTICLE VIII Required Improvements

[Sec. 17-111. General regulations.](#)

[Sec. 17-112. Street improvements.](#)

[Sec. 17-113. Public improvements required.](#)

[Secs. 17-114—17-130. Reserved.](#)

Sec. 17-111. General regulations.

- (a) The subdivider or developer shall enter into an agreement with the Town to guarantee construction of all required improvements, including streets, curbs and gutters, driveways, sidewalks, storm drainage system, sanitary sewerage, potable water system, street lights and street trees.
- (b) Under such agreement, the subdivider shall post a performance bond or certified check, which bond or check shall be drawn in favor of the Town in an amount equal to the estimated cost of construction of improvements.
- (c) The performance bond or certified check posted by the subdivider or developer shall not be released until final construction of improvements has been completed, inspected at the subdivider's expense, and approved and accepted by the Town.
- (d) The improvements required by the following subsections shall be provided in each subdivision or development proposed, and to the extent determined by the Planning Commission and Board of Trustees. Required improvements shall be designed in accordance with the detailed design standards and specifications deemed necessary by the Town, and shall be constructed in accordance with the approved plans and profiles and the construction requirements and specifications.
- (e) No improvements shall be made until all plans, profiles and specifications have been reviewed and approved by the Town.

(Prior code Appx. C, § VI[1])

Sec. 17-112. Street improvements.

- (a) Grading: Street right-of-way shall be graded as necessary to provide adequate surface drainage and convenient access to lots or sites.
- (b) Pavement base: The pavement base shall be properly drained and constructed of suitable materials so as to support the contemplated traffic load.
- (c) Pavement: Pavement shall be constructed of asphalt or concrete of sufficient thickness to support the contemplated traffic load. Streets shall be paved to the widths required under Section 17-102(f).
- (d) Alleys: If alleys are provided, they shall be paved.
- (e) Curbs and gutters: All streets shall be provided with concrete curbs and gutters for the pavement edging. Such curbs and gutters shall be designed as an integral part of the pavement.
- (f) Driveways and accessways: Where appropriate to the type of development proposed, driveways or accessways shall be provided for vehicular access to each structure or parking or loading area. Driveways and accessways provided shall be of adequate width constructed with suitable subgrade, base, drainage and surfacing to be durable under the use contemplated.

- (g) Sidewalks and walkways: Sidewalks and walkways shall be provided where necessary or appropriate for the safety and convenience of pedestrians. Width of sidewalks shall be as specified in Section 17-102(f). Sidewalks and walkways shall be durably constructed with all-weather surfacing and shall be adequately lighted and maintained for the use contemplated.
- (h) Street name signs: Easily legible street name signs shall be installed at street intersections or as necessary for convenient identification of streets.

(Prior code Appx. C, § VI[2])

Sec. 17-113. Public improvements required.

- (a) Sanitary sewerage system. The sanitary sewerage system shall be connected to an existing public sanitary sewer system and shall consist of a closed system of sanitary sewer mains and lateral branch connections to each structure or lot upon which a structure is to be built. The sanitary sewerage system shall be of sufficient size and design to collect all sewage from all proposed or probable structures within the subdivision or development.
- (b) Potable water system. The potable water system provided shall connect to an existing public water system and shall consist of water mains directly connected to using structures by means of lateral branches. The water system shall be of sufficient size and design to supply potable water to each structure or lot upon which a structure is to be built.
- (c) Fire hydrants. Fire hydrants shall be installed at street intersections and at other points as necessary to assure that no building is located more than five hundred (500) feet from the nearest fire hydrants.
- (d) Underground electric power and telephone distribution systems:
 - (1) Electric power and telephone connections and wire shall be placed below the surface of the ground in raceways and conduits or other acceptable means. Transformers, switching bases, terminal boxes, meters cabinets, pedestal ducts and other facilities necessarily appurtenant to such underground connections shall not be located on power poles, but shall be placed on or under the surface of the ground and, where placed on the surface, shall be adequately screened and fenced as necessary for safety and concealment.
 - (2) Electrical transmission and distribution feeder lines and communication trunk and feeder lines may be placed above ground.
- (e) Street lights. Ornamental street lighting and associated underground street lighting supply circuits shall be installed. The minimum requirement shall be seven thousand (7,000) lumen lamps at a maximum spacing of four hundred (400) feet. The street lighting plan specifying the number, kind and approximate location of street lights must be included on the Final Plat.
- (f) Street trees. One (1) tree of one-and-one-half-inch caliper shall be provided for each lot of seventy-foot frontage or less and at least two (2) trees for every lot in excess of seventy-foot frontage. For corner lots, at least one (1) tree shall be required for each street. The trees shall be located so as not to interfere with sight distance at driveways. The Planning and Zoning Commission shall furnish a list of acceptable trees. Street trees shall be installed in conjunction with the issuance of a building permit and prior issuance of a certificate of occupancy, or a certificate from a local nursery must be provided the homeowner with a copy to the Building Inspector.
- (g) Reference monuments. Permanent reference monuments of stone or concrete, at least thirty-six (36) inches in length and six (6) inches square or round with suitable center point, shall be located and placed within the subdivision or development as required by the Town Council. Iron pin monuments at least twenty-four (24) inches long and flush with the surface shall be placed at all points on boundary lines where there is a change in direction, at all block and lot corners, and at other points as required by the Town Council.
- (h) Maintenance of required improvements. Adequate provisions for the satisfactory maintenance of streets and utilities improvements, including easements, shall be made by dedication of such

improvements to the Town. Prior to acceptance by the Town, the improvements to be dedicated shall be inspected and approved by the Town Council or its authorized representatives.

(Prior code Appx. C, § VI[3]; Ord. 505, 1995; Ord. 506, 1995; Ord. 552 §1, 1996; Ord. 99-614 §1; Ord. 689, 2002; Ord. 2005-739 §1)

Secs. 17-114—17-130. Reserved.

ARTICLE IX Planned Unit Development

[Sec. 17-131. Intent.](#)

[Sec. 17-132. Procedure.](#)

[Sec. 17-133. Requirements.](#)

[Secs. 17-134—17-150. Reserved.](#)

Sec. 17-131. Intent.

Planned Unit Development is provided in order to minimize the environmental impact of urban development, to enable the subdivider to make more efficient use of the site by minimizing grading and reducing the amount of land needed for streets and utilities, and to provide the consumer a wider choice of housing types and amenities.

(Prior code Appx. C, § VIII[1])

Sec. 17-132. Procedure.

The procedure for preparing, processing and presenting a Planned Unit Development shall be the same as that specified for all subdivision of land in this Chapter except that there shall be no partial submission of a Final Plat. The Zoning procedures and requirements of Article XVII of Chapter 16 must be met.

(Prior code Appx. C, § VIII[2])

Sec. 17-133. Requirements.

The Planned Unit Development is intended to allow originality in the planning of a community development by relaxing the minimum and maximum requirements set forth in this Chapter. It will be expected that development under the Planned Unit Development will provide for maintained open spaces and recreational areas, safety features for pedestrian and vehicular traffic, elimination of unsightly uniformity and conservation of natural features.

- (1) The following requirements as set forth in Chapter 16 can be modified as established by the Planned Unit Development plan, subject to the approval by the Planning Commission and Board of Trustees:
 - a. Minimum lot area;
 - b. Minimum lot width;

- c. Minimum setback; and
 - d. Minimum offset.
- (2) The following additional requirements are established for Planned Unit Development:
- a. Maximum building height not to exceed thirty-five (35) feet.
 - b. Maximum density of residential units shall be twelve (12) units per acre or less if the Planning Commission so requires. A requirement of a density less than twelve (12) units per acre must be based on the proposed land use plan.
 - c. Minimum common open space shall be thirty percent (30%) of the gross acreage of the site.
 - d. Unified ownership of site.
 - e. Where uses other than residential are proposed:
 - 1. Architectural elevations at a scale of not less 1/8 " = 1' for all nonresidential structures.
 - 2. Size, type and location of all signs, other than street signs.
 - f. Covenants specifying how common areas are to be maintained.

(Prior code Appx. C, § VIII[3])

Secs. 17-134—17-150. Reserved.

ARTICLE X Local Improvement Districts

[Sec. 17-151. Authority to establish.](#)

[Sec. 17-152. Petition required.](#)

[Sec. 17-153. Contents of petition.](#)

[Sec. 17-154. Defects in and duplicates of petition.](#)

[Sec. 17-155. Bond.](#)

[Sec. 17-156. Hearing on petition.](#)

[Sec. 17-157. Notice of petition.](#)

[Sec. 17-158. Board of Trustees determination of electors and assessments; dismissal of petition.](#)

[Sec. 17-159. Approval of petition.](#)

[Sec. 17-160. Appeal of Board of Trustees finding.](#)

[Sec. 17-161. Filing of ordinance establishing district.](#)

[Sec. 17-162. Organization, powers and authority in compliance with state law.](#)

[Sec. 17-163. Election required on indebtedness.](#)

[Sec. 17-164. Requirements for the ordinance creating indebtedness.](#)

[Secs. 17-165—17-180. Reserved.](#)

Sec. 17-151. Authority to establish.

The Board of Trustees shall have the authority to establish improvement districts in the Town for the purpose of constructing or installing therein any public improvements, including parking and off-street parking facilities but excepting light or gas systems or plants.

(Prior code 15-1)

Sec. 17-152. Petition required.

- (a) The organization of a district under this Chapter must be initiated by petition which is to be filed with the Town Clerk. The petition must be signed by no less than a majority of the taxpaying electors owning real or personal property in the proposed district having an assessed value of not less than one-half ($\frac{1}{2}$) of the value of all real and personal property in the district. In addition to the required signature, there must be:
- (1) Address of the residence of the signer.
 - (2) Address or property description of the property within the proposed district if it is different than the residence of the signer.
 - (3) Date of signing.
- (b) After the filing of a petition, no petitioner shall be permitted to withdraw his or her name therefrom.

(Prior code 15-2)

Sec. 17-153. Contents of petition.

The petition required by Section 17-152 must contain:

- (1) The name of the proposed district, which shall include the name of the Town, a descriptive name or number and the words *general improvement district*.
- (2) A general description of the improvement to be constructed.
- (3) The estimated cost of the proposed improvement.
- (4) A general description of the boundaries of the district, with sufficient specificity that the property owners will be able to determine if they are located within the district.
- (5) The names of three (3) taxpaying electors who will represent the petitioners and who will have the power to enter into agreements relating to the organization of the district.
- (6) A prayer for the organization of the district.

(Prior code 15-3)

Sec. 17-154. Defects in and duplicates of petition.

Defects in the petition required by Section 17-152 will not be grounds for dismissal and the Board of Trustees shall allow any petition that is filed to be amended to correct such defects. If similar or duplicate petitions are filed, they shall be regarded as one (1) petition.

(Prior code 15-4)

Sec. 17-155. Bond.

At the time of filing the petition required by Section 17-152 or at any time prior to the hearing on the petition, a bond shall be filed with security approved by the Board of Trustees or cash sufficient to pay all expenses connected with the proceedings in case the organization of the district is denied. If the Board of Trustees should determine that the bond is insufficient, an additional bond or cash may be required within a time to be fixed by the Board of Trustees, not less than ten (10) days distant. Upon failure of the petitioner to file or deposit the required bond or cash, the petition shall be dismissed.

(Prior code 15-5)

Sec. 17-156. Hearing on petition.

After the filing of the petition as provided in this Chapter, the Board of Trustees shall fix a place and time, not less than twenty (20) days nor more than forty (40) days after the petition is filed, for a hearing thereon.

(Prior code 15-6)

Sec. 17-157. Notice of petition.

- (a) The Town Clerk shall publish notice of the pendency of the petition filed under the provisions of this Chapter, of the purposes and boundaries of the proposed district and of the time and place of the hearing thereon.
- (b) Publication shall be once a week in three (3) consecutive weekly editions of a newspaper of general circulation within the proposed district.
- (c) The Town Clerk shall also mail a copy of the notice to each taxpaying elector in the district at his or her last known address, as disclosed by the tax records of the County.
- (d) The notice of hearing on the petition must set forth the fact that all property in the district is subject to the lien of the indebtedness and must set forth the amount of the proposed indebtedness.

(Prior code 15-7)

Sec. 17-158. Board of Trustees determination of electors and assessments; dismissal of petition.

The Board of Trustees shall make a determination as to the number of taxpaying electors and the assessed valuation of the property in the district. The Board of Trustees shall dismiss the petition and assess the costs against the petition if it is found that:

- (1) The petition is not signed by at least a majority of the taxpaying electors owning property within the district having an assessed value of not less than one-half ($\frac{1}{2}$) of the assessed value of all the real and personal property in the district.
- (2) The proposed improvement will not confer a general benefit on the district.
- (3) The cost of the improvement would be excessive as compared with the value of the property in the district.

(Prior code 15-8)

Sec. 17-159. Approval of petition.

If it appears to the Board of Trustees that the petition for the organization of the district has been duly signed and presented in conformity with this Chapter and the statutes of the State, and that the allegations of the petition are true, the Board of Trustees, by ordinance, shall declare the district organized and give it the corporate name specified in the petition.

(Prior code 15-9)

Sec. 17-160. Appeal of Board of Trustees finding.

The finding of the Board of Trustees on the question of the genuineness of the signatures and all matters of fact incident to such determination shall be final and conclusive on all parties in interest. No appeal, writ or error shall lie from an order the dismissing petition.

(Prior code 15-10)

Sec. 17-161. Filing of ordinance establishing district.

Within thirty (30) days after the district has been declared duly organized, the Town Clerk shall file with the County Clerk and Recorder a copy of the ordinance establishing the district.

(Prior code 15-11)

Sec. 17-162. Organization, powers and authority in compliance with state law.

The organization, powers and authority shall be in accordance with the provisions of Section 31-25-501, *et seq.*, C.R.S.

(Prior code 15-12)

Sec. 17-163. Election required on indebtedness.

Whenever the Board of Directors of any district formed in accordance with this Chapter and state statutes shall determine by ordinance that the interest of the district and the public interest and necessity demand the acquisition, construction, installation or completion of any improvements to carry out the purpose of the district, requires the creation of an indebtedness of twenty-five thousand dollars (\$25,000.00) or more, the proposition for the issuance of such obligations, bonds or other indebtedness must be submitted to the taxpaying electors of the district at an election held for that purpose.

(Prior code 15-13)

Sec. 17-164. Requirements for the ordinance creating indebtedness.

The ordinance creating the indebtedness provided for in Section 17-163 must contain:

- (1) The declaration of public interest and necessity.
- (2) Provisions for the holding of such election.
- (3) The objects and purposes for which the indebtedness is proposed to be incurred.

- (4) The estimated cost of the works or improvements.
- (5) The amount of principal of the indebtedness to be incurred.
- (6) The maximum rate of interest to be paid on such indebtedness.
- (7) The date upon which the election shall be held and the manner for holding the election.
- (8) The method for voting for or against the incurring of the proposed indebtedness.
- (9) The compensation to be paid the officers of the election.
- (10) Designation of the polling places and the officers for each, consisting of three (3) judges, one (1) of whom shall act as Town Clerk for each polling place.

(Prior code 15-14)

Secs. 17-165—17-180. Reserved.

ARTICLE XI Oil and Gas Exploration and Production

[Sec. 17-181. Purpose.](#)

[Sec. 17-182. Definitions.](#)

[Sec. 17-183. Well and tank batteries location and setbacks.](#)

[Sec. 17-184. Floodplain and floodway location restrictions.](#)

[Sec. 17-185. Disposal of drilling mud and exploration and production waste.](#)

[Sec. 17-186. Seismic operations.](#)

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[Sec. 17-191. Visual impact/aesthetics regulation and special impact measures.](#)

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[Sec. 17-194. Reclamation.](#)

[Sec. 17-195. Abandonment and plugging of wells.](#)

[Sec. 17-196. Operations within one-half mile of development.](#)

[Sec. 17-197. Building permit.](#)

[Sec. 17-198. Requirements and procedures.](#)

[Sec. 17-199. Site plan application elements.](#)

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[Sec. 17-204. Reports and inspections.](#)

[Sec. 17-205. Inspection and reporting fees.](#)

[Sec. 17-206. Violation and enforcement.](#)

[Sec. 17-207. Severability.](#)

[Secs. 17-208—17-215. Reserved.](#)

Sec. 17-181. Purpose.

