

**1996**

A Codification of the General Ordinances  
of the Town of Nederland, Colorado

**Beginning with Supp. No. 8,  
Supplemented by Municipal Code Corporation**

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info@municode.com | 800.262.2633 | www.municode.com  
P.O. Box 2235 Tallahassee, FL 32316

**OFFICIALS**

of the

**TOWN OF NEDERLAND**

*Mayor*

Joe Gierlach

*Mayor Pro Tem*

Kevin Mueller

*Board of Trustees*  
Annette Croughwell

Peter Fiori  
Randy Lee  
Ledge Long  
Chris Perret

*Town Administrator*

Alisha Reis

*Town Clerk*

Michele Martin

*Town Attorney*

Carmen Beery

## SUPPLEMENTATION

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

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

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

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

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

## AMENDMENTS

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

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

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

(Set out section title and contents)

**Rewrites:** A revision of the Code may be accomplished as follows:

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



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## PREFACE

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

The *Table of Contents* is the table containing each chapter and article title, with reference to page location.

Preceding each chapter is a chapter table of contents, also identifying each article by the subject name provided.

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

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

The *Disposition of Ordinances Table* identifies the source for the contents of the code. This table provides ordinance numbers in chronological order and location by section number for the present code contents. Thus, if there is interest in determining whether an ordinance, or a portion thereof, is contained within the code, the Disposition of

Ordinances Table will provide that information. The *Table of Up-to-Date Pages* lists all of the current pages through the most recent supplementation.

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



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#### **AMENDED ORDINANCE NUMBER 435**

AN ORDINANCE ADOPTING BY REFERENCE A CODIFICATION OF THE ORDINANCES OF THE TOWN OF NEDERLAND OF A GENERAL AND PERMANENT NATURE, ENTITLED THE "NEDERLAND MUNICIPAL CODE, 1996 EDITION"; ADOPTING VARIOUS SECONDARY CODES BY REFERENCE; SETTING FORTH AMENDMENTS TO THE ADOPTED CODES; PROVIDING PENALTIES FOR THE VIOLATIONS OF SUCH MUNICIPAL CODE; PROVIDING FOR THE REPEAL OF CERTAIN ORDINANCES NOT INCLUDED IN SUCH MUNICIPAL CODE; PROVIDING FOR THE MANNER OF AMENDING SUCH MUNICIPAL CODE; AND DECLARING AN EMERGENCY

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

**WHEREAS**, the Board of Trustees of the Town of Nederland has determined that it is appropriate that the ordinances of the Town of a permanent and general nature be codified; and

**WHEREAS**, Colorado Code Publishing Company, 305 West Magnolia, Suite 382, Fort Collins, CO 80521, has compiled, edited and published a codification of the general and permanent ordinances of the Town, which recodification is designated as the "Nederland Municipal Code," 1996 Edition; and

**WHEREAS**, the Board of Trustees provided notice of its intent to consider this Ordinance at its meeting on September 24, 1996, and held a public hearing thereon on December 10, 1996, and notice of intent to reconsider this Ordinance at its meeting on April 8 and held a public hearing thereon on April 22, 1997; and

**WHEREAS**, the Board of Trustees provided notice and held a public hearing on adopting the Uniform Fire Code on February 11, 1997, and adopted such code by Ordinance No. 442.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF NEDERLAND,  
COLORADO, THAT:

Section 1. The code entitled "Nederland Municipal Code," 1996 Edition, published by Colorado Code Publishing Company, 305 West Magnolia, Suite 382, Fort Collins, CO, consisting of Chapters 1 through 18, is hereby adopted as a primary code by reference pursuant to Part 2 of Article 16 of Title 31, C.R.S. and shall hereafter be referred to as the Nederland Municipal Code.

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

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

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

- (1) The *Model Traffic Code for Colorado Municipalities*, 1995 edition, published by the Colorado Department of Transportation, as adopted and amended in Section 8-1 et seq.;
- (2) The *Uniform Building Code* and *Uniform Building Code Standards*, 1994 editions, published by the International Conference of Building Officials, as adopted and amended in Section 18-1 et seq.;
- (3) The *Model Energy Code*, 1989 edition, published by the Council of American Building Officials, as adopted and amended in Section 18-1 et seq.;
- (4) The *Uniform Mechanical Code*, 1994 edition, published by the International Conference of Building Officials, as adopted and amended in Section 18-21 et seq.;
- (5) The *Uniform Plumbing Code*, 1991 edition, published by the International Conference of Plumbing and Mechanical Officials, as adopted in Section 18-41 et seq.; and
- (6) The *Uniform Code for the Abatement of Dangerous Buildings*, 1991 edition, published by the International Conference of Building Officials, as adopted and amended in Section 18-61 et seq..

Section 5. The following codes were adopted by reference and incorporated into the Nederland Municipal Code by Ordinance No. 442 on February 11, 1997:

The *Uniform Fire Code*, 1994 edition, published by the International Fire Code Institute and the *Life Safety Code*, 1988 edition, published by the National Fire Protection Association, as adopted and amended in Section 18-181 et seq.

Section 6. The penalties provided by the Nederland Municipal Code are hereby adopted as follows:

- (1) **Sec. 1-72. General penalty for violation. (Article IV, General Penalty)**
  - (a)

No person shall violate any of the provisions of the ordinances of the Town or of this Code. Except in cases where a different punishment is prescribed by any ordinance of the Town or this Code, any person who violates any of the provisions of the ordinances of the Town or of this Code shall be punished by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment not to exceed one hundred eighty (180) days, or by both such fine and imprisonment, except as hereinafter provided in Section 1-73. In addition, such person shall pay all court costs imposed by the court.

(2) **Sec. 1-73. Application of penalties to juveniles. (Article IV, General**

**Penalty)**

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. In addition, such person shall pay all court costs imposed by the court.

(3) **Sec. 2-226. Contempt power. (Article IX, Municipal Court)**

(a) When the Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed three hundred dollars (\$300.00) and imprisonment not to exceed a term of ten (10) days.

(4) **Sec. 5-7. Forfeiture. (Article I, Cable Television System)**

(c) (6) A penalty of up to one hundred dollars (\$100.00) per day may be assessed for delay caused by the franchisee or unreasonable delay in resolving matters which, independently, may be beyond the control of the applicant.

(5) **Sec. 5-13. Unlawful acts. (Article I, Cable Television System)**

(c) It shall be a misdemeanor punishable by a fine of not more than three hundred dollars (\$300.00), or by imprisonment for a term not to exceed ninety (90) days, or both, for any person to violate any of the provisions of this Section.

(6) **Sec. 5-22. Rate schedules. (Article I, Cable Television System)**

(g) In the event a customer fails to pay his or her monthly service charge to the Grantee by the tenth of the month in which the charge is due, the Grantee is authorized to disconnect the installation or charge a penalty of ten dollars (\$10.00), or both. Any customer so disconnected for nonpayment shall be required to pay a full installation fee in order to have the service reconnected.

(7) **Sec. 7-7. Action to abate a public nuisance. (Article I, Administration and Abatement of Nuisances)**

(2) d. Any violation of any injunction or order issued by the Municipal Court in an action to abate a public nuisance may be punished as a contempt of court or by a fine not to exceed three hundred dollars (\$300.00). Unless the violation by its nature cannot be corrected, each day's failure to comply with an injunction or order to abate shall constitute a separate violation for which an additional penalty may be imposed.

(8) **Sec. 8-25. Penalties. (Article II, Parking Regulations)**

The following penalties shall be assessed against any person found to have violated any provision of this Article:

(1) First offense: fifty dollars (\$50.00) and towing and storage charges, if any, incurred by the Town.

(2)

Second offense: one hundred dollars (\$100.00) and towing and storage charges, if any, incurred by the Town.

(3) Third offense and each subsequent offense: three hundred dollars (\$300.00) and towing and storage charges, if any, incurred by the Town.

(9) **Sec. 10-128. Harassment by stalking (Article VII, Public Peace)**

(c) If a person is convicted of stalking more than once within a seven-year period, there shall be a minimum mandatory sentence of thirty (30) days' imprisonment.

(10) **Sec. 10-129. Acts prohibited in public. (Article VII, Public Peace)**

(c) (2) If the defendant is less than eighteen (18) years at the time of the commission of the offense, by a fine not to exceed three hundred dollars (\$300.00).

(11) **Sec. 10-144. Possession of cannabis. (Article VIII, Alcohol and Drugs)**

(a) It is unlawful to possess one (1) ounce or less of cannabis or cannabis concentrate, and upon conviction thereof, or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine of not more than one hundred dollars (\$100.00).

(b) It is unlawful openly and publicly to display or consume one (1) ounce or less of cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, shall be punished by a fine of one hundred dollars (\$100.00), and by imprisonment not exceeding fifteen (15) days.

(12) **Sec. 10-203. Distribution of cigarettes and tobacco products to minors.**

(e) **(Article XII, Minors)**

Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsections (a), (c) or (d) shall be punished by a fine of two hundred dollars (\$200.00). Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (b) shall be punished by a fine of fifty dollars (\$50.00).

(13) **Sec. 16-90. Fences. (Article IV, Supplemental Regulations)**

(h) Any person violating any provision of this Section shall be guilty of a misdemeanor and may be punished by a fine up to one thousand dollars (\$1,000.00) per day or one (1) year in jail or both.

(14) **Sec. 18-2. Amendments. (Article I, Uniform Building Code, Standards and**

**Model Energy Code)**

**"Section 103 — Violations**

"B. Any person, firm, building superintendent, building manager, property manager, contractor's superintendent or corporation violating any provision of this code or any of the provisions of the adopted construction codes, as amended: the Uniform Building Code, 1994 Edition; the Uniform Building Standards, 1994 Edition; the Uniform Mechanical Code, 1994 Edition; the Uniform Code of the Abatement of Dangerous Buildings, 1991 Edition; the Model Energy Code, 1989 Edition; the Uniform Plumbing Code, 1991 Edition: is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10.00 or more than \$300.00, or by imprisonment in the County jail for not more than 90 days, or by both such fine and imprisonment. Each day during which such illegal erection, construction, reconstruction, alteration, remodeling, use or other violation continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed, reconstructed,

altered, remodeled or used in violation of this code, the Town Attorney, the Town Board of Trustees or any owner of real estate within the limits of the Town, in addition to other remedies provided by law, may institute an appropriate action for injunction, mandamus or abatement to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration or use."

(15) **Sec. 18-4. Violations and penalties. (Article I, Uniform Building Code, Standards and Model Energy Code)**

Any person doing any act or omission in violation of this code shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of one thousand dollars (\$1,000.00), one (1) year imprisonment or both such fine and imprisonment, with each day such violation continues to constitute a separate offense.

(16) **Sec. 18-24. Violations and penalties. (Article II, Uniform Mechanical Code)**

Any person doing any act or omission in violation of this code shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of one thousand dollars (\$1,000.00), one (1) year imprisonment or both such fine and imprisonment, with each day such violation continues to constitute a separate offense.

(17) **Sec. 18-44. Violations and penalties. (Article III, Uniform Plumbing Code)**

Any person doing any act or omission in violation of this code shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of one thousand dollars (\$1,000.00), one (1) year imprisonment or both such fine and imprisonment, with each day such violation continues to constitute a separate offense.

(18) **Sec. 18-64. Violations and penalties. (Article IV, Uniform Code for the**

**Abatement of Dangerous Buildings)**

Any person doing any act or omission in violation of this code shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of one thousand dollars (\$1,000.00), one (1) year imprisonment or both such fine and imprisonment, with each day such violation continues to constitute a separate offense.

(19) **Sec. 18-187. Violations and penalties. (Article VIII, Uniform Fire Code)**

Any person doing any act or omission in violation of this code shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of one thousand dollars (\$1,000.00), one (1) year imprisonment or both such fine and imprisonment, with each day such violation continues to constitute a separate offense.

Section 7. Additions or amendments to the Nederland Municipal Code, when passed in the form as to indicate the intention of the Town to make the same a part of the Nederland Municipal Code, shall be deemed to be incorporated into the Nederland Municipal Code, such that reference to the Nederland Municipal Code includes the additions and amendments.

Section 8. Ordinances adopted after this Ordinance that amend or refer to ordinances that have been codified in the Nederland Municipal Code shall be construed as if they amend or refer to those provisions of the Nederland Municipal Code.

Section 9. All ordinances or portions of ordinances of a general and permanent nature of the Town enacted on or before the effective date of this Ordinance, which are inconsistent with the provisions of the Nederland Municipal Code, to the extent of such inconsistency, are hereby repealed. The repeal of ordinances and parts of ordinances of a general and permanent nature by this Ordinance shall not affect any offenses committed or act done, any penalty or forfeiture incurred, or any contract, right or obligation established prior to the time when said ordinances and parts of ordinances are repealed. Further, the repeal of ordinances of a general and permanent nature by this Ordinance shall not repeal any ordinance or part thereof saved from repeal specifically by the Nederland Municipal Code; nor shall such repeal affect any ordinance:

1. Promising, guaranteeing or authorizing the payment of money by or for the Town.
2. Authorizing or relating to specific issuances of bonds or other evidences of indebtedness.
3. Granting a franchise.
4. Establishing the compensation of Town officers or employees.
5. Imposing taxes, making appropriations or adopting a budget.
6. Vacating, accepting, establishing, locating, relocating or opening any Street or public way.
7. Affecting the corporate limits of the Town.
8. Which is of a special or temporary nature.
9. Dedicating or accepting by plat or subdivision.
10. Making a change in the Town's Zoning map and ordinance as it pertains to specific real property.

Section 10. The repeal established in the foregoing section of this Ordinance shall not be construed to revive any ordinance or part thereof that had been previously repealed by any ordinance which is repealed by this Ordinance.

Section 11. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one (1) or more sections, subsections, sentences, clauses or phrases had been declared invalid.

## Section 12.

- (A) At least one (1) copy of the Nederland Municipal Code, and of each secondary code adopted therein, all certified by the Mayor and the Town Clerk to be true copies of such codes as they were adopted by this Ordinance, shall be kept on file in the office of the Town Clerk and shall be available for public inspection.
- (B) The Town Clerk shall prepare and publish revised sheets of every loose leaf page of the Nederland Municipal Code in need of revision by reason of amendment, addition or repeal. The Town Clerk shall distribute said revised loose leaf sheets for such fee as the Board of Trustees may direct.

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

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

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

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

Section 17. This ordinance is necessary for the immediate protection of the health, welfare and safety of the community.

INTRODUCED, READ, PASSED ON FIRST READING this 8th day of April, 1997.

ATTEST:

/s/ (signature)  
Dave G. Manzanares, Town Clerk

TOWN OF NEDERLAND, COLORADO

ATTEST:

/s/ (signature)  
Silvia N. Iorio, Mayor

READ ON SECOND READING, PASSED, ADOPTED AND ORDERED PUBLISHED this 22nd day of April, 1997.

ATTEST:

/s/ (signature)  
Dave G. Manzanares, Town Clerk

APPROVED AS TO FORM:

/s/ (signature)  
Kathleen E. Haddock, Town Attorney

TOWN OF NEDERLAND, COLORADO

/s/ (signature)  
Silvia N. Iorio, Mayor

#### SUPPLEMENT HISTORY TABLE

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

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.
728	2- 4-2014	Include	8
729	2- 4-2014	Omit	8
730	5- 6-2014	Include	8
731	8- 5-2014	Include	8
732	8-19-2014	Include	8
733	8-19-2014	Include	8
734	11-18-2014	Omit	8
735	12- 2-2014	Omit	8
736	1-20-2015	Include	8
737	6-16-2015	Include	8
738	5-19-2015	Omit	8
2017-21 (Res.)	12- 5-2017	Omit	9
2017-22 (Res.)	12- 5-2017	Omit	9
2017-23 (Res.)	12- 5-2017	Omit	9
2017-24 (Res.)	12- 5-2017	Omit	9
2017-25 (Res.)	12- 5-2017	Omit	9
2018-01 (Res.)	2-20-2018	Omit	9
2018-02 (Res.)	2-20-2018	Omit	9
2018-03 (Res.)	2-20-2018	Omit	9
2018-07 (Res.)	6-19-2018	Omit	9
2018-08 (Res.)	6-19-2018	Omit	9
739	1- 5-2016	Include	9
741	8- 2-2016	Omit	9
742	10- 4-2016	Include	9
743	10- 4-2016	Include	9
744	10-18-2016	Include	9
745	1- 5-2017	Omit	9
746	2- 7-2017	Include	9
747	2-21-2017	Omit	9
749	3- 7-2017	Include	9
750	6-20-2017	Include	9
751	7-18-2017	Include	9
752	8-15-2017	Include	9
753	9-19-2017	Include	9
755	1-16-2018	Include	9
756	1-16-2018	Omit	9
777	1-16-2018	Include	9
780	2-14-2018	Include	9
781	3-20-2018	Omit	9
782	3-20-2018	Omit	9
783	3-20-2018	Omit	9
784	5- 1-2018	Include	9
785	5-17-2018	Include	9
786	6- 5-2018	Omit	9
599	11- 8-2005	Omit	10
656	8- 5-2008	Omit	10
789	10- 2-2018	Omit	10
790	10- 2-2018	Omit	10
791	11-20-2018	Include	10
792	11- 5-2018	Omit	10