These regulations are enacted to protect and promote the health, safety, morals, convenience, order, prosperity or general welfare of the present and future residents of the Town. It is the Town's intent by enacting these regulations to facilitate the mitigating potential land use conflicts between such development and existing, as well as planned, land uses. It is recognized that under Colorado law the surface and mineral estates are separate and distinct interests in land and that one may be severed from the other. Owners of oil and gas interests have certain legal rights and privileges, including the right to use that part of the surface estate reasonably required to extract and develop their subsurface oil and gas interests, subject to compliance with the provisions of these regulations and any other applicable statutory and regulatory requirements. The State has a recognized interest in fostering the efficient development, production and utilization of oil and gas resources and particularly in the prevention of waste and protection of the correlative rights of common source owners and producers to a fair and equitable share of production profits. Similarly, owners of the surface estate have certain legal rights and privileges, including the right to have the mineral estate developed in a reasonable manner and to have adverse land use impacts upon their property, associated with the development of the mineral estate, mitigated through compliance with these regulations. Local governments have a recognized, traditional authority and responsibility to regulate land use within their Jurisdiction, including use for oil and gas drilling. These regulations are intended as exercise of this land use authority. Should it be established by competent evidence that a proposed oil or gas facility cannot be operated in compliance with these regulations, land use approval for such a facility may be denied.

(Ord. 557, 1997)

Sec. 17-182. Definitions.

- (a) Unless the context specifically indicates otherwise, the meaning of terms used in this Article shall be as follows:

Act shall mean the Oil and Gas Conservation Act of the State.

Commission or *OGCC* shall mean the Oil and Gas Conservation Commission of the State.

Day shall mean a period of twenty-four (24) consecutive hours.

Director shall mean Director of the Oil and Gas Conservation Commission of the State.

Inspector means any person designated by the Town Administrator, who shall have the authority to inspect a well site to determine compliance with this Article and other applicable ordinances of the Town.

Mineral owner means any person having title or right of ownership in subsurface oil or leasehold interest therein.

Operating plan means a general description of a facility identifying purpose, use, typical staffing pattern, seasonal or periodic considerations, routine hours of operating, source of services/infrastructure, any mitigation plans and any other information related to regular functioning of that facility.

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Operator means the person designated by the owner or so lessee of the mineral rights as the operator and identified in Oil and Gas Conservation Commission applications.

Surface owner means any person having title or right of ownership in the surface estate of real property or leasehold interest therein.

Twinning means the drilling of a well adjacent to or near an existing well bore when the said existing well cannot be drilled to the objective depth and/or produced due to an engineering problem such as collapsed casing or formation damage.

Well means a hole drilled into the earth for the purpose of exploring for or extracting oil, gas or other hydrocarbon substances or for purposes of recharging, secondary recovery, storage or disposal.

Wellhead means the mouth of the well at which oil or gas is produced.

Well site means that area surrounding a proposed or existing well or wells, tank and tank batteries, and accessory structures and equipment necessary for the operation of drilling and production activities.

- (b) All terms used herein that are defined in the Act or in Commission regulations and are not otherwise defined in Subsection (a) of this Section shall be defined as provided in the Act or in such regulations.
- (c) All other words used herein shall be given their usual customary and accepted meaning, and all words of a technical nature, or peculiar to the oil and gas industry, shall be given that meaning which is generally accepted in said oil and gas industry.

(Ord. 557, 1997)

Sec. 17-183. Well and tank batteries location and setbacks.

- (a) In all areas of the Town except as provided for in Subsection (b) below, the following shall apply:
 - (1) A wellhead location shall not be established less than three hundred fifty (350) feet from any approved subdivision platted building lot, any occupied building, any proposed building for which a building permit has been issued where the primary use includes regular occupancy, or any building for which a certificate of occupancy has been issued.
 - (2) Production tanks and/or associated on-site production equipment proposed for installation shall be located not less than three hundred fifty (350) feet from any building or building permitted for construction.
 - (3) Wellheads, tank batteries and associated on-site production equipment shall be located not less than one hundred (100) feet from the edge of any public right-of-way. This requirement may be waived as part of the use by special review process at the request of the surface owner if such request is consistent with public safety.
- (b) Where compliance with OGCC spacing rules, regulations or orders makes it impossible for the applicant to meet the setbacks stipulated in Subsection (a) of this Section, the applicant shall not be required to fully meet the above described setbacks to the maximum extent possible within the OGCC spacing regulations and may be required to implement special mitigation measures as described herein.

(Ord. 557, 1997)

Sec. 17-184. Floodplain and floodway location restrictions.

The well and tank battery shall comply with all applicable federal, state and local laws and regulations when located in a floodway or a one-hundred-year floodplain area. All equipment at

production sites located within a floodway or a one-hundred-year floodplain shall be anchored as necessary to prevent flotation, lateral movement or collapse or shall be surrounded by a berm with a top elevation at least one (1) foot above the level of a one-hundred-year flood. Any activity or equipment at any well site within a floodway or a one-hundred-year floodplain shall comply with the Federal Emergency Management Act and shall not endanger the eligibility of residents of the Town to obtain federal flood insurance.

(Ord. 557, 1997)

Sec. 17-185. Disposal of drilling mud and exploration and production waste.

No drilling mud or other drilling fluids shall be disposed of at the drilling site. All exploration and production waste shall be disposed of in accordance with OGCC regulations.

(Ord. 557, 1997)

Sec. 17-186. Seismic operations.

All persons shall comply with all OGCC rules with respect to seismic operations. In addition, the owner or operator shall provide at least fifteen (15) days' advance written notice to the Town Administrator and the Fire District whenever seismic activity will be conducted within the city.

(Ord. 557, 1997)

Sec. 17-187. Signage.

The well and tank battery owner or operator shall comply with all OGCC rules with respect to signage. In addition, the owner or operator shall maintain in good, readable condition all signs required by such OGCC regulations.

(Ord. 557, 1997)

Sec. 17-188. Access roads.

All private roads used to access the tank battery and the wellhead shall be improved and maintained according to the following standards:

- (1) Tank battery access roads. Access roads to tank batteries shall, at a minimum, be:
 - a. A graded gravel roadway at least twenty (20) feet wide and with a minimum unobstructed overhead clearance of thirteen (13) feet six (6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the Town. The aggregate material, at a minimum, shall meet the requirements for Class 6, Aggregate Base Course as specified in the Colorado Department of Highways *Standard Specifications for Road and Bridge Construction*, latest edition.
 - b. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage of waterways (i.e., roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of the pipe shall be subject to approval of the Town.

- c. Maintained so as to provide a passable roadway generally free of ruts.
- (2) No mud or gravel, except minor and nominal amounts, shall be carried onto the Town streets. If mud or gravel is carried onto the Town streets, the owner or operator shall insure that the streets are promptly cleaned.
- (3) No public facilities such as curbs, gutters, pavement, water or sewer lines, etc., shall be damaged by vehicles entering or leaving the site. In the event of damage, the owner and operator, jointly and severally, shall indemnify the Town for any reasonable repair costs.
- (4) All tank battery and wellhead access roads which intersect a paved Town street or alley shall be paved to standards determined by the Town from the existing paved roadway to the edge of the public right-of-way.

(Ord. 557, 1997)

Sec. 17-189. Compliance with state environmental requirements.

Operators shall conform to all current Town, County, state and federal regulations and standards concerning air quality, water quality and noise.

(Ord. 557, 1997)

Sec. 17-190. Noise regulation and special mitigation measures.

- (a) State law and regulations concerning noise abatement (Title 25, Article 12, C.R.S.) shall apply to all operations together with applicable local government ordinances, rules or regulations.
- (b) Exhaust from all engines, motors, coolers and other mechanized equipment shall be vented in a direction away from a buildings certified or intended for occupancy to the extent practicable.
- (c) Special mitigation measures.
 - (1) Where a well or tank battery does not comply with the required setback or other portions of the ordinance codified in this Article or where the well or tank battery is in an area of particular noise sensitivity (for example, near hospitals), additional noise mitigation may be required. In determining noise mitigation, specific site characteristics shall be considered, including but not limited to the following:
 - a. Nature and proximity of adjacent development (design, location, type).
 - b. Prevailing weather patterns, including wind directions.
 - c. Vegetative cover on or adjacent to the site.
 - d. Topography.
 - (2) Based upon the specific site characteristics set forth above, nature of the proposed activity, and its proximity to surrounding development and type and intensity of the noise emitted, some additional noise abatement measures may be required. The level of required mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and/or the level of noise emitted by the well and well site. One (1) or more of the following additional noise abatement measures may be required:
 - a. Acoustically insulated housing or cover enclosing the motor, engine or compressor.
 - b. Vegetative screen consisting of trees and shrubs.
 - c. Solid wall or fence of acoustically insulating material surrounding all or part of the facility.

- d. Noise management plan identifying and limiting hours of maximum noise emissions, type, frequency, and level of noise to be emitted, and proposed mitigation measures.
- e. Lowering the level of pumps or tank battery.
- f. Requirement for electric motors only.

(Ord. 557, 1997)

Sec. 17-191. Visual impact/aesthetics regulation and special impact measures.

(a) Visual impacts and aesthetics.

- (1) To the maximum extent practicable, oil and gas facilities shall be located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings and other landmarks.
- (2) To the maximum extent practicable, oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting.
- (3) To the maximum extent practicable, the applicant shall use structures of minimal size to satisfy present and future functional requirements.
- (4) At all times, the applicant shall attempt to avoid the removal of trees.
- (5) To the maximum extent practicable, the applicant shall locate facilities at the base of slopes to provide a background of topography and/or natural cover.
- (6) The applicant shall replace earth adjacent to water crossings at slopes at an angle, which insures stability for the soil type of the site.
- (7) The applicant shall align access roads to follow existing grades and minimize cuts and fills.
- (8) Facilities shall be painted as follows:
 - a. Uniform, noncontrasting, nonreflective color tones, similar to Munsell soil color coding system.
 - b. Color matched to land, not sky, slightly darker than adjacent landscape.
- (9) Storage tanks and other facilities shall be kept clean and well painted and otherwise properly maintained.

(b) Special mitigation measures. Where a well or tank battery does not comply with the required setback or other portions of the ordinance codified in this Article, or in areas of increased visual sensitivity determined by the Town, the applicant shall submit a visual mitigation plan which shall include but not be limited to one (1) or more of the following standards:

- (1) Exterior lighting shall be directed away from residential areas or shielded from said areas to eliminate glare.
- (2) Construction of buildings or other enclosures may be required where facilities create noise and visual impacts nonmitigable because of proximity, density and/or intensity of adjacent residential land use.
- (3) One (1) or more of the following landscaping practices may be required, on a site specific basis:
 - a. Establishment and proper maintenance of adequate ground covers, shrubs and trees.
 - b. Shaping cuts and fills to appear as natural forms.
 - c. Cutting rock areas to create irregular forms.
 - d. Designing the facility to utilize natural screens.

- e. Construction of fences or walls such as woven wood or rock for use with or instead of landscaping.
- (4) Safety measures. Any well located less than three hundred fifty (350) feet from an occupied building shall be equipped with blowout preventers during drilling.

(Ord. 557, 1997)

Sec. 17-192. Wildlife impact mitigation.

- (a) When one (1) or more wells or tank batteries are located within wildlife sensitive areas as identified by the Town's comprehensive plan, the applicant shall consult with the Division of Wildlife to obtain recommendations for appropriate site specific and cumulative impact mitigation procedures. Site and cumulative impact recommendations shall be submitted for review and comment by the Town, not to exceed the recommendations of the Division of Wildlife.
- (b) Multiple sites. In lieu of a site specific mitigation review for each well and well site, the applicant may submit to the Town a multi-site plan addressing cumulative impacts to wildlife from the estimated total number of facilities.

(Ord. 557, 1997)

Sec. 17-193. Recordation of flow lines.

All flow lines, including transmission and gathering systems, shall have their location recorded with the Weld County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flow lines shall be recorded with the Weld County Clerk and Recorder within thirty (30) days after abandonment.

(Ord. 557, 1997)

Sec. 17-194. Reclamation.

The operator shall comply with all Commission rules with respect to site reclamation. The OGCC Drill Site Reclamation Notice shall be filed with the Town at the same time it is sent to the surface owner.

(Ord. 557, 1997)

Sec. 17-195. Abandonment and plugging of wells.

- (a) The operator shall comply with all OGCC rules with respect to abandonment and plugging of wells.
- (b) Operators of wells which are to be abandoned upon the completion of drilling and not be put into production shall notify the Fire District not less than two (2) hours prior to commencing plugging operations.
- (c) Operators of formerly producing wells shall notify the Fire District not less than two (2) working days prior to removing production equipment or commencing plugging operations.
- (d) The operator shall provide copies of all OGCC plugging and abandonment reports to the Town at the same time they are filed with the OGCC.

(Ord. 557, 1997)

Sec. 17-196. Operations within one-half mile of development.

- (a) Any proposed well or associated equipment, such as tank batteries, located within one-half (½) mile of existing buildings or existing or platted development, as measured from the nearest point of the plat boundary or existing building, shall comply with the following requirements:
- (1) All tank batteries shall be restricted to one (1) site per each one hundred sixty (160) acres wherever practicable.
 - (2) All drilling rigs shall be equipped with blowout preventers.
 - (3) All production wells shall be equipped with automatic control valves on the wellhead which close in the well with a sudden change in pressure.
 - (4) All production wellheads and tank batteries shall be fenced with a fence sufficient for safety and aesthetics.
 - (5) At least fifteen (15) days prior to the first Planning and Zoning Commission meeting to consider a use by special review in any location described in paragraph (1) of this Section, the applicant shall notify by first class mail or hand delivery to all surface land owners within one-half (½) mile of the wellhead and tank battery and adjacent to the surface parcel in which the proposed well is to be located of the proposed well and the date, time and place of the first Planning and Zoning Commission meeting.
 - (6) Except for electrically operated drilling rigs or drilling rigs equipped with enhanced efficiency mufflers on any drilling or workover rig operating within one-half (½) mile of an occupied residential building, the bit and drilling pipe shall not be inserted into or removed from the hole for routine operations such as for bit change or logging, between the hours of 11:00 p.m. and 6:00 a.m. This requirement shall not apply in emergencies. This requirement may be waived by written permission of the occupants of all residential buildings within one-half (½) mile of the drilling site.
 - (7) Wellhead access roads to well-heads located within one-half (½) mile of existing buildings shall meet the construction standards of Section 17-188 of this Chapter.
- (b) Exceptions to the provisions of this Section may granted by the Board of Trustees as part of its resolution granting the use by special review only if the owner or operator demonstrates by a preponderance of evidence that the waiver or variance is necessary to prevent waste or protect correlative rights and can provide equivalent mitigation measures for the standards waived.

(Ord. 557, 1997)

Sec. 17-197. Building permit.

Building permits shall be obtained for all aboveground structures as required by the Town Uniform Building and Fire Codes then in effect.

(Ord. 557, 1997)

Sec. 17-198. Requirements and procedures.

- (a) Proposed new wells, re-drilling and enhanced recovery operations. Within all zone districts, it shall be unlawful for any person to drill a well, reactivate a plugged or abandoned well or perform initial installation of accessory equipment or pumping systems unless a special use permit has first been granted by the Town in accordance with the procedures in the ordinance codified herein, where applicable. The initial special use permit shall allow any twinning of a well and relocation of accessory equipment or gathering and transmission lines so long as the standards in this Article are met. If any twinning of a well or relocation of accessory equipment or gathering and transmission lines occurs,

then not less than thirty (30) days prior to such activity, the operator shall file a revised site plan with the Town depicting any changes from the approved special use permit. When a special use permit has been granted for a well, reentry of such well for purposes of sidetracking, deepening, recompleting or reworking shall not require a special use permit amendment. The granting of such use by special review shall not relieve the operator from otherwise complying with all applicable regulatory requirements of this jurisdiction, the State and United States.

- (b) Inspections. In recognition of the potential impacts associated with oil and gas drilling and well operation in an urban setting, all wells and accessory equipment and structures shall be subject to inspection by inspectors of the Town at all times to determine compliance with applicable provisions of this Article, the Uniform Fire Code, as adopted by the Town, the Uniform Building Code, as adopted by the Town and other applicable Town ordinances and regulations.

(Ord. 557, 1997)

Sec. 17-199. Site plan application elements.