<u>793</u>	11- 5-2018	Include	10
<u>794</u>	11-20-2018	Include	10
<u>795</u>	2- 5-2019	Include	10
<u>796</u>	4- 2-2019	Omit	10
<u>797</u>	4- 2-2019	Omit	10
<u>798</u>	10- 1-2019	Include	10
<u>800</u>	8-20-2019	Omit	10
<u>801</u>	8-20-2019	Include	10
<u>803</u>	12- 3-2019	Include	10
<u>603</u>	9-20-2005	Include	11
<u>692</u>	3-15-2011	Include	11
<u>755A</u>	5-15-2018	Include	11
<u>787</u>	8- 7-2018	Include	11
<u>804</u>	1- 7-2020	Include	11
<u>805</u>	2- 4-2020	Include	11
<u>806</u>	2- 4-2020	Include	11
<u>807</u>	3-17-2020	Include	11
<u>808</u>	5-19-2020	Include	11
<u>809</u>	6- 2-2020	Omit	11
<u>810</u>	8-11-2020	Omit	11
<u>812</u>	8-18-2020	Omit	11
<u>813</u>	12-15-2020	Include	11
<u>814</u>	12-15-2020	Omit	11
<u>2021-06(Res.)</u>	4- 6-2021	Include	12
<u>817</u>	5-18-2021	Include	12
<u>818</u>	5-18-2021	Include	12
<u>819</u>	9-21-2021	Include	12
<u>820</u>	1- 4-2021	Include	12
<u>821</u>	6- 1-2021	Include	12
<u>822</u>	9-21-2021	Include	12
<u>823</u>	11-16-2021	Include	12
<u>824</u>	12-21-2021	Include	13
<u>826</u>	4-19-2022	Omit	13
<u>827</u>	6-21-2022	Include	14
<u>828</u>	9-20-2022	Omit	14
<u>829</u>	10-18-2022	Omit	15
<u>830</u>	11- 1-2022	Omit	15
<u>831</u>	11-29-2022	Include	15
<u>832</u>	11-29-2022	Include	15
<u>833</u>	11-29-2022	Include	15
<u>834</u>	12-20-2022	Include	15
<u>835</u>	1-17-2023	Omit	15

## CHAPTER 1 - General Provisions

### ARTICLE I - Code

Sec. 1-1. - Adoption of code.

The published code known as the Nederland 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 Nederland, Colorado, as a codification of all the ordinances of the Town of Nederland of a general and permanent nature through Ordinance No. 435 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. 435 §1, 1996)

#### Sec. 1-2. - Purpose.

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

(Ord. 435 §1, 1996)

#### Sec. 1-3. - Title and scope.

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

(Ord. 435 §1, 1996)

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

Secondary codes may be adopted by reference, as provided by state law.

(Ord. 435 §1, 1996)

#### Sec. 1-5. - Repeal of ordinances not contained in code.

All existing ordinances and portions of ordinances of a general and permanent nature which are in conflict with any ordinance included in the adoption of this Code are hereby repealed as of the effective date of the ordinance adopting this Code, except as hereinafter provided.

(Ord. 435 §1, 1996)

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

The repeal of ordinances and parts of ordinances of a permanent and general nature by Section 1-5 above shall not affect any offense committed or act done, any penalty or forfeiture incurred or any contract, right or obligation established prior to the time said ordinances and parts of ordinances are repealed.

(Ord. 435 §1, 1996)

#### Sec. 1-7. - Ordinances saved from repeal.

The continuance in effect of temporary and/or special ordinances and parts of ordinances, although omitted from this Code, shall not be affected by such omission therefrom, and the adoption of the Code shall not repeal or amend any such ordinance or part of any such ordinance. Among the ordinances not repealed or amended by the adoption of this Code are ordinances:

- (1) Creating, opening, dedicating, vacating or closing specific streets, alleys and other public ways.
- (2) Naming or changing the names of specific streets and other public ways.
- (3) Establishing the grades of specific streets and other public ways.
- (4) Establishing the grades or lines of specific sidewalks.
- (5) Authorizing or relating to specific issuances of general obligation or special revenue bonds.
- (6) Creating specific sewer and paving districts and other local improvement districts.
- (7) Authorizing the issuance of specific local improvement district bonds.
- (8) Making special assessments for local improvement districts and authorizing refunds from specific local improvement district bond proceeds.
- (9) Annexing territory to or excluding territory from the Town.
- (10) Dedicating or accepting any specific plat or subdivision.
- (11) Calling or providing for a specific election.
- (12) Authorizing specific contracts for purchase of beneficial use of water by the Town.
- (13) Approving or authorizing specific contracts with the State, with other governmental bodies or with others.
- (14) Authorizing a specific lease, sale or purchase of property.
- (15) Granting rights-of-way or other rights and privileges to specific railroad companies or other public carriers.
- (16) Granting a specific gas company or other public utility the right or privilege of constructing lines in the streets and alleys or of otherwise using the streets and alleys.
- (17) Granting a franchise to a specific public utility company or establishing rights for or otherwise regulating a specific public utility company.
- (18) Setting rates, tolls and charges for any water, sewer, utility or proprietary fee, unless otherwise specifically set forth in this Code.
- (19) Appropriating money.
- (20) Levying a temporary tax or fixing a temporary tax rate.
- (21) Relating to salaries.
- (22) Amending the Official Zoning Map.

(Ord. 435 §1, 1996)

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

In compiling and preparing the ordinances of the Town for adoption and revision as part of the Code, certain grammatical changes and other changes were made in existing 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. 435 §1, 1996)

Secs. 1-9—1-20. - Reserved.

## ARTICLE II - Definitions and Usage

Sec. 1-21. - Definitions.

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

*Board of Trustees* means the Board of Trustees of the Town of Nederland. All its members means the total number of board members holding office.

*Capital projects*, for the purpose of Ballot Question 2B on the November 2, 1999 election, means any one (1) of the following public projects of the Town listed below. Any funds retained pursuant to Ballot Issue 2B of the November 2, 1999 election shall be deposited into an escrow fund designated for one (1) of these capital projects:

- a. A public works shop for the storage, repair and maintenance of Town vehicles and equipment; or
- b. Expansion of the Town water treatment facilities with an enhanced water filter system to provide reliability.

*County* means the County of Boulder, Colorado.

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

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

*May* is permissive.

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

*Month* means a calendar month.

*Must* and *shall* are each mandatory.

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

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

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

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

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

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

*Property* includes real and personal property.

*Real property* includes lands, tenements and hereditaments.

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

*State* means the State of Colorado.

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

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

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

*Written* includes printed, typewritten, mimeographed or multigraphed, or otherwise reproduced in permanent visible form.

*Year* means a calendar year.

(Ord. 189 §1, 1980; Ord. 435 §1, 1996; Ord. 509 §1, 1999)

#### Sec. 1-22. - Computation of time.

Except when this Code is superseded by state statute, 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. If the time within which to act falls prior to a particular day and such day falls on a Saturday, Sunday or legal holiday, such act shall be done on the preceding day which is not a Saturday, Sunday or legal holiday.

(Ord. 189 §7, 1980; Ord. 435 §1, 1996)

#### Sec. 1-23. - Title of office.

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

Sec. 1-24. - Interpretation of language.

All words and phrases shall be construed 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. 189 §3, 1980)

Sec. 1-25. - Grammatical interpretation.

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

- (1) Gender. Each gender includes the masculine, feminine and neuter genders.
- (2) Singular and plural. The singular number includes the plural and the plural includes the singular.
- (3) Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable.

(Ord. 189 §4, 1980)

Secs. 1-26—1-40. - Reserved.

ARTICLE III - General

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

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

(Ord. 435 §1, 1996)

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

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

(Ord. 189 §5, 1980; Ord. 435 §1, 1996)

Sec. 1-43. - Prohibited acts.

Whenever in this Code 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. 189 §6, 1980; Ord. 435 §1, 1996)

Sec. 1-44. - Purpose of code.

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

(Ord. 189 §8, 1980)

Sec. 1-45. - Repeal of ordinances.

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

(Ord. 189 §9, 1980)

Sec. 1-46. - Publication of ordinances.