An application for a use by special review pursuant to this Article shall be filed with the Planning and Zoning Commission or other official designated by the Town, and shall include the following information:

- (1) Vicinity Map: application elements.
- a. Location and name (if any) of all existing water bodies and watercourses, including direction of water flow. This information shall be submitted on USGS 7.5 minute series or assessor base maps which indicate topographic detail and will show all existing water bodies and watercourses with a physically defined channel within a four-hundred-foot radius of the proposed well. For any existing water body or watercourse topographically lower and within two thousand (2,000) feet or less from the drill site, a description shall be submitted of proposed methods to be employed to prevent water pollution or contamination of the water body or watercourse.
 - b. Location and type of water supply (rivers, creeks, lakes, ponds, wells and ditches or similar features). This information may be shown on a plat or map or may be a written description. Source of all water to be used in the drilling operation of the proposed wells shall be noted. Also include methods and routes for transporting water to the well site.
 - c. Location of drill site. This information shall be submitted on a plat or map of the section in which the drill site is to be located. The scaled plat of the section will include and clearly show the following information:
 1. All dimensions of the section (north line, south line, west line and east line) as shown on USGS 7.5 minute quadrangle maps.
 2. Location of drill site, given in feet from two (2) lines of the section, e.g. one thousand (1,000) feet from the north line and one thousand six hundred (1,600) feet from the west line.
 3. Township and range information.,
 4. Section number.
 5. Location expressed in appropriate $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ section.
 6. True north arrow.
 7. Parcel tax identification number.
- (2) Site map. This information for the site shall be submitted on a scaled plat or map showing:
- a. Proposed location of the wellhead, tank battery and recorded or unrecorded flow lines associated with the proposed well in the event production is established. Future development

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of the resource shall be considered in the location of the tank battery. Existing tank batteries and flow lines within a half mile radius of the proposed location shall be shown.

- b. Location of layout, including, without limitation, positions of the rig, mud reserve pits, racks and all other structures and equipment.
 - c. True north arrow.
 - d. Any and all existing surface improvements and equipment within one-half (½) mile. Existing subdivisions may be shown by shading or color in lieu of showing any and all existing surface improvements.
 - e. Recorded or known unrecorded existing utility easements and other rights-of-way.
 - f. Irrigation or drainage ditches within four hundred (400) feet of the wellhead.
 - g. Drainage and erosion control plans for on-site and off-site drainage.
 - h. Location of access roads, either private or public.
 - i. Site and lease boundaries.
 - j. Adjacent surface owners within one thousand five hundred (1,500) feet of the wellhead and tank battery.
 - k. A title block showing scale, date of preparation, identity of preparer including name, address and telephone number and identity of applicant.
- (3) Narrative elements. In addition to the mapped information required in Subsections (1) and (2) of this Section, the application shall also include:
- a. The operator's and surface owner's names and addresses, copies of any legal instruments of public record identifying the applicant's interest in the property and any required OGCC form 1, Designation of Agent.
 - b. An operating plan.
 - c. A listing of all permits or approvals obtained or yet to be obtained from local, state or federal agencies other than OGCC.
 - d. An emergency response plan including, but not limited to, listing of local telephone numbers of the public and private entities and individuals to be notified in the event of an emergency, means of identifying location of well and provisions to be made for access by emergency response entities to secured facilities.
 - e. Plans designed to minimize negative effects. Negative effects are deemed to include but are not limited to noise levels, air, water and land quality impacts, vibration and odor levels, visual impacts, wildlife impacts, waste disposal and public safety.

(Ord. 557, 1997)

Sec. 17-200. Application review criteria.

- (a) The Planning and Zoning Commission and Board of Trustees decision to approve or deny an application shall be made and determined based upon the proposed facility's compliance with all applicable performance standards and other requirements of these regulations and by applying the following valuative criteria to the evidence in the record of proceedings before the Planning and Zoning Commission and Board of Trustees:
- (1) Whether the special use will be consistent with the Town's current comprehensive plan.
 - (2) Whether the special use will be compatible with existing conforming surrounding and probable future land uses.

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- (3) Whether the special use will cause an unreasonable demand on Town services.
- (4) Whether the special use will unreasonably and adversely affect traffic flow and parking in the surrounding area.
- (5) Whether the public welfare requires approval of the special use.
- (b) The Planning and Zoning Commission recommendation and Board of Trustees resolution shall be based upon competent evidence presented in the application and at the public hearing. Following the conclusion of the public hearing, the Planning and Zoning Commission and the Board of Trustees may proceed to verbally render their provisional decision on the application or they may take the matter under advisement to an announced date certain not to exceed thirty (30) days, at which time they shall verbally render their provisional decision.

(Ord. 557, 1997)

Sec. 17-201. Consideration of waste and correlative rights.

- (a) In the event that an application is provisionally denied based upon the criteria of paragraphs (a) (1) through (5) of Section 17-200, the applicant may, within ten (10) days, request a rehearing to demonstrate how issuance of the permit is necessary to prevent waste or protect owners of correlative rights in a common source to a fair share of production profits.
- (b) If the applicant demonstrates by a preponderance of the evidence that the use by special review must be granted to prevent waste, or to protect owners of correlative rights in a common source of oil and/or gas to a fair share of production profits, the Board of Trustees shall grant the use by special review, but may attach reasonable mitigation conditions to the use by special review to protect the health, safety and welfare of the public.

(Ord. 557, 1997)

Sec. 17-202. Written resolution of decision.

- (a) Following the Board of Trustees oral announcement of its decision and any subsequent rehearing, a written resolution shall be adopted in ten (10) days or less as its final action or decision on the application. This written resolution shall set forth findings based upon competent evidence in the record of proceedings before the Board of Trustees and any applicable federal, state or Town statutes, rules, regulations or policies.
- (b) For the purpose of judicial review, the Town's final action or decision regarding the application shall be deemed to have been made as of the date upon which the Board of Trustees executes the written resolution, which shall constitute the Board of Trustees final action or decision.

(Ord. 557, 1997)

Sec. 17-203. Notice to proceed.

Prior to commencement of construction, drilling, re-drilling or enhanced recovery operations for which a use by special review has been previously granted, a Notice to Proceed shall be obtained from the Town. A copy of any necessary state or federal permits issued for the operation shall be provided to the Town.

(Ord. 557, 1997)

Sec. 17-204. Reports and inspections.

- (a) The operator of any producing oil or gas well within the Town shall provide to the Fire District proof of insurance required by any Town, county, state or federal law or regulation, and certification of compliance with the conditions of any special use permit, the requirements of this Article and the Uniform Building and Fire Codes, as adopted by the Town, annually.
- (b) As a condition of any special use permit for any oil or gas exploration or production activity or operation, the holder or agent of the special use permit shall allow inspections by the Town personnel at any reasonable hour. Failure to allow inspections shall result in an immediate suspension of the special use permit. Failure to allow inspections for more than thirty (30) days shall result in revocation of the special use permit, subject only to appeal to the Board of Trustees. The Board of Trustees decision on a special use permit revocation based on failure to allow inspections shall be final.

(Ord. 557, 1997)

Sec. 17-205. Inspection and reporting fees.

Any operator of any oil and gas well within the Town shall remit to the Town an annual inspection and reporting fee. The fee shall be determined annually by the Town Manager or his or her designee and shall be set to cover the reasonable costs of the Town to inspect oil and gas wells and process the annual reports of operators. This fee shall be paid not later than February 1 of the year following that for which the fee is due. Wells which have been plugged and abandoned are exempt from this fee.

(Ord. 557, 1997)

Sec. 17-206. Violation and enforcement.

- (a) It is unlawful to construct or install unapproved oil and gas facilities. It is unlawful to construct, install or cause to be constructed or installed any oil and gas facility within the Town unless approval has been granted by the Board of Trustees or its designee pursuant to this Code. The unlawful drilling or redrilling of any well or the production therefrom shall constitute a public nuisance. The Town shall have the right to abate the nuisance at the sole reasonable expense of the operator of the nuisance by any means to include but not be limited to:
 - (1) Injunctive relief.
 - (2) A stop work order issued by the Town Administrator.
 - (3) Criminal charges.
 - (4) Removal of the nuisance by the Town personnel or Town contractors.
- (b) Penalty. Any person, firm, corporation or legal entity that constructs, installs or uses, or which causes to be constructed, installed or used, any oil and gas well or well site in violation of any provision of this Article or of the conditions and requirements of the special use permit may be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than one (1) year or by both such fine and imprisonment. Each day of such unlawful operation shall constitute a separate violation. Any subsequent violation after any conviction of a violation of this Article shall be punished by a minimum fine of five hundred dollars (\$500.00) for each subsequent violation which may not be suspended by the Court.
- (c) Civil action. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered or used, or any land is or is proposed to be used, in violation of this Article or the conditions and requirement of the special use permit, the Town Manager, in addition to the other remedies provided by law, ordinance or resolution, may institute an injunction, mandamus, abatement

or other appropriate action or proceeding to abate nuisances and/or to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use.

- (d) False or inaccurate information. The Town Council may revoke approval of a facility if it is determined at a public hearing, held on at least ten (10) days' notice to the applicant, that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants and employees, knew or reasonably should have known, was false, misleading, deceptive or inaccurate. The applicant and Town staff shall be provided with an opportunity to be heard at the public meeting prior to the Town Council rendering its decision.
- (e) For the purpose of implementing and enforcing these regulations, Town personnel may enter onto subject property upon notification of the permittee, lessee or the other party holding a legal interest in the property; if such entry is denied, the Town shall have the right to obtain an order from a court of competent jurisdiction to obtain entry.
- (f) In any action for legal or equitable relief, in addition to any other penalties or remedies which may be available, the Town shall be entitled to recover any damages, costs of action, expert witness fees and reasonable attorney's fees incurred should the Town prevail.

(Ord. 557, 1997)

Sec. 17-207. Severability.

If any provision of the ordinance codified in this Article is found by a court of competent jurisdiction to be invalid, the remaining provisions of the ordinance codified in this Article will remain valid, it being the intent of the Town Council that the provisions of the ordinance codified in this Article are severable.

(Ord. 557, 1997)

Secs. 17-208—17-215. Reserved.

ARTICLE XII Impact Fees

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[Sec. 17-217. Definitions.](#)

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[Sec. 17-220. Establishment of impact fee accounts; appropriation of impact fee funds; refunds.](#)

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[Sec. 17-223. Development fee adjustment for inflation.](#)

[Sec. 17-224. Transportation facilities development fee.](#)

[Sec. 17-225. Parks and recreation facilities development fee.](#)

[Sec. 17-226. Public facilities development fee.](#)

[Sec. 17-227. Library and cultural facilities development fee.](#)

[Sec. 17-228. Police facilities development fee.](#)

[Sec. 17-229. Credit for historical use.](#)

[Sec. 17-230. Fire and emergency services provider facilities development fee.](#)

[Secs. 17-231—17-240. Reserved.](#)

Sec. 17-216. Purpose and intent.

The purposes and intent of these impact fee procedures are:

- (1) To establish uniform procedures for the imposition, calculation, collection, expenditure and administration of impact fees imposed on new land development;
- (2) To implement the goals, objectives and policies of the Town's Comprehensive Plan to assure that new land development contributes its fair share towards the costs of capital improvements reasonably necessitated by such new land development;
- (3) To ensure that new land development is reasonably benefited by the provision of the capital improvements provided with the proceeds of impact fees;
- (4) To ensure that all applicable legal standards and criteria are properly incorporated in these procedures; and
- (5) To ensure that all applicable procedures and requirements of Sections 29-1-801 through 29-1-804, C.R.S., and Sections 29-20-101 through 29-20-107, C.R.S., have been met. In addition, Section 29-20-104.5, C.R.S. (as adopted in 2001) procedures and requirements are to be met.

(Ord. 616, § 1, 2000; Ord. 2005-735 §1)

Sec. 17-217. Definitions.

The words or phrases used herein shall have the meaning prescribed in this Code except as otherwise indicated herein:

Applicant means any person who files an application with the Town for a building permit for new land development.

Appropriation or to *appropriate* means an action by the Town to identify specific capital improvements for which impact fee funds may be utilized. *Appropriation* shall include, but shall not necessarily be limited to: inclusion of a capital improvement in the adopted Town budget or capital improvements program execution of a contract or other legal encumbrance for construction of a capital improvement using impact fee funds in whole or in part; and/or actual expenditure of impact fee funds through payments made from an impact fee account.

Capital expenditure means any expenditure for an improvement, facility or equipment necessitated by new land development, which has an estimated useful life of five (5) years or longer. *Capital expenditures* may be for any or all of the following: water resources; water facilities; sewer facilities; storm drainage and flood control facilities; transportation; law enforcement, including lands, buildings, and vehicles; fire and emergency medical services; municipal facilities, including lands and buildings; library, including lands and buildings; solid waste disposal; utilities; and parks, recreation open space and trails; provided that the expenditures are addressed in one of the categories identified in this Article.

Capital improvements expenditures include amounts appropriated in connection with the planning, design, engineering and construction of capital improvements; planning, legal, appraisal and other costs related to the acquisition of land; financing and development costs; the costs of compliance with purchasing procedures and applicable administrative and legal requirements; and all other costs necessarily incident to provision of the capital improvement.

Commercial or industrial use means any use or establishment not defined as a dwelling unit.

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Connection means the physical tie-in of a land developer's water, effluent or sewer service to the Town's water, effluent or sewer main.

Developer means the individual, firm, corporation, partnership, association, syndication, trust or other legal entity that is responsible for creating a demand for Town facilities and capital improvements by seeking approval of a new land development.

District or impact fee district means a defined geographic area or subarea of the Town and/or its planning area within which particular capital improvements are provided and in which impact fees will be collected, appropriated and expended for capital improvements serving new land development within such area or subarea.

Dwelling unit means one (1) or more rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy or for rental or lease on a monthly or longer basis, physically separated from any other rooms or dwelling units which may be in the same structure. Dwelling unit shall not include those units designed primarily for transient occupant purposes, nor shall they include rooms in hospitals or nursing homes.

- a. *Single-family detached dwelling unit* means a residential building containing not more than one (1) dwelling unit entirely surrounded by open space on the same lot.
- b. *All other dwelling units* means a single-family attached dwelling, a duplex, multi-family dwelling or other dwelling unit not defined as a single-family detached dwelling unit.

Fire and emergency services provider means a fire protection district organized under Article 1 of Title 32, C.R.S., or a fire authority established pursuant to Section 29-1-203.5, C.R.S.

Governing body means the Board of Trustees of the Town.

Impact fee means a fee adopted pursuant to Section 29-1-802, C.R.S., which is imposed on new land development on a pro rata basis in connection with and as a condition of the issuance of a building permit or land development approval and which is calculated to defray all or a portion of the costs of the capital improvements required to accommodate new land development at Town-designated level of service (LOS) standards and which reasonably benefits the new land development. See *Land development charge*.

Impact fee adoption and imposition — Sections 17-216 through 17-223 establish procedures and requirements for all impact fees which may be adopted by the Town.

Impact fee district maps means the maps defining the geographical extent of the impact fee districts, if any, for each adopted impact fee, as may be necessary.

Land development means the issuance of a building permit or a connection permit for the construction, reconstruction, redevelopment or conversion of a use of land or any structural alteration, relocation or enlargement which results in an increase in the number of "service units" required, or, the extension of a use or a new use of land which results in an increase in the number of service units.

Land development charge (or impact fee) means a fee relating to a capital expenditure or service provided by the Town which is imposed on land development as a condition of approval of such land development as a prerequisite to obtaining a permit (building permit) or service (connection permit).

Multiple uses means a new development consisting of both residential and nonresidential uses, or one (1) or more different types of nonresidential use, on the same site or part of the same new land development.

Municipal planning area means an area outside of the present Town limits, but in which the Town will provide public facilities and capital improvements.

Service unit means a standard unit of measurement of consumption, use, generation or discharge of a capital improvement or service provided by the Town.

Town Administrator includes his or her designee.

Transient occupancy means occupancy by any one (1) person or group of persons for a period of less than thirty (30) days at a time.

(Ord. 616, § 1, 2000; Ord. No. 2018-151, § 1, 3-5-2018)

Sec. 17-218. General provisions; applicability.