All ordinances, as soon as may be after their passage, shall be recorded in a book kept for that purpose and authenticated by the signature of the Mayor and Town Clerk. All ordinances of a general or permanent nature, and those imposing any fine or forfeiture, shall be published in a newspaper circulated 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. 435 §1, 1996)

Sec. 1-47. - 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 with 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 1-50 hereof.

(Ord. 435 §1, 1996)

Sec. 1-48. - Copy of code on file.

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

(Ord. 435 §1, 1996)

Sec. 1-49. - Examination of code.

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

(Ord. 435 §1, 1996)

Sec. 1-50. - Supplementation of code.

- (a) The Town Clerk shall cause supplementation of this Code to be prepared and printed from time to time as he or she may see fit. The Town Clerk is hereby directed to certify and forward to the codifier of ordinances duly selected by or having contracted with the Town all ordinances enacted by the Board of Trustees since the most recent codification of ordinances, to coincide with chapters, articles, divisions, sections and subsections as they currently exist within this Code and to resolve any inconsistencies regarding capitalization, grammar and numbering or placement of chapters, articles, divisions, sections and subsections in this Code. All substantive, permanent and general parts of ordinances passed by the Board of Trustees or adopted by initiative and referendum, and all amendments and changes in ordinances or other measures included in the Code prior to the supplementation and since the previous supplementation shall be included.
- (b) It shall be the duty of the Town Clerk, or someone authorized and directed by the Town Clerk, to keep up to date the copy of the book containing the Code required to be filed in the office of the Town Clerk for the use of the public.

(Ord. 435 §1, 1996; Ord. 648 §10, 2008)

Sec. 1-51. - Sale of code books.

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

(Ord. 435 §1, 1996)

Sec. 1-52. - Altering or tampering with code; penalties for violation.

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

(Ord. 435 §1, 1996)

Sec. 1-53. - Severability.

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

(Ord. 189 §10, 1980; Ord. 435 §1, 1996)

Secs. 1-54—1-70. - Reserved.

ARTICLE IV - General Penalty

Sec. 1-71. - Violations.

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

(Ord. 435 §1, 1996)

Sec. 1-72. - General penalty for violation.

- (a) No person shall violate any of the provisions of the ordinances of the Town or of this Code. Except in cases where a different punishment is prescribed by any ordinance of the Town or this Code, any person who violates any of the provisions of the ordinances of the Town or of this Code shall be punished by a fine of not more than two thousand six hundred fifty dollars (\$2,650.00), except as hereinafter provided in Section 1-73. Except where otherwise provided for by specific provision, all violations of this Code shall be deemed to be noncriminal and shall not be punished by imprisonment. No defendant found civilly liable for a noncriminal offense shall be punished by imprisonment for such offense. In addition, such person shall pay all court costs imposed by the court.
- (b) Each and every day during any portion of which any violation of any provision of the ordinances of the Town or of this Code is committed, continued or permitted shall be a separate offense by a person and shall be punishable accordingly.

(Ord. 435 §§1, 6, 1996; Ord. 795 §1, 2019; Ord. 803 §3, 2019)

Sec. 1-73. - Application of penalties to juveniles.

Every person who, at the time of commission of the offense, was at least ten (10) but not yet eighteen (18) years of age, and who is subsequently convicted of or pleads guilty or nolo contendere to, a violation of any provision of this Chapter, shall be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation or count. In addition, such person shall pay all court costs imposed by the court.

(Ord. 435 §§1, 6, 1996)

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

Any voluntary plea of guilty or nolo contendere to the original charge or to a lesser or substituted charge shall subject the person so pleading to all fines and/or penalties applicable to the original charge.

(Ord. 435 §1, 1996)

Sec. 1-75. - Penalty for violations of ordinances adopted after adoption of code.

Any person who shall violate any provision of any ordinance of a permanent and general nature passed or adopted after adoption of this Code, either before or after it has been inserted in the Code by a supplement, shall, upon conviction thereof, be punishable as provided by Section 1-72 or 1-73, unless another penalty is specifically provided for the violation.

(Ord. 435 §1, 1996)

Sec. 1-76. - Interpretation of unlawful acts.

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

(Ord. 435 §1, 1996)

Secs. 1-77—1-90. - Reserved.

ARTICLE V - Inspections

Sec. 1-91. - Entry.

Whenever necessary to make an inspection to enforce any provision of any ordinance or this Code, 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 official 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 official is unable to obtain permission of such occupant or owner to enter such building or premises, the public official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(Ord. 435 §1, 1996)

Sec. 1-92. - Authority to enter premises under emergency.

Law enforcement officers, 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 or when on duty 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. 435 §1, 1996)

Secs. 1-93—1-110. - Reserved.

ARTICLE VI - Disposition of Lost, Abandoned or Recovered Stolen Personal Property

Sec. 1-111. - Custody of property.

The Town Marshal shall have custody of all lost, abandoned and recovered stolen personal property coming into the possession of the Town and property ordered confiscated by the Municipal Court.

(Ord. 435 §1, 1996)

Sec. 1-112. - Storage of abandoned vehicles and other property.

Whenever a motor vehicle or other personal property is found abandoned upon the streets or public places of the Town or whenever personal property shall for any reason come into the possession of the Town Marshal without a claimant, the Town Marshal shall, pending the disposal of said property, cause such property to be stored on Town property or with a private person engaged in the business of storing personal property.

(Ord. 435 §1, 1996)

Sec. 1-113. - Investigation of ownership.

Upon coming into possession of lost, abandoned and stolen personal property, the Town Marshal shall cause an investigation to be made into the ownership of such property.

(Ord. 435 §1, 1996)

Sec. 1-114. - Disposition of motor vehicles.

The Town Marshal shall dispose of lost, abandoned or recovered stolen motor vehicles coming into his or her possession in accordance with the procedures provided therefor by state statutes or, in the absence of such statutes, in accordance with a procedure approved by the department or agency of the State responsible for the issuance of certificates of title for motor vehicles.

(Ord. 435 §1, 1996)

Sec. 1-115. - Notification of owner of other property if known.

If the Town Marshal determines who owns lost, abandoned or recovered stolen personal property, except motor vehicles and property ordered confiscated by the Municipal Court, he or she shall give notice in writing to such owner that his or her property is in the possession of the Town Marshal and that it will be sold or otherwise disposed of by the Town unless such owner reclaims the property in the manner provided for by law within twenty (20) days after the effective date of the notice. The notice shall be sent to the owner at his or her last known address by regular first class United States mail, postage prepaid, and the notice shall be effective when mailed. The Municipal Court may order, without notice to the owner, destruction of any confiscated property which the owner did not have the legal right to possess, including marijuana, weapons and tobacco products.

(Ord. 435 §1, 1996)

Sec. 1-116. - Advertising for owner if not known.

- (a) If the owner of such lost, abandoned or recovered stolen personal property, motor vehicles excepted, cannot be determined by the Town Marshal, he or she shall periodically, and not less than once a year, cause notice to be published in a newspaper of general circulation in the Town, which notice shall be published on three (3) different days, which may be consecutive days, and shall contain the following information:
  - (1) A description of the lost, abandoned or recovered stolen personal property then in the possession of the Town Marshal; and
  - (2) A statement that such property will be disposed of by the Town unless the owner thereof reclaims such property in the manner provided for by law within ten (10) days after the publication of the notice.
- (b) If, at any time prior to the Town's disposition of such lost, abandoned or recovered stolen personal property, a person claims such property as the owner thereof, the Town Marshal shall return the property to such claimant, provided that the claimant submits evidence of his or her ownership which is sufficient to satisfy the Town Marshal that the claim is rightful, and provided that the claimant tenders to the Town Marshal the cost incurred by the Town in obtaining possession of such property, in the storage of such property and in the publication of notice or mailing of notice relating to such property.
- (c) In the event that such lost, abandoned or recovered stolen personal property, motor vehicles excepted, has been in the possession and custody of the Town Marshal for at least thirty (30) days, and in the event that such property remains unclaimed after the giving of notice and the expiration of time following the notice as provided for in this Article, the Town Marshal shall make recommendations to the Board of Trustees as to the disposition of such property and the Board of Trustees shall, by motion, provide for the disposition of such property.

Sec. 1-117. - Procedure for sale.