- (a) Term. This Article and the procedures established herein shall remain in effect unless and until repealed, amended or modified by the Board of Trustees in accordance with applicable State law and this Code, ordinances and resolutions.
- (b) Annual review.
 - (1) At least once every year not later than October 15 of each year, beginning October 15, 2001, and prior to the Board of Trustees' adoption of the annual budget and capital improvements program, the Town Administrator shall coordinate the preparation and submission of an annual report to the Board of Trustees on the subject of impact fees.
 - (2) The annual report may include any or all of the following:
 - a. Recommendations for amendments, if appropriate, to these procedures or to specific ordinances adopting impact fees for particular capital improvements;
 - b. Proposed changes to the Comprehensive Plan or plan elements and/or an applicable Capital Improvements Program, including the identification of additional capital improvement projects anticipated to be funded wholly or partially with impact fees;
 - c. Proposed changes to the boundaries of impact fee districts, if applicable;
 - d. Proposed changes to impact fee schedules as set forth in the ordinances imposing and setting impact fees for particular capital improvements;
 - e. Proposed changes to level of service standards for particular categories of capital improvements;
 - f. Proposed changes to any impact fee calculation methodology;
 - g. Proposed changes to the population, housing, land use, persons per household or nonresidential development projections included in the impact fee report and upon which the impact fee amounts have been determined;
 - h. Other data, analysis or recommendations as the Town Administrator may deem appropriate, or as may be requested by the Board of Trustees.
 - (3) The annual report may additionally include any or all of the following on an annual basis:
 - a. Number of building permits issued by type of residential or nonresidential development;
 - b. Square footage (gross floor area) of nonresidential development, by type;
 - c. Total amount of impact fees collected, by category of capital improvement and by land use type;
 - d. The amount of expenditures made from the impact fee account or subaccounts and the purpose for which the expenditure was made, i.e., the description, type and location of the capital improvement project;
 - e. When the capital improvement project was initiated and when it was (or will be) completed;
 - f. Whether additional impact fee funds will be appropriated for the same project in the future;
 - g. Whether supplemental nonimpact fee funds have been used for the project and, if so, how much and what percentage;

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- h. The service area of the capital improvement project;
 - i. The total estimated cost of the capital improvement project and the portion funded with impact fees;
 - j. Whether the capital improvement project is in the Town's current annual budget or capital improvements program;
 - k. The estimated useful life of the capital improvement project;
 - l. The extent to which the capital improvement project is needed to serve new land development;
 - m. The extent to which the capital improvement project is needed to maintain the existing level of service (LOS) standard and;
 - n. Such other facts as may be deemed relevant by the Board of Trustees.
- (4) Submission of impact fee annual report and Board of Trustees action. The Town Administrator shall submit the impact fee annual report to the Board of Trustees, which shall receive the annual report and which may take such actions as it deems appropriate, including, but not limited to, requesting additional data or analyses and holding public workshops and/or public hearings.
- (c) Affected area.
- (1) Impact fee district. Impact fees shall be imposed on new land development in the Town which, for purposes hereof, may be divided into impact fee districts by the Board of Trustees.
 - (2) Municipal planning areas. Impact fees imposed by the Town shall, if necessary and appropriate, be collected by other municipalities or by the County on new land development within the Town's municipal planning area, but outside of the Town limits, pursuant to an intergovernmental agreement which provides that the impact fees collected be transferred to the appropriate Town fund for expenditure in accordance with the terms of this Article.
 - (3) Identification. The affected area, including impact fee districts, if applicable, shall be described and/or mapped in the particular impact fee ordinance for a category of capital improvements.
 - (4) Change in boundaries of impact fee districts. The Board of Trustees may amend the boundaries of the impact fee districts at such times as may be deemed necessary to carry out the purposes and intent of this Article and applicable legal requirements for use of impact fees. In the event of annexation of unincorporated county land by the Town, the Board of Trustees shall consider whether such annexed area should be included in a particular impact fee district and whether new land development in such annexed area shall be subject to impact fees.
- (d) Type of land development affected. This Article shall apply to all land development as herein defined and as may be further defined in the individual impact fee-setting ordinances for particular public facilities or categories of capital improvements, but excluding land developments described in Subsection (e) below.
- (e) Type of land development not affected. This Article shall not apply to:
- (1) Previously issued building permits. No impact fee shall be imposed on land development for which a building permit has been issued prior to the effective date of this Article, except in the event of a change of use.
 - (2) Previous payment of impact fees. Subject to the requirements of Subsection 17-219(d) of this Article, no impact fees shall be due at a later stage of the development permit or approval process if impact fees have been paid for such category of capital improvements at an earlier stage in the development permit or approval process.
 - (3) No net increase in dwelling units. No impact fee shall be imposed on any new residential development which does not add a new dwelling unit (service unit).

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- (4) No net increase in nonresidential square footage. No impact fee shall be imposed on any new nonresidential development which does not add square footage, unless the new nonresidential development increases the demand for capital improvements (service units) for which impact fees are being imposed.
 - (5) Other uses. No impact fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for capital improvements (service units).
 - (6) New land developments which are the subject of a development agreement containing provisions in conflict with these provisions, but only to the extent of the conflict or inconsistency.
- (f) Effect of payment of impact fees on other applicable Town land use, zoning, platting, subdivision or development regulations.
- (1) The payment of impact fees shall not entitle the applicant to a building permit unless all other applicable land use, zoning, planning, platting, subdivision or other related requirements, standards and conditions have been met. Such other requirements, standards and conditions are independent of the requirement for payment of an impact fee.
 - (2) Neither this Article nor the specific impact fee ordinances for particular categories of capital improvements shall affect, in any manner, the permissible use of property, density/intensity of development, design and improvement standards or other applicable standards or requirements of the Town land development regulations, which shall be operative and remain in full force and effect without limitation.

(Ord. 616, § 1, 2000)

Sec. 17-219. Procedures for imposition, calculation and collection of impact fees.

- (a) In general. An applicant shall be notified by the Town of the applicable impact fee requirements at the time of application for a building permit. At such time, an impact fee calculation form shall be prepared, and a copy shall be given to the applicant. Impact fees shall be calculated by the Town at the time of application for a building permit and shall be paid by the applicant prior to the issuance of a building permit.
- (b) Calculation.
 - (1) Upon receipt of an application for a building permit or an application for a business license, the Town shall determine:
 - a. Whether it is a residential or nonresidential use,
 - b. The specific category (type) of residential or nonresidential development, if applicable,
 - c. If residential, the number of new dwelling units,
 - d. If nonresidential, the number of new or additional square feet of gross floor area (rounded up to the nearest square foot) and the proposed use, and
 - e. The impact fee district in which the new land development is located (if applicable).
 - (2) Upon receipt of an application for a building permit, the Town shall determine whether it is for a change in use. In such cases, the impact fee due shall be based only on the incremental increase in the fee for the additional service units added by the change in use.
 - (3) After making these determinations, the Town shall calculate the demand for the capital improvements (service units) added by the new land development for each capital improvements category for which an impact fee is being imposed and calculate the applicable impact fee by multiplying the demand (service units) added by the new development by the amount of the

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applicable impact fee per service unit, incorporating any applicable offset if set forth in the particular impact fee calculation methodology.

- (4) If the type of land use proposed for land development is not expressly listed in the particular impact fee ordinance and schedule, the Town shall:
 - a. Identify the most similar land use type listed and calculate the impact fee based on that land use or
 - b. Identify the broader land use category within which the specified land use would fit and calculate the impact fee based on that land use category; or
 - c. At the option of the applicant or the Town Administrator, determine the basis used to calculate the fee pursuant to an independent impact analysis of service units added. This option shall be available only for transportation impact fees and shall be requested by the applicant on a form provided by the Town for such purpose. If this option is chosen, the following shall apply:
 1. The applicant shall be responsible, at its sole expense, for preparing the independent impact analysis, which shall be reviewed for approval by the Town Administrator and, if appropriate, other Town staff or officials, prior to payment of the fee.
 2. The independent impact analysis shall measure the impact (in service units) that the proposed development will have on the particular category of capital improvements at issue, and shall be based on the same methodologies used in the impact fee calculation methodology report, and shall be supported by professionally acceptable data and assumptions.
 3. After review of the independent impact analysis submitted by the applicant, the Town Administrator shall accept or reject the analysis and provide written notice to the applicant of its decision on a form provided for such purpose within thirty (30) days. If the independent impact analysis is rejected, the written notice shall provide an explanation of the insufficiencies of the analysis.
 4. The final decision of the Town Administrator may be appealed pursuant to Section 17-221 herein.
 - (5) An applicant may request a nonbinding estimate of impact fees due for a particular land development at any time by filing a request on a form provided for such purpose by the Town; provided, however, that such estimate may be subject to change when a formal application for a building permit for land development is made. Such nonbinding estimate is solely for the benefit of the prospective applicant and shall in no way bind the Town nor preclude it from making amendments or revisions to any provisions of this Article, the specific impact fee implementing ordinances or the impact fee schedules.
 - (6) The calculation of impact fees due from a multiple-use land development shall be based upon the aggregated demand (in service units) for each category of capital improvements generated by each land use type in the land development.
 - (7) The calculation of impact fees due from a phased land development shall be based upon the demand (in service units) generated by each specific land use within the phase of development for which a separate building permit is requested.
 - (8) Impact fees shall be calculated based on the impact fee amount in effect at the time of application for a building permit, or a change in use.
- (c) Offsets.
- (1) Offsets against the amount of an impact fee due from a land development shall be provided for, among other things, contributions made or to be made in the future in cash, or by dedication of land or by actual construction of all or part of a capital improvement by the affected property owner for capital improvements meeting or exceeding the demand generated by the land development and the contribution is determined by the Town to be an acceptable substitute for

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the cost of capital improvements which are included in the particular impact fee calculation methodology.

- (2) The amount of the excess contribution shall be determined by the Town upon receipt of an application form requesting an offset; provided, however, that:
 - a. The Town will make no reimbursement for excess contributions unless and until the particular capital improvements fund has sufficient revenue to make the reimbursement without jeopardizing the continuity of the Town's capital improvements program; and
 - b. The excess contribution may not be transferred or credited to any other type of impact fees calculated to be due from that development for other types of capital improvements. The determination of the eligibility for and the amount of the credit shall be made by the Town on a form provided for such purposes. The discretion of the Town shall not be abused. If the applicant contends that any aspect of the Town's decision constitutes an abuse of discretion, the applicant shall be entitled to appeal pursuant to Section 17-221 below.
 - (3) No offset shall be allowed unless the Town has approved the contribution or expenditure before it is made.
 - (4) Offsets for dedication of land or provision of capital improvements shall be applicable only as to impact fees imposed for the same types of capital improvements which are proposed to be dedicated or provided. Even if the value of the dedication of land or provision of a capital improvement exceeds the impact fee due for the type of capital improvement, the excess value may not be transferred to impact fees calculated to be due from the applicant for other types of capital improvements. Offsets may, however, be transferred to other applicants within the same development for the same type of capital improvement.
- (d) Collection.
- (1) The Town shall collect all applicable impact fees at the time of issuance of a building permit and shall issue a receipt to the applicant for such payment unless:
 - a. The applicant is determined to be entitled to a full offset; or
 - b. The applicant has been determined to be not subject to the payment of an impact fee; or
 - c. The applicant has filed an appeal and a letter of credit, or other surety in the amount of the impact fee, as calculated by the Town and approved by the Town Attorney and Treasurer, has been posted with the Town.
 - (2) The Town shall collect an impact fee at the time of issuance of a building permit even if impact fees were paid by the applicant at an earlier time in the development permit or approval process if the amount of the impact fees has increased since such prior approval. Except as provided for in Section 17-218(e), the applicant shall only be liable for the difference between the impact fees paid earlier and those in effect at the time of issuance of the subsequent building permit.
- (e) Fire and emergency services providers. With respect to impact fees collected on behalf of fire and emergency services providers, an applicant shall confer with the appropriate fire and emergency service provider to determine whether an impact fee is owed under Section 17-230 and, if so, the amount of the impact fee. The applicant shall return an impact fee form signed by the fire and emergency service provider to the Town at the time of the application for a building permit. If an impact fee is owed, the applicant shall provide a check to the Town made payable to the fire and emergency service provider, unless the Town agrees to waive or defer payment of the impact fee as otherwise permitted by law. To the extent the provisions of this Subsection (e) conflict with the foregoing provisions of Section 17-219, this Subsection (e) shall control with respect to impact fees collected on behalf of fire and emergency services providers.

(Ord. 616, § 1, 2000; Ord. No. 2018-151, § 2, 3-5-2018)

Sec. 17-220. Establishment of impact fee accounts; appropriation of impact fee funds; refunds.

- (a) Impact fee accounts. An impact fee account shall be established by the Town for each category of capital improvements for which impact fees are imposed. Such account shall clearly identify the category, account or fund for which the impact fee has been imposed. Subaccounts may be established for individual impact fee districts. All impact fees collected by the Town shall be deposited into the appropriate impact fee account or subaccount, which shall be interest-bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The funds of each such account shall be capable of being accounted for separately from all other Town funds, over time. The Town shall establish and implement necessary accounting controls to ensure that the impact fee funds are properly deposited, accounted for and appropriated in accordance with these provisions and any other applicable legal requirements.
- (b) Appropriation of impact fee funds.
 - (1) In general. Impact fee funds may be appropriated for capital improvements and for the payment of principal, interest and other financing costs on contracts, bonds, notes or other obligations issued by or on behalf of the Town or other applicable local governmental entities to finance such capital improvements. All appropriations from impact fee accounts shall be detailed on a form provided for such purposes and filed with the Town Treasurer.
 - (2) Restrictions on appropriations. Impact fees shall be appropriated only:
 - a. For the particular category of capital improvements for which they were imposed, calculated and collected; and
 - b. Within the impact fee district where collected, unless the impact fee funds will be appropriated for a capital improvement necessitated by or serving the new land development as provided herein. Impact fees shall not be appropriated for funding maintenance or repair of capital improvements nor for operational or personnel expenses associated with the provision of the capital improvements.
 - (3) Appropriation of impact fee funds outside of district where collected. Impact fee funds may be appropriated for a capital improvement located outside of the district of the new land development where collected only if the demand for the capital improvement is generated in whole or in part by the new land development or if the capital improvement will actually serve the new land development.
- (c) Procedure for appropriation of impact fee funds.
 - (1) The Town shall each year identify capital improvement projects anticipated to be funded in whole or in part with impact fees. The capital improvement recommendations shall be based upon the impact fee annual review set forth in Section 17-218(b) herein and such other information as may be relevant, and may be part of the Town's annual budget and capital improvements programming process.
 - (2) The recommendations shall be consistent with the provisions of this Article, the particular impact fee ordinances or other applicable legal requirements and any guidelines adopted by the Board of Trustees.
 - (3) The Board of Trustees may include impact fee-funded capital improvements in the Town's annual budget and capital improvements program. If included, the description of the capital improvement shall specify the nature, location, capacity to be added, service area, need/demand for, and the anticipated timing of completion of the capital improvement.
 - (4) The Board of Trustees may authorize impact fee-funded capital improvements at such other times as may be deemed necessary and appropriate by the Board of Trustees.
 - (5) The Board of Trustees shall verify that adequate impact fee funds are or will be available from the appropriate impact fee account for the particular category of capital improvements.

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- (d) Refunds.
- (1) Eligibility for refund.
 - a. Expiration or revocation of building permit. An applicant who has paid an impact fee for a land development for which the necessary building permit has expired or for which the building permit has been revoked prior to construction shall be eligible to apply for a refund of impact fees paid on a form provided by the Town for such purposes.
 - b. Abandonment of development after initiation of construction. An applicant who has paid an impact fee for a new land development for which a building permit has been issued and pursuant to which construction has been initiated, but which construction is abandoned prior to completion and issuance of a certificate of occupancy, shall not be eligible for a refund unless the uncompleted building is completely demolished.
 - c. A ten-percent administrative fee, but not to exceed five hundred dollars (\$500.00), shall be deducted from the amount of any refund granted and shall be retained by the Town in the appropriate impact fee account to defray the administrative expenses associated with the processing of a refund application.
 - (2) Except as provided in Sections 17-220(d)(1) and 17-220(d)(5) hereof, refunds shall be made only to the current owner of property on which the new land development was proposed or occurred.
 - (3) Processing of applications for a refund. Applications for a refund shall be made on a form provided by the Town for such purposes and shall include all information required in Section 17-220(d) hereof, as appropriate. Upon receipt of a complete application for a refund, the Town shall review the application and documentary evidence submitted by the applicant as well as such other information and evidence as may be deemed relevant, and make a determination as to whether a refund is due. Refunds by direct payment shall be made following an affirmative determination by the Town.
 - (4) Applications for refunds due to abandonment of a new land development prior to completion shall be made on forms provided by the Town and shall be made within sixty (60) days following expiration or revocation of the building permit. The applicant shall submit:
 - a. Evidence that the applicant is the property owner or the duly designated agent of the property owner,
 - b. The amount of the impact fees paid by capital improvements category and receipts evidencing such payments, and
 - c. Documentation evidencing the expiration or revocation of the building permit or approval of demolition of the structure pursuant to a valid Town-issued demolition permit. Failure to apply for a refund within sixty (60) days following expiration or revocation of the building permit or demolition of the structure shall constitute a waiver of entitlement to a refund. No interest shall be paid by the Town in calculating the amount of the refunds.
 - (5) The Town may, at its option, make refunds of impact fees by direct payment, by offsetting such refunds against other impact fees due for the same category of capital improvements for new land development on the same property, or by other means subject to agreement with the property owner.
- (e) Fire and emergency services providers. Notwithstanding the foregoing provisions of Section 17-220, the Town shall forward impact fees collected on behalf of fire and emergency services providers directly to the appropriate fire and emergency service provider. Such provider shall appropriate and expend the impact fees as required by law. Requests for refunds of the impact fees shall be made, if at all, to the fire and emergency services provider. The fire and emergency services provider shall be solely responsible for granting or denying a request for a refund and, if granted, for providing such refund.

(Ord. 616, § 1, 2000; Ord. No. 2018-151, § 2, 3-5-2018)

Sec. 17-221. Appeals.

- (a) An appeal from any decision of a Town official pursuant to this Article shall be made to the Board of Trustees by filing a written appeal pursuant to the appropriate Town form with the Town Clerk within thirty (30) days following the decision which is being appealed; provided, however, that if the notice of appeal is accompanied by a letter of credit in a form satisfactory to the Town Attorney and the Town Treasurer in an amount equal to the impact fee calculated to be due, a building permit may be issued to the new land development. The filing of an appeal shall not stay the imposition or the collection of the impact fee as calculated by the Town unless a letter of credit or other sufficient surety has been provided.
- (b) The burden of proof shall be on the appellant to demonstrate that the decision of the Town is erroneous.
- (c) All appeals shall detail the specific grounds therefor and all other relevant information and shall be filed on a form provided by the Town for such purposes.

(Ord. 616, § 1, 2000)

Sec. 17-222. Exemptions; waivers.

- (a) Filing of application. Petitions for exemptions to the application of the provisions of this Article or waivers from specific impact fees shall be filed with the Town Council on forms provided by the Town.
- (b) Effect of grant of exemption/waiver. If the Town Council grants an exemption or waiver in whole or in part of impact fees otherwise due, the amount of the impact fees exempted or waived shall be provided by the Town from nonimpact fee funds, as may be provided in the particular impact fee ordinances establishing such fees for particular capital improvements, and such funds shall be deposited to the appropriate impact fee account within a reasonable period of time consistent with the applicable Town capital improvements program.
- (c) Development agreements. Nothing herein shall be deemed to limit the Town's authority or ability to enter into development agreements with applicants for new land development which may provide for dedication of land, payments in lieu of impact fees or actual infrastructure improvements. Such development agreements may allow offsets against impact fees for contributions made or to be made in the future in cash, or by taxes or assessments or dedication of land or by actual construction of all or part of a capital improvement by the affected property owner.

(Ord. 616, § 1, 2000)

Sec. 17-223. Development fee adjustment for inflation.

- (a) On January 1, 2001, and on January 1st of each year thereafter in which development fees are in effect, the amount of the development fee per dwelling unit for residential development and/or per one thousand (1,000) square feet of gross floor areas for nonresidential development shall be automatically adjusted to account for inflationary increases in the cost of providing public facilities, utilizing the most recent data from the Engineering News Record Construction Cost Index for the Denver metropolitan area.
- (b) In lieu of this automatic annual adjustment, the Town Council may, at its option, determine the appropriate annual inflation factor pursuant to the annual review process as set forth in Section 17-219(b).

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- (c) Nothing herein shall prevent the governing body of the Town from electing to maintain an existing development fee or from electing to waive the inflation adjustment for any given fiscal year.
- (d) Any action of the Town Council to adjust development or impact fees may be by resolution.

(Ord. 616, § 1, 2000)

Sec. 17-224. Transportation facilities development fee.

All residential and nonresidential development in the Town shall be subject to the payment of a transportation facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

<i>Residential Development</i>	Calendar Year	<i>Development Fee per Dwelling Unit</i>				
		2016	2017	2018	2019	2020+
Detached Housing		\$2,311	2,427	2,544	2,660	2,777
Attached Housing		\$1,817	1,953	2,090	2,226	2,363

<i>Nonresidential</i>	Calendar Year	<i>Development Fee per square foot</i>				
		2016	2017	2018	2019	2020+
Retail		\$3.33	3.72	4.12	4.52	4.92
Office		\$1.91	2.17	2.44	2.71	2.98
Industrial/Other		\$1.09	1.30	1.50	1.71	1.92

(Ord. 621, § 1, 2000; Ord. 2005-735 §2; Ord. No. 2015-139, § 1, 12-21-2015)

Sec. 17-225. Parks and recreation facilities development fee.

All residential development in the Town shall be subject to the payment of a parks and recreation facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

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<i>Residential Development</i>	Calendar Year	<i>Development Fee per Dwelling Unit</i>				
		2016	2017	2018	2019	2020+
Detached Housing		\$1,153	1,163	1,173	1,184	1,194
Attached Housing		\$ 991	997	1,003	1,010	1,016

(Ord. 617, § 1, 2000; Ord. 2005-735 §3; Ord. No. 2015-139, § 2, 12-21-2015)

Sec. 17-226. Public facilities development fee.

All future residential and nonresidential development in the Town shall be subject to the payment of a public facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

<i>Residential Development</i>	Calendar Year	<i>Development Fee per Dwelling Unit</i>				
		2016	2017	2018	2019	2020+
Detached Housing		\$1,366	1,421	1,477	1,533	1,589
Attached Housing		\$1,174	1,218	1,263	1,307	1,352

<i>Nonresidential</i>	Calendar Year	<i>Development Fee per square foot</i>				
		2016	2017	2018	2019	2020+
Retail		\$0.54	0.59	0.64	0.69	0.74
Office		\$0.62	0.65	0.68	0.71	0.74
Industrial/Other		\$0.49	0.55	0.61	0.68	0.74

(Ord. 618, § 1, 2000; Ord. 2005-735 §4; Ord. No. 2015-139, § 3, 12-21-2015)

Sec. 17-227. Library and cultural facilities development fee.

All future residential development in the Town shall be subject to the payment of a library and cultural facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

<i>Residential Development</i>	Calendar Year	<i>Development Fee per Dwelling Unit</i>				
		2016	2017	2018	2019	2020+
Detached Housing		\$684	800	916	1,032	1,148
Attached Housing		\$586	683	781	879	977

(Ord. 620, § 1, 2000; Ord. 2005-735 §5; Ord. No. 2015-139, § 4, 12-21-2015)

Sec. 17-228. Police facilities development fee.

All future residential and nonresidential development in the Town shall be subject to the payment of a police facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223, as follows:

<i>Residential Development</i>	Calendar Year	<i>Development Fee per Dwelling Unit</i>				
		2016	2017	2018	2019	2020+
Detached Housing		\$581	619	657	695	733
Attached Housing		\$498	529	561	593	624

<i>Nonresidential</i>	Calendar Year	<i>Development Fee per square foot</i>				
		2016	2017	2018	2019	2020+
Retail		\$0.42	0.48	0.55	0.62	0.68

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Office	\$0.15	0.17	0.20	0.23	0.25
Industrial/Other	\$0.13	0.16	0.19	0.22	0.25

(Ord. 619, § 1, 2000; Ord. 2005-735 §6; Ord. No. 2015-139, § 5, 12-21-2015)

Sec. 17-229. Credit for historical use.

- (a) Intent. If an existing building is to undergo a change of use, but has been in existence for at least five (5) years, the owner shall be entitled to credit for historical usage under the presumption that the owner or prior owner has paid real estate property taxes to support existing infrastructure that would be paid for by impact fees.
- (b) Calculation of credit. For a building in existence for at least five (5) years, the owner shall receive a credit to be applied against all impact fees due of one percent (1%) for each year beyond five (5) years that the buildings has been in existence, up to a maximum possible credit of seventy-five percent (75%). Credit shall only apply to that portion of the building in existence, and within the Town boundaries of Johnstown, for at least five (5) years and not to any additions or other constructed buildings on the same property.
- (c) Proof of age. Owner must be able to show proof satisfactory to the Town of the date when the building was originally constructed by building permit, tax assessment records or other similar verification.

(Ord. 668, § 1, 2001)

Sec. 17-230. Fire and emergency services provider facilities development fee.

- (a) *Loveland Fire Rescue Authority.* All residential and nonresidential development within the jurisdictional boundaries of the Loveland Fire Rescue Authority shall be subject to the payment of a fire and emergency services provider facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

Residential	
Unit Type	Fee Per Dwelling Unit
Single Family	\$895.00
Multifamily	\$622.00

Nonresidential

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Use Type	Fee Per Square Foot
Commercial	\$0.30
Industrial	\$0.03

(b) *Front Range Fire Rescue Fire Protection District.* All residential and nonresidential development within the jurisdictional boundaries of the Front Range Fire Rescue Fire Protection District shall be subject to the payment of a fire and emergency services provider facilities development fee at the time of building permit issuance, pursuant to this Section and Sections 17-216 through 17-223 as follows:

RESIDENTIAL	
UNIT TYPE	FEE PER DWELLING UNIT
Single Family or Two-Family	\$1,087.00
Multi-Family	\$692.00
NON-RESIDENTIAL	
UNIT TYPE	FEE PER SQUARE FOOT
Any Non-Residential	\$0.60

(Ord. No. 2018-151, § 2, 3-5-2018; Ord. No. 2018-154, § 1, 12-3-2018)

Secs. 17-231—17-240. Reserved.

ARTICLE XIII Vested Property Rights

[Sec. 17-241. Intent.](#)

[Sec. 17-242. Definitions.](#)

[Sec. 17-243. Notice and hearing.](#)

[Sec. 17-244. Development agreements.](#)

[Sec. 17-245. Notice of approval.](#)

[Sec. 17-246. Approval; effective date; amendments.](#)

[Sec. 17-247. Payment of costs.](#)

[Sec. 17-248. Other provisions unaffected.](#)

[Sec. 17-249. Limitations.](#)

[Secs. 17-250—17-260. Reserved.](#)

Sec. 17-241. Intent.

The intent of this Article is to provide the procedures necessary to implement the provisions of Article 68, Title 24, C.R.S., and to effectuate local control over creation of vested property rights to the fullest extent permitted under the law.

(Ord. 685, § 1, 2002)

Sec. 17-242. Definitions.

- (a) *Site specific development plan* means a map, plat or site plan that has been submitted to the Town by a landowner's representative describing the reasonable certainty, type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of the following: final site plan, final subdivision plat, planned unit development plan, use by special review or as otherwise agreed by the Board of Trustees and the owner for a specific project or development phase which occurs prior to building permit application for those vested rights, and has submitted an application and receives approval by the Board of Trustees. A *site specific development plan* deemed to have been created, a *site specific development plan* shall not include a variance, sketch plan or preliminary plan.
- (b) *Vested property right* means the right to undertake and complete the development and use of the property under the terms and conditions of a site specific development plan. A property right which becomes vested upon final approval of an ordinance or resolution, as the case may be, shall remain vested for a period of three (3) years. This vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the Board of Trustees. The Town shall conduct a hearing at the request of the landowner, which hearing follows the successful approval of the development at all other required stages of the development review process. Failure of the landowner to request such hearing renders the approval not a "site specific development plan," and no vested rights shall be deemed to have been created.

(Ord. 685, § 1, 2002)

Sec. 17-243. Notice and hearing.

- (a) No site specific development plan shall be approved until after a public hearing, preceded by written notice of such hearing which is published in a newspaper of general circulation at least ten (10) days prior to such hearing. Such notice may, at the Town's option, be combined with the notice required for final plan approval, or any other required notice. At such hearing, interested persons shall have an opportunity to be heard.
- (b) The Board of Trustees may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. The conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights.

(Ord. 685, § 1, 2002)

Sec. 17-244. Development agreements.

The Board of Trustees may enter into development agreements with landowners that provide property rights shall be vested for a period exceeding three (3) years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles and market conditions.

(Ord. 685, § 1, 2002)

Sec. 17-245. Notice of approval.

Each map, plat or other document constituting a site specific development plan shall contain the following language: "Approval of this plan may create 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 and stating 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.

(Ord. 685, § 1, 2002)

Sec. 17-246. Approval; effective date; amendments.

A site specific development plan shall be deemed approved when the Board of Trustees approves the related ordinance or resolution subject to the right of appeal and judicial review. In the event amendments to a site specific development 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 Town Council specifically finds to the contrary and incorporates such finding in its approval of the amendment.

(Ord. 685, § 1, 2002)

Sec. 17-247. Payment of costs.

In addition to any and all other fees and charges imposed by this Code, 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 review, including publication of notices, public hearing and reviewing costs, which costs may be established by the Town Council by resolution.

(Ord. 685, § 1, 2002)

Sec. 17-248. Other provisions unaffected.

Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions of this Code pertaining to the development and use of property. The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town, including but not limited to building, fire, plumbing, electrical, and mechanical codes.

(Ord. 685, § 1, 2002)

Sec. 17-249. Limitations.

Nothing in this Section is intended to create any vested property right, but only to implement the provisions of Article 68, Title 24, C.R.S., as amended. 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.

(Ord. 685, § 1, 2002)

Secs. 17-250—17-260. Reserved.

ARTICLE XIV Flood Damage Prevention

[Sec. 17-261. Title and purpose.](#)

[Sec. 17-262. Definitions.](#)

[Sec. 17-263. General provisions.](#)

[Sec. 17-264. Administration.](#)

[Sec. 17-265. Provisions for flood hazard reduction.](#)

[Secs. 17-266—17-280. Reserved.](#)

Sec. 17-261. Title and purpose.

- (a) Statutory authorization. The Legislature of the State has, in Article 20 of Title 29, C.R.S., delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Town Council hereby adopts the following floodplain management regulations.
- (b) Findings of fact.
 - (1) The flood hazard areas of the Town are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.
 - (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.
- (c) Statement of purpose. It is the purpose of this Article to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
 - (1) Protect human life and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business interruptions;

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- (5) Minimize damage to critical facilities, infrastructure and other public facilities, such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;
 - (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
 - (7) Ensure that potential buyers are notified that property is located in a flood hazard area.
- (d) Methods of reducing flood losses. In order to accomplish its purposes, this Article uses the following methods:
- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
 - (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (3) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of floodwaters;
 - (4) Control filling, grading, dredging and other development which may increase flood damage; and
 - (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. 2013-129 §1)

Sec. 17-262. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted to give them the meaning they have in common usage and to give this Article its most reasonable application.

100-year flood means a flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (one-percent-annual-chance flood). The terms *one-hundred-year flood* and *one-percent-chance flood* are synonymous with the term *100-year flood*. The term does not imply that the flood will necessarily happen once every one hundred (100) years.

100-year floodplain means the area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

500-year flood means a flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance annual flood). The term does not imply that the flood will necessarily happen once every five hundred (500) years.

500-year floodplain means the area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

Addition means any activity that expands the enclosed footprint or increases the square footage of an existing structure.

Alluvial fan flooding means a fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

Area of shallow flooding means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

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Base Flood Elevation (BFE) means the elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30 and VE that indicates the water surface elevation resulting from a flood that has a one-percent chance of equaling or exceeding that level in any given year.

Basement means any area of a building having its floor sub-grade (below ground level) on all sides.

Channel means the physical confine of a stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

Channelization means the artificial creation, enlargement or realignment of a stream channel.

Code of Federal Regulations (CFR) means the codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the federal government. It is divided into fifty (50) titles that represent broad areas subject to federal regulation.

Community means any political subdivision in the State that has authority to adopt and enforce floodplain management regulations through zoning, including but not limited to cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

Conditional Letter of Map Revision (CLOMR) means FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

Critical Facility means a structure or related infrastructure, but not the land on which it is situated, as specified in Subsection 17-265(h) that, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood. See Subsection 17-265(h).

Development means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DFIRM database means a database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

Digital Flood Insurance Rate Map (DFIRM) means a FEMA digital floodplain map. These digital maps serve as "regulatory floodplain maps" for insurance and floodplain management purposes.

Elevated building means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, *elevated building* also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

Federal Register means the official daily publication for Rules, proposed Rules and notices of federal agencies and organizations, as well as executive orders and other presidential documents.