In the event the Board of Trustees directs that the property be disposed of by sale, the following sale procedure shall be followed:

- (1) The Town Clerk shall cause a notice of the sale to be published in a newspaper of general circulation in the Town. Such notice shall be published on three (3) different days, which days may be consecutive days, and shall set forth the date, time and place of the sale (which date, time and place shall be at least ten [10] days after the last publication of notice of sale), a description of the property to be sold, and a statement that the property will be sold at public auction to the highest bidder for cash.
- (2) At the date, time and place designated for the sale of the lost, abandoned or recovered stolen personal property or property ordered confiscated by the Municipal Court as set forth and provided for in the notice of sale, the Town Marshal shall cause such property to be sold at public auction to the highest bidder for cash. No money or negotiable instruments shall be sold at the sale, but shall become the property of the Town if unclaimed by the owner thereof. In the event that a bid is not made for an article of personal property offered at the sale, such article of personal property shall become the property of the Town.
- (3) Upon consummation of the sale of the property, the Town Clerk shall issue a receipt to the successful bidder, which receipt shall indicate thereon the article of personal property sold and the amount paid therefor. Upon exhibiting the receipt to the Town Marshal, the purchaser shall be entitled to possession of the article so purchased.
- (4) The proceeds of the sale of such property shall be first applied upon storage bills, towing bills, publication fees and other costs of the keeping and sale of such property, and the balance of such proceeds shall be placed in the general fund of the Town.
- (5) The sale and conveyance of the property shall be without redemption.
- (6) No license shall be required of the person or persons conducting the auction provided for herein.

(Ord. 435 §1, 1996)

Sec. 1-118. - Holding as evidence.

In the event the Town Attorney, or other person charged with the duty of prosecuting violations of the Town, state or federal laws, requests that any of the lost, abandoned or recovered stolen property be held, the Town Marshal shall retain custody of such property and shall not sell the same until such property is no longer needed in the prosecution noted.

(Ord. 435 §1, 1996)

Secs. 1-119—1-130. - Reserved.

ARTICLE VII - Seal

A seal, the impression of which shall contain in the center the word "Seal" and around the outer edge the words "Nederland, Colorado, Inc: A.D. 1874" shall be and hereby is declared to be the Seal of the Town.

(Ord. 435 §1, 1996)

Secs. 1-132—1-150. - Reserved.

## ARTICLE VIII - Processing of Land Use Applications

Sec. 1-151. - Definition of land use applications.

A land use application is any application submitted to the Town pursuant to the provisions of this Code for the purpose of altering the configuration, use or development of a lot, parcel or tract of land. Land use applications may be related to, but are not limited to, the following processes: special review, planned unit developments, subdivisions, annexation, variances and amendment to the comprehensive plan, rezone applications or any other application requiring the approval of the Board of Trustees, Board of Zoning Adjustment or Planning Commission. Applications for lot line dissolutions and appeals of staff decisions shall not be subject to the limits set forth below.

(Ord. 461 §1, 1997)

Sec. 1-152. - Prioritization for processing completed land use applications.

- (a) Major land use applications. Major land use applications which are complete shall be prioritized in the order received by the Zoning Administrator and/or Town Clerk. The Zoning Administrator and/or Town Clerk shall not consider or process more than three (3) completed major land use applications at any one (1) time. Any application being considered or processed pursuant to this Section shall be deemed an active application. Any time provisions contained in this Chapter shall not commence until the application is considered active. For purposes of this Section, major land use applications are requests for consideration by the Town of a rezoning, variance, preliminary plat, final plat, planned unit development, vacation of any Town property, special review use or any other request requiring staff research or recommendations or consideration by the Board of Trustees, the Board of Adjustment or the Planning Commission.
- (b) Variances and appeals. Applications for variance requests or appeals shall be prioritized in the order received by the Zoning Administrator and/or Town Clerk. Not more than one (1) completed application for variance or appeal shall be considered an active variance at any one (1) time.
- (c) Land use applications in litigation. In order to process land use applications in a timely manner, a land use application that is in litigation will not be considered an active application. When an active land use application enters into litigation, said application will be removed from its active status and will be handled according to the outcome of the litigation.
- (d)

Idle applications. If a land use application becomes idle for a period of sixty (60) days due to an inability or a failure to proceed on the part of the applicant, said application will be removed from its active status and placed at the end of the list of applications filed with the Town. However, if the application becomes idle due to the Town's inability or failure to proceed, the application will not be removed from its active status.

(Ord. 461 §1, 1997; Ord. 487 §1, 1998)

Sec. 1-153. - Limitation of public hearings.

The Planning Commission shall not hold more than one (1) meeting per month with public hearings on active applications.

(Ord. 461 §1, 1997)

Secs. 1-154—1-170. - Reserved.

CHAPTER 2 - Administration and Personnel

ARTICLE I - Elections

Sec. 2-1. - Conduct of elections.

All elections shall be held and conducted in accordance with the Colorado Municipal Election Code.

(Ord. 435 §1, 1996; Ord. 714 §1, 2013)

Sec. 2-2. - Regular elections.

Regular Town elections shall be held on the first Tuesday in April of every even-numbered year.

(Ord. 177 §2, 1980; Ord. 714 §1, 2013)

Sec. 2-3. - Two-year term for Mayor.

At every regular election held, there shall be elected a Mayor for a term of two (2) years.

(Ord. 177 §3, 1980; Ord. 714 §1, 2013)

Sec. 2-4. - Four-year term for Trustees.

The persons elected to Trustee positions at every regular election shall serve four-year terms; provided, however, that in the event that in any election year there are more than three (3) Trustee positions to be filled, the persons receiving the fourth highest number of votes or less shall be elected to two-year terms.

(Ord. 177 §4, 1980; Ord. 435 §1, 1996; Ord. 714 §1, 2013)

Secs. 2-5—2-20. - Reserved.

Sec. 2-21. - Board of Trustees.

- (a) The legislative and corporate authority of the Town shall be vested in a Board of Trustees, consisting of one (1) Mayor and six (6) Trustees.
- (b) The Board of Trustees shall constitute the legislative body of the Town and shall have the power and authority, except as otherwise provided by statute, to exercise all power conferred upon or possessed by the Town, and shall have the power and authority to adopt such laws, ordinances and resolutions as it shall deem proper in the exercise thereof.

(Ord. 177 §1, 1980; Ord. 435 §1, 1996; Ord. 714 §2, 2013)

Sec. 2-22. - Mayor duties.

The Mayor shall preside at all meetings of the Board of Trustees and shall be allowed to cast a vote. The Mayor shall be responsible for ceremonial purposes. He or she will act as the official representative of the Town and is authorized and empowered to sign his or her name officially for and on behalf of the Town on all contracts, documents and papers to which the Town is a party, and to require that the conditions in any instrument are faithfully performed. He or she shall from time to time provide for the Board of Trustees such information and recommend such measures as he or she may deem beneficial to the Town. The Mayor shall examine the grounds of all complaints against any elected or appointed official of the Town to determine the existence of a violation or neglect of duty and report to the Board of Trustees the evidence thereof, if deemed sufficient for the removal of said officer. He or she shall have such other powers as the Board of Trustees may prescribe.

(Ord. 177 §7, 1980; Ord. 435 §1, 1996; Ord. 623 §1, 2006; Ord. 714 §2, 2013)

Sec. 2-23. - Reimbursement.

The members of the Board of Trustees and the Mayor shall be paid actual expenses incurred by them or any of them in the transaction of the business of the Town, including mileage traveled, either in or out of Town, while engaged in transacting such business, at the rate of the current federal rate of reimbursement per mile, upon the presentation of an itemized statement of such expense and the allowance thereof by the Board of Trustees. Such expenditures other than mileage shall be approved for reimbursement by the Board of Trustees prior to being incurred. Such reimbursement shall be presented for payment within one (1) month of occurrence.

(Ord. 177 §12, 1980; Ord. 714 §2, 2013)

Sec. 2-24. - Confidential matters.

It shall be a violation of this Chapter for any member of the Board of Trustees to disclose any confidences of the Town, any matter discussed in executive session, or any matter which is subject to the attorney-client privilege between the Town and the Town Attorney, unless a majority of the Board of Trustees determines that such privilege should be waived and disclosure should be made.

Sec. 2-25. - Mayor and Trustee compensation.

Commencing with new terms of office filled by election in April of 2014, and for each new term of office that commences thereafter, each member of the Board of Trustees, shall receive compensation in the amount of one hundred fifty dollars (\$150.00) per month, and the Mayor to receive two hundred fifty dollars (\$250.00) per month.

(Ord. 728 §2, 2014)

Secs. 2-26—2-50. - Reserved.

### ARTICLE III - Board Meetings

Sec. 2-51. - Regular meetings.

The Board of Trustees shall meet in regular session on the first and third Tuesdays of each month at 7:00 p.m. When a regular meeting falls on a holiday as provided in the Town Personnel Rules and Regulations, the regular meeting shall be held on the following day, at the same hour, unless otherwise scheduled by the Mayor. The Mayor may dispense with any regular meeting or reschedule any regular meeting with at least forty-eight (48) hours' notice to Board members, except that at least one (1) regular meeting shall be held each month. The place of all regular meetings shall be designated by the Board of Trustees.

(Ord. 413 §1.1, 1995; Ord. 421 §1, 1996; Ord. 571 §1, 2003; Ord. 714 §3, 2013)

Sec. 2-52. - Special meetings.

- (a) Special meetings shall be called by the Town Clerk on the request of the Mayor or any two (2) members of the Board of Trustees on at least forty-eight (48) hours' written notice to each member of the Board of Trustees and the Town Administrator, served personally or left at such person's usual place of residence. Said notice shall indicate the business to be performed at such special meeting. If any member shall have moved from the Town and shall be a nonresident thereof, no notice shall be required. Any Trustee may waive notice of the meeting, and a Trustee's presence shall constitute waiver of notice of the meeting.
- (b) No business shall be transacted at any special meeting of the Board of Trustees unless the same has been stated in the notice of such meeting unless otherwise determined by unanimous vote of those members present.

(Ord. 413 §1.2, 1995; Ord. 714 §3, 2013)

Sec. 2-53. - Emergency meetings.

Emergency meetings may be called by the Mayor or any two (2) Board of Trustees members in the event of an emergency that requires the immediate action of the Board of Trustees in order to protect the public health, safety and welfare of the residents of the Town. Notice of such emergency meeting may be given to the Board of Trustees by telephone or whatever other means are reasonable to meet the circumstances of the emergency. At such emergency meeting, any action within the

police power of the Board of Trustees that is necessary for the immediate protection of the public health, safety and welfare may be taken; provided, however, that any action taken at an emergency meeting shall be effective only until the first to occur of (a) the next regular meeting, or (b) the next special meeting of the Board of Trustees at which the emergency issue is on the public notice of the meeting. At such subsequent meeting, the Board of Trustees may ratify any emergency action taken. If any emergency action taken is not ratified, then it shall be deemed rescinded.

(Ord. 413 §1.3, 1995; Ord. 714 §3, 2013)

Sec. 2-54. - Public participation in Board meetings.

The Board of Trustees recognizes the importance and value of public comment and participation at public Board of Trustees meetings as well as the importance of conducting such meetings in an efficient and orderly manner. Public comment shall be permitted on both agenda and nonagenda items at each public Board of Trustees meeting. The details concerning the parameters of and process for such public comment shall be as set forth in the Town of Nederland Board of Trustees Rules of Procedure, as adopted and amended from time to time by the Board of Trustees by resolution. In the absence of any such Rules of Procedure in place at any given time, the Mayor shall prescribe the rules and procedures governing public comment. A majority vote of the quorum present may overrule any such decision of the Mayor concerning public comment.

(Ord. 413 §1.7, 1995; Ord. 714 §3, 2013)

Secs. 2-55—2-80. - Reserved.

ARTICLE IV - Reserved

Secs. 2-81—2-110. - Reserved.

ARTICLE V - Reserved

Secs. 2-111—2-130. - Reserved.

ARTICLE VI - Reserved

Secs. 2-131—2-170. - Reserved.

ARTICLE VII - Officers and Employees

Sec. 2-171. - Appointment of officers and oath of office.

- (a) A majority vote of all members of the Board of Trustees in office at the time shall be required to appoint any Town official. Such appointment shall be accomplished through the adoption of a resolution by the Board of Trustees. The Town Clerk, Mayor or Mayor Pro Tem shall administer the oath of office before the Board of Trustees.
- (b) Except as specifically provided by law, each officer appointed by the Board of Trustees shall serve at the pleasure of the Board of Trustees and nothing herein is intended to create an expectation of continued employment. Except as specifically provided by law, the Personnel Plan of the Town shall not apply to the officers appointed, unless provisions of such Personnel Plan are hereafter specifically made applicable to any such officers.

(Ord. 375 §7, 1994; Ord. 413 §4.1, 1995; Ord. 630 §§1, 2, 2007)

#### Sec. 2-172. - Officers and employees.

The Town Clerk, Town Administrator, Town Attorney, Town Treasurer, Town Marshal and other officers and employees of the Town shall be under the control and direction of the Chair during sessions of the Board of Trustees.

(Ord. 413 §4.2, 1995)

#### Sec. 2-173. - Appointments by Mayor.

Whenever the Mayor shall, at any meeting, submit a written resolution of appointment to be made with the advice and consent of the Board of Trustees, consideration of such appointment may be deferred until the next meeting by a majority vote of the Board of Trustees.

(Ord. 413 §4.3, 1995)

#### Sec. 2-174. - Residency requirements.

- (a) The appointed Town Clerk, Town Attorney, Town Treasurer, Municipal Judge and Town Administrator may reside outside of the corporate limits of the Town.
- (b) The appointed Town Marshal may reside outside of the corporate limits of the Town. However, either the Town Marshal or a designated Deputy must reside within seven (7) miles and within a fifteen-minute response time of the corporate limits of the Town.

(Ord. 371 §§1, 2, 1994; Ord. 435 §1, 1996; Ord. 464 §1, 1997; Ord. 601 §1, 2005; Ord. 755A §1, 2018)

#### Sec. 2-175. - Town Administrator.

- (a) The Town Administrator shall be responsible for the proper administration of all affairs of the Town placed in his or her charge by the Mayor on behalf of the Board of Trustees.
- (b) The duties of the Town Administrator are as prescribed by the Board of Trustees from time to time.
- (c) The Town Administrator shall attend all meetings of the Board of Trustees, unless excused by the Board. The Town Administrator shall keep the Board of Trustees fully advised as to the conditions and needs of the Town. The Town Administrator may make recommendations to the Board of Trustees and may take part in discussions as allowed by the Board of Trustees, but shall have no vote in the meetings of the Board of Trustees.

Sec. 2-176. - Town Treasurer.

- (a) The Town Treasurer shall, before entering upon the duties of his or her office, execute a bond to the Town, with good and sufficient surety, to be approved by the Board of Trustees, conditioned for the faithful discharge of his or her duties, and that he or she will, whenever required by law, pay over all moneys and deliver all papers, books and property in his or her custody, belonging to the Town, to his or her successor in office, or to the persons authorized to receive the same, which bond shall be for ten thousand dollars (\$10,000.00).
- (b) It shall be the duty of the Town Treasurer to receive and receipt for all monies belonging to the Town, and pay from the Town treasury such sums of money, and only such sums of money, as shall be ordered paid by the Board of Trustees upon review and approval of bills to be paid. Such bills shall state the particular fund against which they are chargeable. He or she shall keep the account of each fund separate from others, charging each fund with all payments and crediting it with all monies received on account thereof. The Town Treasurer shall keep a true and accurate account of all monies belonging to the Town and of the several funds to which such monies belong, and shall report to the Board of Trustees, in writing, once in each month, all monies received and paid out by him or her as such Treasurer.
- (c) The Town Treasurer shall attend all meetings of the Board of Trustees as required by the Mayor, Board of Trustees or Town Administrator.

(Ord. 178 §§6, 7, 1980; Ord. 413 §4.5, 1995; Ord. 435 §1, 1996)

Sec. 2-177. - Town Clerk.

- (a) The duties of the Town Clerk shall be as prescribed by Section 31-4-305, C.R.S.
- (b) It shall be the duty of the Town Clerk to attend all meetings of the Board of Trustees and to make, in a book kept for that purpose, a full, legible and accurate record of all the proceedings, rules and ordinances of the Board of Trustees; to maintain personnel files; to sell all licenses and keep records of the same; to be responsible for proceedings of municipal elections; and to keep accurate records of all transactions of his or her office and, whenever required by the Board of Trustees, provide a true report of such.
- (c) The Town Clerk shall be ex officio clerk of the Board of Trustees and shall keep minutes of the meetings and perform such other and further duties as may be ordered by the Mayor, Town Administrator or Board of Trustees.
- (d) The Town Clerk shall attend all scheduled meetings of the Local Liquor Licensing Authority and serve as secretary thereto; arrange a court reporter's presence at liquor licensing hearings as necessary; distribute and review all liquor license applications for completeness; accept changes of corporate structure, changes of trade name or corporate name and manager registrations and report the same to the Board of Trustees; refer liquor license applications to the Town Marshal and Town Attorney for statutory compliance review prior to consideration by the Authority; assess and collect application fees and issue the local license upon approval; maintain records of liquor licenses and notify the Town Marshal of any violations; and maintain a working knowledge of state and local liquor and fermented malt beverage statutes and regulations.