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FEMA means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of water from channels and reservoir spillways;
- b. The unusual and rapid accumulation or runoff of surface waters from any source; or
- c. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

Flood control structure means a physical structure designed and built expressly or partially for the purpose of reducing, redirecting or guiding flood flows along a particular waterway. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means the official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map, as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

Floodplain or flood-prone area means any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

Floodplain Administrator means the community official designated by title to administer and enforce the floodplain management regulations.

Floodplain Development Permit means a permit required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a community, the community shall require permits for all proposed construction or other development in the community including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Permits are required to ensure that proposed development projects meet the requirements of the NFIP and this Article.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means any combination of structural and/or nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (regulatory floodway) means the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The statewide standard for the designated height to be used for all newly studied reaches shall be one-half ($\frac{1}{2}$) foot (six [6] inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

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Freeboard means the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior; or
 2. Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Revision (LOMR) means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs) or the Special Flood Hazard Area (SFHA).

Letter of Map Revision Based on Fill (LOMR-F) means FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

Levee means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR § 65.10.

Levee system means a flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating or recreation, or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

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Manufactured home means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Material Safety Data Sheet (MSDS) means a form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment and spill-handling procedures.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

National Flood Insurance Program (NFIP) means FEMA's program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

No-rise certification means a record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A no-rise certification must be supported by technical data and signed by a registered Colorado professional engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

Physical Map Revision (PMR) means FEMA's action whereby one (1) or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations and/or planimetric features.

Recreational vehicle means a vehicle which is:

- a. Built on a single chassis;
- b. Four hundred (400) square feet or less when measured at the largest horizontal projections;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Special Flood Hazard Area means the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

Start of construction means the date the building permit was issued, including substantial improvements, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. *Permanent construction* does not include land preparation, such as clearing, grading and

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filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure just prior to when the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before start of construction of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions; or
- b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Threshold Planning Quantity (TPQ) means a quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

Variance means a grant of relief to a person from the requirement of this Article when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Article. (For full requirements, see Section 60.6 of the National Flood Insurance Program regulations.)

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4) or (e)(5) is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. 2013-129 §1)

Sec. 17-263. General provisions.

- (a) Lands to which this Article applies. This Article shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of the Town.
- (b) Basis for establishing the Special Flood Hazard Area. The Special Flood Hazard Areas identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Larimer County, Colorado and Incorporated Areas," dated December 19, 2006, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this

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Article. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated and approved by the Town Council. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

- (c) Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required to ensure conformance with the provisions of this Article.
- (d) Compliance. No structure or land shall hereafter be located, altered or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this Article and other applicable regulations. Nothing herein shall prevent the Town Council from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.
- (e) Abrogation and greater restrictions. This Article is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Article and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (f) Interpretation. In the interpretation and application of this Article, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) Warning and disclaimer of liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town or any official or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.
- (h) Severability. This Article and the various parts thereof are hereby declared to be severable. Should any section of this Article be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Article as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

(Ord. 2013-129 §1)

Sec. 17-264. Administration.

- (a) Designation of Floodplain Administrator. The Town Planner is hereby appointed as Floodplain Administrator to administer, implement and enforce the provisions of this Article and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.
- (b) Duties and responsibilities of Floodplain Administrator. Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:
 - (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Article, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by Subsection 17-264(c) of this Article
 - (2) Review, approve or deny all applications for Floodplain Development Permits required by adoption of this Article.

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- (3) Review Floodplain Development Permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
 - (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334) from which prior approval is required.
 - (5) Inspect all development at appropriate times during the period of construction to ensure compliance with all provisions of this Article, including proper elevation of the structure.
 - (6) Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
 - (7) When Base Flood Elevation data has not been provided in accordance with Subsection 17-263(b) of this Article, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of Section 17-265 of this Article.
 - (8) For waterways with Base Flood Elevations for which a regulatory floodway has not been designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half ($\frac{1}{2}$) foot at any point within the community.
 - (9) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zone A1-30, AE or AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one-half ($\frac{1}{2}$) foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
 - (10) Notify, in riverine situations, adjacent communities and the state coordinating agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
 - (11) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (c) Permit procedures. Application for a Floodplain Development Permit shall be presented to the Floodplain Administrator on forms furnished by him or her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:
- (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
 - (3) A certificate from a registered Colorado professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Paragraph 17-265(b)(2);
 - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
 - (5) Maintain a record of all such information in accordance with Subsection 17-264(b).

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Approval or denial of a Floodplain Development Permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development;
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities, such as sewer, gas, electrical and water systems;
 - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable;
 - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
 - (10) The relationship of the proposed use to the comprehensive plan for that area.
- (d) Variance procedures.
- (1) The Town Council shall hear and render judgment on requests for variances from the requirements of this Article.
 - (2) The Town Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Administrator in the enforcement or administration of this Article.
 - (3) Any person or persons aggrieved by the decision of the Town Council may appeal such decision in the courts of competent jurisdiction.
 - (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
 - (5) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Article.
 - (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half ($\frac{1}{2}$) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Subsection (c) above have been fully considered. As the lot size increases beyond the one-half ($\frac{1}{2}$) acre, the technical justification required for issuing the variance increases.
 - (7) Upon consideration of the factors noted above and the intent of this Article, the Town Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article as stated in Subsection 17-261(c).
 - (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
 - (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (10) Prerequisites for granting variances:

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- a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. Variances shall only be issued upon:
 - 1. Showing a good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
 - c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
- a. The criteria outlined in Paragraphs (d)(1)—(9) of this Section are met; and
 - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (e) Penalties for noncompliance. A person who violates the requirements of this Article shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of not more than one (1) year, or by both such fine and imprisonment. Each day that any such violation continues shall constitute a separate violation and shall subject the perpetrator to a separate penalty.

(Ord. 2013-129 §1)

Sec. 17-265. Provisions for flood hazard reduction.

- (a) General standards. In all Special Flood Hazard Areas, the following provisions are required for all new construction and substantial improvements:
- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
 - (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
 - (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (5) All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

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- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and
 - (8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (b) Specific standards. In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in (i) Paragraph 17-263(b)(2); Paragraph 17-264(b)(7) or (iii) Subsection 17-265(g), the following provisions are required:
- (1) Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork), elevated to one (1) foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado professional engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Administrator.
 - (2) Nonresidential construction. With the exception of Critical Facilities, outlined in Subsection (h) of this Section, new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated to one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that, at one (1) foot above the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered Colorado professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this Subsection. Such certification shall be maintained by the Floodplain Administrator, as proposed in Subsection 17-264(c) above.
 - (3) Enclosures. New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered Colorado professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
 - b. The bottom of all openings shall be no higher than one (1) foot above grade.
 - c. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
 - (4) Manufactured homes. All manufactured homes that are placed or substantially improved within Zones A1-30, AH and AE on the community's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) are elevated to one (1) foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the

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community's FIRM that are not subject to the provisions of the above Paragraph shall be elevated so that either:

- a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork), are one (1) foot above the base flood elevation; or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and all securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (5) Recreational vehicles. All recreational vehicles placed on sites within Zones A1-30, AH and AE on the community's FIRM shall either:
- a. Be on the site for fewer than one hundred eighty (180) consecutive days;
 - b. Be fully licensed and ready for highway use; or
 - c. Meet the permit requirements of Subsection 17-264(c) of this Article and the elevation and anchoring requirements for manufactured homes in Paragraph (4) above.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.

- (6) Prior approved activities. Any activity for which a Floodplain Development Permit was issued by the Town or a CLOMR was issued by FEMA prior to the effective date of this Article may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this Article if it meets such standards.
- (c) Standards for areas of shallow flooding (AO/AH zones). Located within the Special Flood Hazard Area established in Subsection 17-263(b) of this Article are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:
- (1) Residential construction. All new construction and substantial improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community's FIRM (at least three [3] feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado professional engineer, architect or land surveyor. Such certification shall be submitted to the Floodplain Administrator.
 - (2) Nonresidential construction. With the exception of Critical Facilities, outlined in Subsection (h) of this Section, all new construction and substantial improvements of nonresidential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) elevated above the highest adjacent grade at least one (1) foot above the depth number specified in feet on the community's FIRM (at least three [3] feet if no depth number is specified) or, together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one (1) foot above the base flood level with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy. A registered Colorado professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this Section, as proposed in Subsection 17-264(c) of this Article, are satisfied. Within Zone AH or AO, adequate drainage paths around structures on slopes are required to guide floodwaters around and away from proposed structures.

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- (d) Floodways. Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State has adopted floodway standards that are more stringent than the FEMA minimum standard (see definition of *Floodway* in Section 17-262 of this Article). Located within Special Flood Hazard Area established in Subsection 17-263(b) of this Article are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:
- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory floodway Unless it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado professional engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a no-rise certification) in flood levels within the community during the occurrence of the base flood discharge.
 - (2) If Paragraph (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Section.
 - (3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations, provided that the community first applies for a CLOMR and floodway revision through FEMA.
- (e) Alteration of a watercourse. For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:
- (1) Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition and channel migration and properly mitigate potential problems through the project, as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
 - (2) Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
 - (3) Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable federal, state and local floodplain rules, regulations and ordinances.
 - (4) Any stream alteration activity shall be designed and sealed by a registered Colorado professional engineer or Certified Professional Hydrologist.
 - (5) All activities within the regulatory floodplain shall meet all applicable federal, state and the Town floodplain requirements and regulations.
 - (6) Within the regulatory floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a floodway analysis and report, sealed by a registered Colorado professional engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions floodway resulting from the project, otherwise known as a no-rise certification, unless the community first applies for a CLOMR and floodway revision in accordance with Subsection (d) of this Section.
 - (7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.
- (f) Properties removed from floodplain by fill. A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) unless such new structure or addition complies with the following:
- (1) Residential construction. The lowest floor (including basement) electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one (1) foot above the Base Flood Elevation that existed prior to the placement of fill.

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- (2) Nonresidential construction. The lowest floor (including basement) electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities (including ductwork) must be elevated to one (1) foot above the Base Flood Elevation that existed prior to the placement of fill, or, together with attendant utility and sanitary facilities, be designed so that the structure or addition is watertight to at least one (1) foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads or effects of buoyancy.
- (g) Standards for subdivision proposals.
- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.
 - (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Permit requirements of Subsection 17-263(c); Subsection 17-264(c) of this Article; and the provisions of this Section.
 - (3) Base Flood Elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to Subsection 17-263(b) or Subsection 17-264(b) of this Article.
 - (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
 - (5) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize or eliminate flood damage.
- (h) Standards for Critical Facilities. A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that, if flooded, may result in significant hazards to public health and safety or interrupt essential services and operations for the community at any time before, during and after a flood.
- (1) Classification of Critical Facilities. Critical Facilities are classified under the following categories: (a) essential services; (b) hazardous materials; (c) at-risk populations; and (d) vital to restoring normal services. It is the responsibility of the Town Council to identify and confirm that specific structures in their community meet the following criteria:
 - a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities and transportation lifelines.
 1. These facilities consist of:
 - a) Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage and emergency operation centers);
 - b) Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions and nonambulatory surgical structures, but excluding clinics, doctors' offices, and nonurgent care medical structures that do not provide these functions);
 - c) Designated emergency shelters;
 - d) Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio and other emergency warning systems, but excluding towers, poles, lines, cables and conduits);

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- e) Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines and service lines); and
 - f) Air transportation lifelines (airports [municipal and larger], helicopter pads and structures serving emergency functions and associated infrastructure [aviation control towers, air traffic control centers and emergency equipment aircraft hangars]).
2. Specific exemptions to this category include wastewater treatment plants (WWTP), nonpotable water treatment and distribution systems and hydroelectric power generating plants and related appurtenances.
 3. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Town Council that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town Council on an as-needed basis upon request.
- b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.
1. These facilities may include:
 - a) Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
 - b) Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
 - c) Refineries;
 - d) Hazardous waste storage and disposal sites; and
 - e) Aboveground gasoline or propane storage or sales centers.
 2. Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemicals are stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either five hundred (500) pounds or the TPQ listed (whichever is lower) for the three hundred fifty-six (356) chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or ten thousand (10,000) pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Public Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 C.F.R. § 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation the ordinance codified herein, but exclude later amendments to or editions of the regulations.
 3. Specific exemptions to this category include:

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- a) Finished consumer products within retail centers and households containing hazardous materials intended for household use and agricultural products intended for agricultural use.
 - b) Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
 - c) Pharmaceutical sales, use, storage and distribution centers that do not manufacture pharmaceutical products.
 - d) These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.
- c. At-risk population facilities include medical care, congregate care and schools. These facilities consist of:
- 1. Elder care (nursing homes);
 - 2. Congregate care serving twelve (12) or more individuals (day care and assisted living);
 - 3. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving twelve (12) or more children);
- d. Facilities vital to restoring normal services including government operations. These facilities consist of:
- 1. Essential government operations (public records, courts, jails, building permitting and inspection services, community administration and management, maintenance and equipment centers);
 - 2. Essential structures for public colleges and universities (dormitories, offices and classrooms only).

These facilities may be exempted if it is demonstrated to the Town Council that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this Article and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Town Council on an as-needed basis upon request.

- (2) Protection for Critical Facilities. All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this Article, protection shall include one (1) of the following:
 - a. Location outside the Special Flood Hazard Area; or
 - b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two (2) feet above the Base Flood Elevation.
- (3) Ingress and egress for new Critical Facilities. New Critical Facilities shall, when practicable as determined by the Town Council, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

(Ord. 2013-129 §1)

Secs. 17-266—17-280. Reserved.

ARTICLE XV Street Maintenance Fees

[Sec. 17-281. Purpose and intent.](#)

[Sec. 17-282. Definitions; administration.](#)

[Sec. 17-283. Street maintenance fee imposed.](#)

[Sec. 17-284. Billing for street maintenance fee; exemptions.](#)

[Sec. 17-285. Use of street maintenance fee; establishment of fund.](#)

[Sec. 17-286. Enforcement.](#)

[Sec. 17-287. Unpaid fees to be a lien.](#)

[Sec. 17-288. Administrative review; appeals.](#)

[Secs. 17-289—17-300. Reserved.](#)

Sec. 17-281. Purpose and intent.

The purpose of this Article is to establish a street maintenance fee system designed to defray the costs of maintaining the Town streets. The amount of the street maintenance fees established herein are reasonably related to the costs incurred by the Town to maintain the streets, and the funds collected from residential and nonresidential properties in the Town shall be set aside and utilized for the sole purpose of defraying such costs.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-282. Definitions; administration.

(a) *Definitions.* For purposes of this Article:

- (1) "Maintenance" or "maintaining" means activities performed for ongoing maintenance of the Town streets, including but not limited to, resurfacing, patching, pothole repair, periodic seal coating, chip seal application, asphalt overlay and other similar expenses. "Maintenance" or "maintaining" shall not include expanding the street system, replacing or adding traffic signals, maintaining pedestrian trails, street sweeping or snow removal or other such activities unrelated to maintenance of the Town streets.
- (2) "Street" means all arterial and neighborhood/collector streets within the boundaries of the Town that are used, or intended for use, by vehicular traffic and are operated and maintained by the Town.

(b) *Administration.* The administration of this Article is hereby vested in and shall be exercised by the Town Manager, who may prescribe forms and rules and regulations for the proper administration and enforcement of the provisions hereof. The Town Manager may delegate the administration of this Article or any part of it, subject to the limitations of this Code, to duly qualified employees and agents of the Town.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-283. Street maintenance fee imposed.

(a) *Street maintenance fee.* The following street maintenance fees are imposed on residential and nonresidential properties in the Town for the time period set forth in Subsection (b):

	Monthly Fee
Residential Development (per unit)	\$4.48
Nonresidential (per 1,000 square feet)	
Retail	\$3.05
Office	\$0.63
Industrial/Other	\$0.27

(b) *Duration of street maintenance fee.* The street maintenance fee shall be effective on January 1, 2017 and shall be imposed on properties in the Town commencing on such date. The street maintenance fee shall terminate on December 31, 2021 and shall not thereafter be imposed on properties in the Town.

(c) *Adjustments to the street maintenance fee.*

(1) Annual adjustment for inflation.

(A) On January 1, 2018, and on January 1st of each year thereafter in which street maintenance fees are in effect, the amount of the street maintenance fee shall be automatically adjusted to account for inflationary increases in the Town's cost of maintaining the streets, utilizing the most recent data from the Engineering News Record Construction Cost Index for the Denver metropolitan area.

(B) In lieu of the automatic annual adjustment, the Town Council may, at its option, adjust the street maintenance fee pursuant to the review process set forth in Subsection (c)(2).

(C) Nothing herein shall prevent the Town Council from electing to maintain an existing street maintenance fee or from electing to waive the inflationary adjustment for any given fiscal year.

(2) Adjustment based on changed circumstances. The street maintenance fees shall be reviewed periodically to ensure that the fees are reasonably related to the overall cost of maintaining the streets and reasonably designed to defray such maintenance costs. When appropriate, the street maintenance fees may be amended based upon revised estimates of the cost of maintaining the Town streets, revised categories of users, uses and traffic generation factors, the needs created or contributed to by those who are subject to the fee and any other factor reasonably related to the Town's legitimate goal of maintaining an effective network of Town streets.

(3) The street maintenance fees may be amended, as set forth above, by Town Council by resolution.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-284. Billing for street maintenance fee; exemptions.

- (a) *Billing.* The street maintenance fee may be billed and collected with the Town's monthly water and sewer bill for residential and nonresidential properties utilizing the Town's water and sewer services and billed and collected separately for properties not utilizing such Town services. All such bills shall be paid to the Town Treasurer, and shall become due and payable in accordance with the rules and regulations of this Code pertaining to the collection of such charges.
- (b) *Exemptions.* The following properties are exempt from payment of the street maintenance fees:
 - (1) All public park land;
 - (2) All public or private ponds, lakes, reservoirs, rivers, creeks, natural water courses, wetlands or irrigation ditch/canal rights-of-way;
 - (3) All public streets, highways, rights-of-way and alleys;
 - (4) All railroad rights-of-way except railroad property not utilized for railroad purposes;
 - (5) All cemeteries; and
 - (6) All lands actively used for agriculture and larger than two (2) acres in size.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-285. Use of street maintenance fee; establishment of fund.

- (a) *Use of funds.* All funds received from the street maintenance fees shall be used for the sole purpose of maintaining the Town streets and not for any other purpose.
- (b) *Establishment of street maintenance fee fund.* A street maintenance account shall be established by the Town and shall be called the "Street Maintenance Fee Fund." All street maintenance fees collected by the Town shall be deposited into the account, which shall be interest-bearing. All interest earned on monies deposited to such account shall be credited to and shall be considered funds of the account. The Town shall establish and implement necessary accounting controls to ensure that the street maintenance fees are properly deposited, accounted for and appropriated in accordance with this provision and any other applicable legal requirements.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-286. Enforcement.

The street maintenance fees due under this Article which are not paid when due may be recovered in an action at law by the Town. The Town Manager is hereby empowered and directed to enforce this provision as to any and all delinquent property owners.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-287. Unpaid fees to be a lien.

The street maintenance fee charged pursuant to this Article shall become a permanent lien upon the property to which such fee is associated from the date said fee becomes due until paid. The owner of the property shall be obligated to pay the fee, which obligation may be enforced by the Town Manager as set forth in Section 17-286 or by suit to enforce the lien. If a tenant in possession of property fails to pay the fee, such failure shall not relieve the owner from the obligation and lien, and the Town shall not be required to seek recovery from any person other than the owner of the property. No changes of

ownership, occupation or use shall affect the application of this Section, and the failure of a new owner to discover that a lien exists shall not impact the new owner's responsibility for payment of the fee. Notwithstanding any provision to the contrary, any delinquent amount may be enforced by assessment and lien upon the property so served and certification thereof to the County Treasurer for collection, with ten-percent administrative fee.

(Ord. No. 2016-142, § 1, 8-18-2016)

Sec. 17-288. Administrative review; appeals.

- (a) *Petition.* An owner who disputes the amount of the street maintenance fee imposed against such owner's property or who disputes any determination made by or on behalf of the Town pursuant to and by the authority of this Article may petition for a hearing on a revision or modification of such fee or such determination. The petition shall be in writing, filed with the Town Clerk and contain facts and figures in support of the position alleged therein. The petition shall be submitted under oath in writing or orally at the duly scheduled hearing. A property owner may only file one petition in connection with a particular fee or determination, except upon a showing of changed circumstances sufficient to justify the filing of an additional petition.
- (b) *Hearing.* The Town Manager may hold a hearing on the petition or may designate another person as a hearing officer with authority to hold such hearing. The hearing shall be held within a reasonable time after the filing of a petition at the Town Hall or other place as designated by the hearing officer, and notice thereof and the proceedings shall otherwise be in accordance with the rules and regulations issued by the Town. The petitioner shall have the burden of proof.
- (c) *Final Order.* Within thirty (30) days of a hearing, the hearing officer shall make written findings of fact and conclusions based upon all relevant information contained in the petition and presented at the hearing. The hearing officer's determination shall be considered a final order, which may, within thirty (30) days of its issuance, be appealed to the Town Council.
- (d) *Appeal to Town Council.* An appeal to the Town Council shall be in writing, filed with the Town Clerk and allege with particularity the errors and omissions contained in the final order. The appellant shall, at that time of making such appeal, pay to the Town Treasurer a docket fee in the amount of fifty dollars (\$50.00). Written notice of the hearing shall be given to all parties concerned at least seven (7) days prior to the hearing. The appellant shall have the burden of proof on appeal. Within thirty (30) days of the hearing, the Town Council shall make its final determination and affirm, modify or reverse the final order.
- (e) *Service.* Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this Article.

(Ord. No. 2016-142, § 1, 8-18-2016)

Secs. 17-289—17-300. Reserved.

CHAPTER 18 Building Regulations

ARTICLE I - Residential Code

ARTICLE II - Building Code

ARTICLE III - Mechanical Code

ARTICLE IV - Plumbing Code

ARTICLE V - Energy Conservation Code

ARTICLE VI - Fuel Gas Code

ARTICLE VII - Fire Code

ARTICLE VIII - Dangerous Buildings Code

ARTICLE IX - Electrical Code

ARTICLE X - Violation; Penalty

ARTICLE XI - Fees and Charges

ARTICLE I Residential Code

[Sec. 18-1. International Residential Code adopted.](#)

[Sec. 18-2. Application of regulations.](#)

[Sec. 18-3. Amendments.](#)

[Secs. 18-4—18-10. Reserved.](#)

Sec. 18-1. International Residential Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the residential building code for the Town, by reference thereto, the *International Residential Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-2. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-3. Amendments.

The International Residential Code is amended as follows:

"Part I. Administrative Code Amendments.

"Chapter 1 - Administration.

"R101.1 Title. These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the Town of Johnstown, and shall be cited as such and will be referred to herein as 'this code.'

"R104.10.1 Areas prone to flooding. The building official shall not grant modifications to any provision related to areas prone to flooding as established by Table R301.2(1) without the granting of a variance to such provisions by the Town Floodplain Administrator.

"R105.1.1 No person shall excavate for a foundation for a building or structure without first having obtained a permit from the building official.

"R105.2 Work exempt from permit.

"7. Prefabricated swimming pools, hot tubs or spas that are less than 24 inches (610 mm) deep.

"R105.5 Expiration. Building permits shall expire as established in Johnstown Municipal Code Section 16-45:

"Sec. 16-45. Expiration of building permit.

"(a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

"(b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

"R106.1.3 Information for construction in flood hazard areas.

"4. If design flood elevations are not included on the community's Flood Insurance Rate Map (FIRM), the Town Floodplain Administrator and the applicant shall obtain and reasonably utilize any design flood elevation and floodway data available from other sources.

"R108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI Fees and Charges.

"R108.3 Building permit valuations. Building permit valuation shall include total value of the work for which a permit is being issued, such as electrical, gas, mechanical and plumbing equipment, and other permanent systems, including materials and labor. The building official shall set final building permit valuation based on the latest valuation schedule published in *Building Safety* magazine by the International Code Council or other accepted schedule.

"R108.5 Refunds. The building official is authorized to establish a refund policy.

"The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"R108.6 Work commencing before permit issuance. Any person who commences any work on a building, structure, gas, mechanical, electrical or plumbing system before obtaining the necessary permits shall be subject to an additional fee equal to the permit fee.

"R108.7 Re-inspections. A re-inspection fee may be assessed when: inspections are requested before the work is ready, the permit and/or approved plans are not available, and/or if the job is not accessible for the inspector. This fee must be paid before further inspections will be conducted."

Delete Section R112 in its entirety and replace with the following:

"Section R112 Board of Appeals.

"R112.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"R112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an adequate or superior alternative form of construction is proposed. The board shall have no authority to waive requirements of this code.

"R112.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments.

"R113.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92."

"Part III. Building Planning and Construction Amendments.

"Chapter 3 - Building Planning.

**"Table R301.2(1)
Climatic and Geographic Design Criteria**

"Ground Snow Load	Wind Speed ^d (mph)	Seismic Design Category ^f	Subject to Damage From			Winter Design Temperature ^e	Ice Barrier Underlayment Required ^h	Flood Hazard ^g	Air Freezing Index ⁱ	Mean Annual Temp ^j
			Weathering ^a	Frost line depth ^h	Termite ^c					

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30	90 C	B	Severe	30"	Slight to Moderate	1	No	2003	1000	45.
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^d ;hg;The jurisdiction shall fill in this part of the table with the wind speed from the Colorado Front Range Gust Study. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4."

"R312.1.1 Area wells. All area wells, stair wells and light wells attached to any building, when such wells are located less 36 inches (914 mm) from the nearest intended walking surface and deeper than 30 inches below the surrounding ground level, creating an opening with a horizontal dimension greater than 24 inches (610 mm) measured perpendicular from the building, with the side walls of such well having a slope steeper than 2 horizontal to 1 vertical, shall be protected with guards conforming to this section around the entire opening, or be provided with an equivalent barrier.

"Exceptions:

"1. The access side of stairways need not be barricaded.

"2. Area wells provided for emergency escape and rescue windows may be protected with approved grates or covers that comply with Section 310.4 of this code.

"R312.2 Guard opening limitations. Required guards on open sides of stairways, raised floor areas, balconies, porches and area wells protected as specified in R312.1.1 shall have intermediate rails or ornamental closures that do not allow passage of a sphere 4 inches (102 mm) in diameter.

"R401.1.1 Footings and foundations shall be designed by a Colorado licensed architect or engineer. The engineered footing and foundation design shall be based on a soils analysis for the specific location where the foundation is to be installed.

"Exception: Detached accessory buildings may have a foundation system approved by the building official."

"Part VI. Fuel Gas Code Amendments.

"Chapter 24 - Fuel Gas.

"G2417.4.1 (406.4.1) Test pressure. The test pressure to be used shall be not less than one and one-half times the proposed maximum working pressure, but not less than 10 psig, irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe."

"Part VII. Plumbing Code Amendments.

"Chapter 25 - Plumbing Administration.

"P2603.6.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be a minimum of 12 inches below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 12 inches below grade."

(Ord. 2008-813 §1)

Secs. 18-4—18-10. Reserved.

ARTICLE II Building Code

[Sec. 18-11. International Building Code adopted.](#)

[Sec. 18-12. Application of regulations.](#)

[Sec. 18-13. Amendments.](#)

[Secs. 18-14—18-20. Reserved.](#)

Sec. 18-11. International Building Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the building code for the Town, by reference thereto, the *International Building Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-12. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-13. Amendments.

The International Building Code is amended as follows:

"Part I. Administrative Code Amendments.

"101.1 Title. These regulations shall be known as the Building Code of the Town of Johnstown, hereinafter referred to as 'this code.'

"R105.1.3 No person shall excavate for a foundation for a building or structure without first having obtained a permit from the building official.

"105.5 Expiration. Building permits shall expire as established in Johnstown Municipal Code Section 16-45:

"Sec. 16-45. Expiration of building permit.

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"(a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

"(b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

"108.2 Schedule of permit fees. On buildings, structures, electrical, gas, mechanical and plumbing systems or alterations requiring a permit, a fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"108.6 Refunds. The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"108.7 Re-inspections. A re-inspection fee may be assessed when: inspections are requested before the work is ready, the permit and/or approved plans are not available, and/or if the job is not accessible for the inspector. This fee must be paid before further inspections will be conducted.

"112.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an adequate or superior alternative form of construction is proposed. The board shall have no authority to waive requirements of this code.

"112.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments.

"113.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92.

"1013.1.1 Area wells. All area wells, stair wells and light wells attached to any building, when such wells are located less 36 inches (914 mm) from the nearest intended walking surface and deeper than 30 inches below the surrounding ground level, creating an opening with a horizontal dimension greater than 24 inches (610 mm) measured perpendicular from the building, with the side walls of such well having a slope steeper than 2 horizontal to 1 vertical, shall be protected with guards conforming to this section around the entire opening, or be provided with an equivalent barrier.

"Exceptions:

"1. The access side of stairways need not be barricaded.

"2. Area wells provided for emergency escape and rescue windows may be protected with approved grates or covers that comply with Section 1025.4 of this code.

"1612.3 Establishment of flood hazard areas. To establish flood hazard areas, the governing body shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a

minimum, areas of special flood hazard as identified by the Federal Emergency Management Agency in an engineering report entitled "The Flood Insurance Study for the Town of Johnstown," dated August 22, 2003, as amended or revised with the accompanying Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) and related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

"3410.2 Applicability. Structures existing prior to the adoption of this code, in which there is work involving additions, alterations or changes of occupancy, shall be made to conform to the requirements of this section or the provisions of Sections 3403 through 3407. The provisions in Sections 3410.2.1 through 3410.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I."

(Ord. 2008-813 §1)

Secs. 18-14—18-20. Reserved.

ARTICLE III Mechanical Code

[Sec. 18-21. International Mechanical Code adopted.](#)

[Sec. 18-22. Application of regulations.](#)

[Sec. 18-23. Amendments.](#)

[Secs. 18-24—18-30. Reserved.](#)

Sec. 18-21. International Mechanical Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the mechanical code for the Town, by reference thereto, the *International Mechanical Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-22. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-23. Amendments.

The International Mechanical Code is amended as follows:

"101.1 Title. These regulations shall be known as the Mechanical Code of the Town of Johnstown, hereinafter referred to as 'this code.'

"106.4.3 Expiration. Permits shall expire as established in Johnstown Municipal Code Section 16-45:

"Sec. 16-45. Expiration of building permit.

"(a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

"(b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

"106.5.2 Fee schedule. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"106.5.3 Fee refunds. The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"108.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair mechanical work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92.

"108.5 Stop work orders. Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, the owner's agent or the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed in Article X, Section 18-92."

Delete Section 109 in its entirety and replace with the following:

"Section 109 Means of Appeal.

"109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"109.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an adequate or superior alternative form of construction is proposed. The board shall have no authority to waive requirements of this code.

"109.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments."

(Ord. 2008-813 §1)

Secs. 18-24—18-30. Reserved.

ARTICLE IV Plumbing Code

[Sec. 18-31. International Plumbing Code adopted.](#)

[Sec. 18-32. Application of regulations.](#)

[Sec. 18-33. Amendments.](#)

[Secs. 18-34—18-40. Reserved.](#)

Sec. 18-31. International Plumbing Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the plumbing code of the Town, by reference thereto, the *International Plumbing Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL, 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-32. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-33. Amendments.

The International Plumbing Code is amended as follows:

"101.1 Title. These regulations shall be known as the International Plumbing Code of the Town of Johnstown hereinafter referred to as 'this code.'

"106.5.3 Expiration. Permits shall expire as established in Johnstown Municipal Code Section 16-45:

"Sec. 16-45. Expiration of building permit.

"(a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

"(b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected,

together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

"106.6.2 Fee schedule. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"106.6.3 Fee refunds. The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"108.4 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair plumbing work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92."

Delete Section 109 in its entirety and replace with the following:

"Section 109 Means of Appeal.

"109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"109.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an adequate or superior alternative form of construction is proposed. The board shall have no authority to waive requirements of this code.

"109.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments.

"305.6.1 Sewer depth. Building sewers that connect to private sewage disposal systems shall be a minimum of 12 inches below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 12 inches below grade.

"904.1 Roof extension. All open vent pipes that extend through a roof shall be terminated at least 6 inches above the roof, except that where a roof is to be used for any purpose other than weather protection, the vent extensions shall be run at least 7 feet (2134 mm) above the roof."

(Ord. 2008-813 §1)

Secs. 18-34—18-40. Reserved.