(Ord. 178 §8, 1980; Ord. 375 §5, 1994; Ord. 413 §4.6, 1995; Ord. 646 §1, 2008; Ord. 648 §9, 2008)

Sec. 2-178. - Town Attorney.

- (a) The Town Attorney must be currently licensed in the practice of law in the state. It shall be the duty of the Town Attorney to act as legal advisor to, and be attorney and counsel for, the Board of Trustees and to be responsible solely to the Board. He or she shall advise any officer or department head of the Town in matters relating to his or her official duties when so requested by the Board of Trustees and shall file with the Town Clerk a copy of all written opinions given by him or her. He or she shall prosecute ordinance violations and all other proceedings brought by the Town in Municipal Court. The Town Attorney shall prepare or review all ordinances, contracts, bonds and other written instruments which are submitted to him or her by the Board of Trustees and shall promptly give his or her opinion as to the legal consequences thereof as requested. He or she shall perform such other duties as may be prescribed for him or her by the Board of Trustees.
- (b) The Town Attorney shall, either in person or by deputy, attend all meetings of the Board of Trustees as required by the Mayor, Board or Town Administrator. Any member of the Board of Trustees, by collective decision, may call upon the Town Attorney for an oral or written opinion to decide any questions of law, but not to decide upon any parliamentary rules. The Town Attorney may retain special counsel with the prior approval of the Board of Trustees.

(Ord. 178 §10, 1980; Ord. 413 §4.7, 1995; Ord. 435 §1, 1996)

Sec. 2-179. - Officers and employees to attend.

The head of any department, or any officer or employee of the Town, when requested by the Mayor, Mayor Pro Tem, Board member or Town Administrator, shall attend any regular, adjourned, special, emergency or study/work session and confer with the Board of Trustees on all matters relating to the Town. Such officers and employees, from time to time, may be required to attend an executive session of the Board of Trustees.

(Ord. 413 §4.8, 1995)

Secs. 2-180—2-190. - Reserved.

ARTICLE VIII - Reserved

Secs. 2-191—2-220. - Reserved.

ARTICLE IX - Municipal Court

Sec. 2-221. - Creation of Municipal Court.

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

(Ord. 435 §1, 1996)

Sec. 2-222. - Appointment of Municipal Judge.

The Municipal Court shall be presided over by a Municipal Judge, who shall be appointed by the Board of Trustees. Such Municipal Judge, when so appointed, shall hold his or her office for not less than two (2) years and until his or her successor is appointed unless sooner removed by the Board of Trustees, and who may be reappointed for a subsequent term. Any vacancy in the office of the Municipal Judge shall be filled by appointment of the Board of Trustees for the remainder of the unexpired term. The compensation for the Municipal Judge shall be prescribed by ordinance.

(Ord. 179 §1, 1980; Ord. 435 §1, 1996)

Sec. 2-223. - Original jurisdiction.

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

(Ord. 435 §1, 1996)

Sec. 2-224. - Qualifications.

The Municipal Judge must be currently licensed in the practice of law in the State.

(Ord. 179 §3, 1980; Ord. 435 §1, 1996)

Sec. 2-225. - Rules of procedure.

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

(Ord. 435 §1, 1996)

Sec. 2-226. - Contempt power.

- (a) When the Court finds any person to be in contempt, the Court may vindicate its dignity by imposing on the contemnor a fine not to exceed three hundred dollars (\$300.00) and imprisonment not to exceed a term of ten (10) days.
- (b) In cases of indirect contempt, the alleged contemnor shall have all the rights, privileges, safeguards and protections of a defendant in a petty offense case, including but not limited to a formal written complaint, arraignment and trial by jury.

(Ord. 435 §1, 1996)

Sec. 2-227. - Records to be kept.

A verbatim record of the proceedings and evidence at all proceedings held in the Municipal Court shall be made and kept by either electronic devices or by stenographic means.

(Ord. 179 §4, 1980; Ord. 435 §1, 1996)

Sec. 2-228. - Execution of process or writ.

The Town Marshal, or any deputy, may execute any process or writ issued out of or by the Municipal Court in any case arising under the ordinances of the Town.

(Ord. 179 §6, 1980; Ord. 435 §1, 1996)

Secs. 2-229—2-250. - Reserved.

ARTICLE X - Police Department

Sec. 2-251. - Creation; composition.

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

(Ord. 435 §1, 1996)

Sec. 2-252. - Departmental rules and regulations.

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

(Ord. 435 §1, 1996)

Sec. 2-253. - Town Marshal; appointment; powers and duties.

- (a) The Town Marshal shall be the principal law enforcement officer of the Town.
- (b) The Board of Trustees, upon the recommendation of the Town Administrator, shall appoint a Town Marshal who shall be the head of the Police Department. It shall be the duty of the Town Marshal to:
  - (1) Execute all the legal orders of the Board of Trustees and of the Mayor as prescribed by law.
  - (2) See that the ordinances of the Town and the laws of the State are duly enforced and the rules and regulations of the Police Department obeyed, and perform such other duties as may be required by the Board of Trustees.
  - (3) Direct the operations of the Police Department, subject to the rules and regulations thereof.
  - (4) Arrest any person violating any of the Town ordinances and take such violator before the Municipal Court for trial.
  - (5)

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

- (c) Before entering upon the duties of such office, the Town Marshal shall take and subscribe to an oath that he or she will support the Constitution and laws of the State, the 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.

(Ord. 178 §9, 1980; Ord. 435 §1, 1996)

#### Sec. 2-254. - Duties of police officers.

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

- (1) To perform all duties required by the Town Marshal.
- (2) To suppress all riots, disturbances and breaches of the peace and apprehend all disorderly persons in the Town, and shall pursue and arrest any person fleeing from justice in any part of the State.
- (3) To serve as the enforcement officers of the Town and shall see that the provisions of the ordinances of the Town and the laws of the State are complied with. They shall arrest without process all persons engaged in the violation in their presence of any provision of the ordinances of the Town or the laws of the State.
- (4) To execute and return all writs and processes to them directed by the Municipal Judge in any case arising under a Town ordinance, and they may serve the same in any part of the County.

(Ord. 435 §1, 1996)

#### Sec. 2-255. - Oath of 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.

(Ord. 435 §1, 1996)

#### Secs. 2-256—2-270. - Reserved.

### ARTICLE XI - Planning Commission

#### Sec. 2-271. - Creation.

Pursuant to state law, there is hereby created a Planning Commission for the Town.

(Ord. 435 §1, 1996)

#### Sec. 2-272. - Purpose.

The Planning Commission is created for the following purposes:

- (1) To prepare and maintain, subject to periodic revision as necessary, a Master Plan as described by state statutes.
- (2) To implement the provisions of Chapters 16 and 17 of this Code, and to perform all functions and powers referred to in said chapters where reference is made.
- (3) To study and recommend to the Board of Trustees amendments to the Zoning Map of the Town.
- (4) To study and recommend appropriate zoning classifications for all annexations to the Town.
- (5) To exchange information with the various governmental agencies charged with planning and zoning responsibilities and with the Board of Zoning Adjustment of the Town.
- (6) To have all other duties and powers incidental to the above and any and all powers and duties set out by state statute, except that nothing herein shall permit the Planning Commission to make amendments to changes in the zoning of the Town, such powers expressly being reserved by the Board of Trustees.

(Ord. 435 §1, 1996)

Sec. 2-273. - Membership.

- (a) The membership of the Planning Commission shall consist of nine (9) residents of the Town. One (1) member shall be a member of the Board of Trustees appointed by the Mayor with the approval of the Board of Trustees, with the term to coincide with the member's term as Trustee. This member shall vote only in the event of a tie vote among the other members and only upon matters of legislative concern. The terms of such resident members shall be four-year staggered terms. One (1) said member may be a member of the Board of Zoning Adjustment. It is the intent of the Board of Trustees to encourage diversity of participation on the Planning Commission by avoiding overlapping of membership between the Planning Commission and other boards and commissions of the Town. To initiate the staggered terms, two (2) terms shall expire June 1, 1997, two (2) shall expire June 1, 1998, and the other two (2) shall expire June 1, 1999.
- (b) All members of the Planning Commission shall be bona fide residents of the Town and if any member ceases to reside in the Town, his or her membership on the Planning Commission shall immediately terminate.
- (c) All members of the Planning Commission shall serve as such without compensation and the appointed members shall hold no other municipal office, except that one (1) such appointed member may be a member of the Board of Zoning Adjustment or Appeals. The terms of ex officio members shall correspond to their respective official tenures, except in the case of an administrative official or other designated person selected by the Mayor; his or her term shall terminate with the term of the Mayor selecting him or her. Members other than the member representing the Board of Trustees may be removed, after public hearings, by the Mayor for inefficiency, neglect of duty or malfeasance in office. The Mayor, or the Board of Trustees, as the case may be, shall file a written statement of reasons for such removal. Vacancies occurring otherwise than through the expiration of term shall be filled for the remainder of the unexpired term by the Mayor in the case of members selected or appointed by him or her, or by the Board of Trustees in the case of the Board member.