ARTICLE V Energy Conservation Code

[Sec. 18-41. International Energy Conservation Code adopted.](#)

[Sec. 18-42. Application of regulations.](#)

[Sec. 18-43. Amendments.](#)

[Secs. 18-44—18-50. Reserved.](#)

Sec. 18-41. International Energy Conservation Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the energy code of the Town, by reference thereto, the *International Energy Conservation Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-42. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-43. Amendments.

The International Energy Conservation Code is amended as follows:

"101.1 Title. These regulations shall be known as the Energy Conservation Code of the Town of Johnstown, hereinafter referred to as 'this code.'

"Section 108 Permits, Fees and Violations.

"108.1 Permits, when required. Residential buildings shall meet the permit requirements of International Residential Code Section R105. Commercial buildings shall meet the requirements of International Building Code Section 105.

"108.2 Fees. A permit shall not be issued until the fees prescribed in Section 108.2.1 have been paid.

"108.2.1 Fee schedule. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"108.2.2 Fee refunds. The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"108.3 Violation penalties. Any person who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter or repair work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92."

(Ord. 2008-813 §1)

Secs. 18-44—18-50. Reserved.

ARTICLE VI Fuel Gas Code

[Sec. 18-51. International Fuel Gas Code adopted.](#)

[Sec. 18-52. Application of regulations.](#)

[Sec. 18-53. Amendments.](#)

[Secs. 18-54—18-60. Reserved.](#)

Sec. 18-51. International Fuel Gas Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the fuel gas code of the Town, by reference thereto, the *International Fuel Gas Code*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-52. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-53. Amendments.

The International Fuel Gas Code is amended as follows:

"101.1 Title. These regulations shall be known as the Fuel Gas Code of Town of Johnstown, hereinafter referred to as 'this code.'

"106.4.3 Expiration. Permits shall expire as established in Johnstown Municipal Code Section 16-45:

"Sec. 16-45. Expiration of building permit.

"(a) If the work described in any building permit has not begun within ninety (90) days from the date of issuance thereof, the permit shall expire; it shall be cancelled by the administrative official; and written notice thereof shall be given to the persons affected.

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"(b) If the work described in any building permit has not been substantially completed within two (2) years of the date of issuance thereof, the permit shall expire and be cancelled by the administrative official, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

"106.5.2 Fee schedule. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"106.5.3 Fee refunds. The building official may authorize refunding of any fee paid which was erroneously paid or collected.

"The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

"The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

"The building official shall not authorize the refunding of any fee paid except upon written application filed by the original permittee not later than 180 days after the date of the fee payment.

"108.4 Violation penalties. Persons who shall violate a provision of this code, fail to comply with any of the requirements thereof or erect, install, alter or repair work in violation of the approved construction documents or directive of the code official, or of a permit or certificate issued under the provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92.

"108.5 Stop work orders. Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, the owner's agent or the person doing the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed in Article X, Section 18-92."

Delete Section 109 in its entirety and replace with the following:

"Section 109 (IFGC) Means of Appeal.

"109.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"109.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an adequate or superior alternative form of construction is proposed. The board shall have no authority to waive requirements of this code.

"109.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments.

"406.4.1 Test pressure. The test pressure to be used shall be no less than 1½ times the proposed maximum working pressure, but not less than 10 psig, irrespective of design pressure. Where the test pressure exceeds 125 psig (862 kPa gauge), the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe."

(Ord. 2008-813 §1)

Secs. 18-54—18-60. Reserved.

ARTICLE VII Fire Code

[Sec. 18-61. International Fire Code adopted.](#)

[Sec. 18-62. Application of regulations.](#)

[Sec. 18-63. Amendments.](#)

[Secs. 18-64—18-70. Reserved.](#)

Sec. 18-61. International Fire Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the fire code of the Town, by reference thereto, the *International Fire Code*, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-62. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-63. Amendments.

(a) The International Fire Code is amended as follows:

"101.1 Title. These regulations shall be known as the Fire Code of the Town of Johnstown, hereinafter referred to as 'this code.'

"105.1.1 Permits required. Permits required by this code shall be obtained from the fire code official. Permit fees shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official."

Delete Section 108 in its entirety and replace with the following:

"Section 108 Board of Appeals.

"108.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the fire code official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"108.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments.

"109.3 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92.

"111.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed in Article X, Section 18-92."

A new Subsection 112 is hereby enacted to read as follows:

"Section 112 Fees.

"112.1 General. The fees for the permits, inspections, and services authorized by this code shall be assessed in accordance with the fee schedule established by resolution of the Johnstown Fire Protection District Board or the Loveland Rural Fire Protection District Board with approval of Town of Johnstown.

"315.4 Storage under stairways. Storage is prohibited under exit stairways.

"Exception: Storage is allowed under interior stairways when such stairways are not within exit enclosures and such spaces are protected on the enclosed side by one-hour fire resistive construction as specified in the Building Code.

"503.2.5 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved area for turning around fire apparatus. Dead-ends in excess of 1,000 feet are not allowed.

"Exception: Within the Town's boundary where fire apparatus access roads cannot be installed because of location on property, topography, waterways, nonnegotiable grades or other similar conditions the fire code official is authorized to increase the dead-end distance.

"503.6 Controlled access gates. The installation of a controlled access gate or barrier in the path of a fire apparatus access road shall be approved by the fire code official and be designed and installed in accordance with the criteria established by the fire code official and this section.

"Exception: Private driveways serving a single-family residence.

"503.6.1 Permits. Permits shall be required to install, modify or operate controlled access gates and barriers.

"503.6.2 Maintenance. All gates or barriers shall be maintained operable at all times and shall be inspected at least annually. The annual inspection and maintenance shall be the responsibility of the property owner, homeowners' association or the occupants of a gated community.

"503.6.3 Inoperable gates and barriers. Gates or barriers that are inoperable shall be locked open or removed at the owner's expense.

"503.6.4 Unpermitted gates and barriers. Gates or barriers that have been installed without a permit shall be chained open or removed at the owner's expense until a permit and final approval have been obtained from the fire department.

"508.3 Fire flow. Fire flow requirements for buildings or portions of buildings and facilities shall be determined in accordance with Appendix B.

"508.5 Fire hydrant systems. Fire hydrant systems shall comply with Sections 508.5.1 through 508.5.8.

"508.5.7 Fire hydrant spacing. Fire hydrants shall be spaced 600 feet apart for Group R-3 occupancies and 350 feet apart for all other occupancies.

"508.5.8 Fire Department Connections. A fire hydrant shall be located within 150 feet of a fire department connection.

"Section 512 Public Safety Radio Amplification Systems.

"512.1 General. Public safety radio amplification systems for the enhancement of emergency services communications within buildings shall be designed, installed and maintained in accordance with this section.

"512.2 Where required. Where adequate radio coverage cannot be established within a building, as defined by the fire code official, public safety radio amplification systems shall be installed in the following locations:

"1. New buildings with a total building area greater than 50,000 square feet or building additions that cause the building to be greater than 50,000 square feet. For the purposes of this section, fire walls shall not be used to define separate buildings.

"2. All new basements over 10,000 square feet.

"3. Existing buildings meeting the criteria of Item #1 or #2 of this section undergoing alterations exceeding 50% of the aggregate area of the building.

"Exception: One- and two-family dwellings and townhouses.

"512.3 Design and installation standard. Public safety radio amplification systems shall be designed and installed in accordance with the criteria established by the fire code official based on the capabilities and communication features of emergency services.

"512.4 Maintenance. Public safety radio amplification systems shall be maintained in an operative condition at all times and shall be replaced or repaired where defective.

"903.2.14 Dead-end roadways. An automatic fire sprinkler shall be installed in all Group R fire areas (other than single family detached residences) on a dead-end roadway when the dead-end is in excess of 400 feet.

"903.4.3 Floor control valves. Approved supervised indicating control valves shall be provided at the point of connection to the riser on each floor in all multistory structures.

"2403.2 Approval required. Tents and membrane structures having an area in excess of 600 square feet and canopies in excess of 900 square feet shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

"3301.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited unless permitted by state or local laws.

"Exceptions:

"4. The possession, storage, sale, handling and use of Permissible Fireworks in accordance with the criteria established by the fire code official.

"3302 Permissible fireworks. As defined in the Colorado Revised Statutes 12-28-101, and the provisions of the Johnstown Municipal Code concerning fireworks.

"Section 3309 Permissible fireworks.

"3309.1 General. Permissible fireworks use shall be as detailed in this section and in accordance with state and local laws.

"3309.2 Use of fireworks. The use of permissible fireworks shall be in accordance with subsections 3309.2.1 through 3309.2.4.

"3309.2.1 It shall be unlawful for any person to possess, store, offer for sale, expose for sale, sell at retail or use or discharge any fireworks, other than permissible fireworks.

"3309.2.2 It shall be unlawful for any person to knowingly furnish to any person who is under sixteen years of age, by gift, sale or any other means, any fireworks or permissible fireworks.

"3309.2.3 It shall be unlawful for any person under sixteen years of age to purchase any fireworks including permissible fireworks.

"3309.2.4 It shall be lawful for a person under the age of sixteen years to possess and discharge permissible fireworks if such person is under adult supervision throughout the act of possession and discharge."

3404.2.13.1.4 is hereby repealed in its entirety.

"3404.2.9.5.1 Locations where aboveground tanks are prohibited. Storage of Class I and II liquids in aboveground tanks outside of buildings is prohibited.

"Exceptions:

"1. Protected aboveground tank storage (UL 2085) not exceeding 1000 gallons in size per tank or more than 2000 gallons per site.

"2. Aboveground storage tanks not exceeding 500 gallons for supply of emergency generators or fire pumps when approved by the fire code official."

Subsection 3404.2.13.1.4 is hereby repealed in its entirety.

"3406.2.4 Permanent and temporary tanks. The capacity of permanent aboveground tanks containing Class I or II liquids shall not exceed 500 gallons. The capacity of temporary aboveground tanks containing Class I or II liquids shall not exceed 2,000 gallons unless a larger amount is approved in writing by the fire code official. Tanks shall be of the single-compartment design."

Subsection 3406.2.4.4 is hereby repealed in its entirety.

"3804.2 Maximum capacity within established limits. Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed a water capacity of 500 gallons.

"Exception: The aggregate capacity of any one installation shall not exceed a water capacity of 2,000 gallons."

(b) Only those appendix chapters of the International Fire Code listed herein are adopted as follows:

APPENDIX B, Fire-Flow Requirements for Buildings.

APPENDIX C, Fire Hydrant Locations and Distribution.

APPENDIX D, Fire Apparatus Access Road. (Johnstown Fire Protection District only).

(Ord. 2008-813 §1)

Secs. 18-64—18-70. Reserved.

ARTICLE VIII Dangerous Buildings Code

[Sec. 18-71. Uniform Code for the Abatement of Dangerous Buildings adopted.](#)

[Sec. 18-72. Application of regulations.](#)

[Sec. 18-73. Amendments.](#)

[Secs. 18-74—18-80. Reserved.](#)

Sec. 18-71. Uniform Code for the Abatement of Dangerous Buildings adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted, by reference thereto, the *Uniform Code for the Abatement of Dangerous Buildings*, 1997 edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601.

(Ord. 2008-813 §1)

Sec. 18-72. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code or other ordinances of the Town specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-73. Amendments.

The Uniform Code for the Abatement of Dangerous Buildings is amended as follows:

"Section 202 Abatement of Dangerous Buildings.

"202.1 General. All buildings or portions thereof which are determined after inspection by the building official to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 401 of this code.

"202.2 Permits, when required. An owner, authorized agent or contractor who desires to repair, rehabilitate, demolish or remove as regulated by this code, or to cause such work to be done, shall first make application to the code official and obtain the required permit for the work as provided in sections 105.3 through 105.7 of the International Building Code.

"202.3 Fees. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"203.1 General. It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

"203.2 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be subject to penalties as prescribed in Article X, Section 18-92.

"204 Inspection of work. All buildings or structures within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this code and Section 109 and Chapter 17 of the Building Code."

Delete Section 205 in its entirety and replace with the following:

"Section 205 Board of Appeals.

"205.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the

governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"205.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

"205.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments."

(Ord. 2008-813 §1)

Secs. 18-74—18-80. Reserved.

ARTICLE IX Electrical Code

[Sec. 18-81. National Electric Code adopted.](#)

[Sec. 18-82. Application of regulations.](#)

[Sec. 18-83. Amendments.](#)

[Secs. 18-84—18-90. Reserved.](#)

Sec. 18-81. National Electric Code adopted.

Pursuant to Section 31-16-201, et seq., C.R.S., as amended, there is hereby adopted as the electrical code of the Town, by reference thereto, the National Electrical Code, 2008 edition, published by the National Fire Protection Association, Inc., One Batterymarch Park, Quincy, MA 02169-7471, and the *International Code Council Electrical Code Administrative Provisions*, 2006 edition, published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

(Ord. 2008-813 §1)

Sec. 18-82. Application of regulations.

Where, in any specific case, different sections of this Code, the zoning code, other ordinances of the Town or the electric code adopted by the Colorado State Electric Board specify different materials, methods of construction or other requirements, the most restrictive shall govern.

(Ord. 2008-813 §1)

Sec. 18-83. Amendments.

The International Code Council Electrical Code Administrative Provisions are amended as follows:

"101.1 Title. These regulations shall be known as the Electrical Code Administrative Provisions of the Town of Johnstown and shall be cited as such and will be referred to herein as 'this code.'

"404.2 Schedule of permit fees. A fee for each permit shall be paid as required, in accordance with the schedule as established by Article XI, Fees and Charges.

"1003.1 Penalties. Any person who fails to comply with the provisions of this code or who fails to carry out an order made pursuant to this code or violates any condition attached to a permit, approval or certificate shall be subject to penalties as prescribed in Article X, Section 18-92."

Delete Section 1101 in its entirety and replace with the following:

"Section 1101 General.

"1101.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

"1101.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

"1101.3 Members of the board of appeals. The board of appeals shall be comprised of the members of the Board of Adjustments."

(Ord. 2008-813 §1)

Secs. 18-84—18-90. Reserved.

ARTICLE X Violation; Penalty

[Sec. 18-91. Violation.](#)

[Sec. 18-92. Penalty.](#)

[Secs. 18-93—18-100. Reserved.](#)

Sec. 18-91. Violation.

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure in the Town, or cause the same to be done, contrary to or in violation of the provisions of the codes adopted in this Chapter.

(Ord. 2008-813 §1)

Sec. 18-92. Penalty.

Penalties for violations of any of the codes referred to under this Chapter shall be prosecuted pursuant to the procedures and penalties expressed under Article IV, Chapter 1 of this Code.

(Ord. 2008-813 §1)

Secs. 18-93—18-100. Reserved.

ARTICLE XI Fees and Charges

[Sec. 18-101. Fees and charges.](#)

[Secs. 18-102—18-110. Reserved.](#)

Sec. 18-101. Fees and charges.

Any fees and charges provided for in this Chapter may be amended by resolution adopted by the Town Council.

(Ord. 2008-813 §1)

Secs. 18-102—18-110. Reserved.

CODE COMPARISON TABLE

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478	1992	Possession or consumption of alcoholic beverages by underage person	1 Added	10-126
480	1993	Vehicle proof of insurance	Added	8-81
482	1993	Vehicle safety belts	Added	8-82
483	1993	Model Traffic Code amendment	1	8-22
484	1993	Uniform Building Code	1	18-21, 18-22,
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498	1994	Uniform Housing Code	1 Added	Ch. 18, Art. IX
500	1995	Cemetery		11-111, 11-115, 11-120, 11-143
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505	1995	Storm water drainage assessment, fee		17-113
506	1995	Storm water drainage assessment, fee		17-113
509	1995	Town Administrator		2-44—2-46
517	1995	Model Traffic Code, 1995 edition	1	8-21
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534	1996	Police Chief employment, powers and duties	1	2-93
541	1996	Model Traffic Code amendments	1	8-22
542	1996	Zoning, public hearings	1	16-48
546	1996	Fraud by check	1 Added	10-75
552	1996	Storm water drainage fee	1	17-113
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557	1997	Oil and gas exploration and production	Added	17-181—17-207
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569	1997	Approval of preliminary plats	1		17-62
570	1997	Ethics code	1	Added	2-220—2-225
571	1997	Order of business	1		2-19
572	1997	Drug and alcohol testing	1	Added	2-57
575	1997	Telecommunications towers and antennas	1	Added	16-341—16-349
577	1998	Water rights dedication	1	Added	13-61—13-72
98-579	1998	Parking of trailers, campers and boats	1	Added	8-47
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