(Ord. 140, 1976; Ord. 299 §1, 1988; Ord. 387 §1, 1994; Ord. 405 §1, 1995; Ord. 423 §1, 1996; Ord. 435 §1, 1996; Ord. 725 §1, 2013; Ord. 732 §1, 2014; Ord. 787 §1, 2018)

ARTICLE I - Fiscal Year

Sec. 4-1. - Fiscal year established.

The fiscal year of the Town shall be the calendar year.

(Ord. 16 §1, 1908; Ord. 435 §1, 1996)

Secs. 4-2—4-10. - Reserved.

ARTICLE II - Funds Generally

Sec. 4-11. - Custody and management of funds.

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

(Ord. 435 §1, 1996)

Secs. 4-12—4-30. - Reserved.

ARTICLE III - General and Special Funds

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. 435 §1, 1996)

Sec. 4-32. - Capital improvement fund.

- (a) Pursuant to Section 29-2-111, C.R.S., there is hereby established a special fund of the Town to be known as the "Town of Nederland Sales Tax Capital Improvement Fund" (the "Capital Improvement Fund"). The pledged revenue, as defined in Section 4-57 of this Chapter, is hereby pledged to the Capital Improvement Fund, and shall be deposited thereto pursuant to said Section 4-57.
- (b) Amounts pledged or deposited to the Capital Improvement Fund shall be used solely to provide capital improvements or to pay debt services on bonds or other obligations issued for the purpose of providing capital improvements, including without limitation, the payment of all costs associated with the construction, installation, acquisition, provision, design, completion, improvement, replacement and financing of capital improvements of every character; provided, however, that such capital improvements shall have a useful life of not less than three (3) years, as determined by the Board of Trustees.
- (c) Amounts deposited to the Capital Improvement Fund shall not be available to be pledged or expended for any general municipal purpose.

(Ord. 294 §8, 1988)

#### Sec. 4-33. - Conservation trust fund.

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

(Ord. 435 §1, 1996)

#### Sec. 4-34. - Commercial parking fund.

- (a) There is hereby created a special fund of the Town to be known as the Commercial Parking Fund. All payments made in lieu of providing off-street parking as required by Chapter 16 of this Code shall be paid into the Commercial Parking Fund. The Commercial Parking Fund shall be an interest-bearing account of the Town. The Commercial Parking Fund may be within existing bank accounts of the Town, provided that amounts within the Commercial Parking Fund are accounted for separately and that the aggregate amount of collected Commercial Parking Fund payments is clearly identified. Any interest income earned on Commercial Parking Fund payments shall be credited to the Commercial Parking Fund. The Town Treasurer shall account separately for all receipts and disbursements to and from the Commercial Parking Fund.
- (b) Any and all disbursements from the Commercial Parking Fund shall be limited to payment of the following costs, which the Board of Trustees has determined are reasonably necessary to respond to and assist in defraying the costs of parking needs created by new development within the Town: land acquisition; planning and design; street construction; street improvements; ancillary buildings; surveying; site improvements; off-site improvements; grading; installation of curb, gutter and pavement; construction of drainage improvements; installation of lighting, landscaping, trash receptacles, outdoor seating, bike racks and similar facilities; architectural fees and costs; legal fees and costs; and other costs related to the provision of additional on-street and off-street public parking spaces to serve the Town. A portion of the Commercial Parking Fund payment collected may be used to help defray the administrative expenses of the Town reasonably incurred in connection with and equitably apportioned to

acquisition and construction of improvements pursuant to this Section and the cost of accounting and management of the Commercial Parking Fund, with such portion of the payment being deposited into the appropriate fund of the Town to help defray such expenses.

- (c) If a payment to the Commercial Parking Fund is made pursuant to Section 16-211 of this Code, it shall be due and payable at the time that the building permit is issued or, for a new use for which no building permit is required, at the time the business license is issued. Under no circumstances shall the Building Official issue a building permit or the Town Clerk issue a business license until and unless the payment to the Commercial Parking Fund, if any, has been paid in full or a written agreement concerning scheduled payments has been approved by the Board of Trustees.
- (d) Payments to the Commercial Parking Fund shall be used in the order in which they are collected; payments that are received first will be expended or encumbered first. Any payor into the Commercial Parking Fund shall be entitled to a refund of such payment, without the interest accrued thereon, if the payment has not been expended or encumbered by the end of the calendar quarter immediately following twenty (20) years from the date such payment was made. If scheduled payments have been made pursuant to Subsection (c) above, then the twenty-year time period shall begin to run on the date the Town received the last of the scheduled payments. All requests for refunds shall be made in writing to the Town no later than one hundred eighty (180) days from the date the payor becomes entitled to a refund. If all or a portion of a payor's payment to the Commercial Parking Fund has not been expended or encumbered, the Town shall refund that portion of the payment that was not expended or encumbered.

(Ord. 666 §1, 2008)

Secs. 4-35—4-50. - Reserved.

#### ARTICLE IV - Sales Tax

Sec. 4-51. - Definitions.

For the purpose of this Article, words not otherwise defined herein shall have the meanings set forth in Section 39-26-102, C.R.S., and said definitions are incorporated herein by this specific reference.

(Ord. 218 §2, 1982)

Sec. 4-52. - General provisions.

- (a) There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services as provided in Section 29-2-105(1)(d), C.R.S., a sales tax equal to four percent (4%) of the gross receipts (the "sales tax") beginning July 1, 2018, and that the sales tax rate shall be increased to four and one-quarter percent (4.25%) of the gross receipts beginning on January 1, 2023. The tangible personal property and services taxable under this Article shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., and subject to the same exemptions as those specified in Part 7 of Article 26 of Title 39, C.R.S.; provided that the exemption for sales of food pursuant to Section 39-56-707(1)(c), C.R.S., the exemption for sales of

electricity, coal, wood, gas, fuel oil or coke sold to occupants of residences pursuant to Section 39-26-715(1)(a)(II), C.R.S., and the exemption for sales of machinery or machine tools pursuant to Section 39-26-709(1), C.R.S., shall not apply to the sales tax, and the sale of such items is expressly made taxable under this Article. The imposition of the sales tax on individual sales shall be in accordance with schedules set forth in the rules and regulations promulgated by the Department of Revenue. If any vendor, during any reporting period, shall collect as the sales tax an amount in excess of the amount of the sales tax imposed by this Article, he or she shall remit to the Executive Director (hereinafter defined) the full amount of the sales tax herein imposed and also such excess.

- (b) For the purpose of the sales tax, 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 to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town. The gross receipts from such sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Article 26 of Title 39, C.R.S., regardless of the place to which delivery is made. If a retailer has no permanent place of business in the Town, or has more than one (1) place of business, the place at which the retail sales are consummated for the purpose of sales tax shall be determined by the provisions of Article 26 of Title 39, C.R.S., and by rules and regulations promulgated by the Department of Revenue.
- (c) The sales tax shall not apply to the sale of construction and building materials, as the term is used in Section 29-2-109, C.R.S., if such materials are picked up by the purchaser and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town evidencing that a local use tax has been paid or is required to be paid.
- (d) The amount subject to the sales tax shall not include the amount of any sales or use tax imposed by Article 26 of Title 39, C.R.S.
- (e) All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from the sales tax when such sales meet both of the following conditions:
  - (1) The purchaser is a nonresident of or has his or her principal place of business outside the limits of the Town; and
  - (2) Such personal property is registered or required to be registered outside the limits of the Town under the laws of the State.
- (f) The sales tax 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 on the purchaser or user by another statutory or home rule city and county, city or town equal to or in excess of the sales tax. A credit shall be granted against the sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule city and county, city or town. The amount of the credit shall not exceed the amount of the sales tax.
- (g) The sales tax shall not apply to the sale of food purchased with food stamps. For the purposes of this Subsection, food shall have the same meaning as provided in 7 U.S.C. § 2012(g), as such section now exists or is hereafter amended.
- (h) The sales tax shall not apply to the sale of food purchased with funds provided by the special supplemental food program for women, infants and children authorized by 42 U.S.C. § 1786. For the purposes of this Subsection, food shall have the same meaning as provided in 42 U.S.C. § 1786, as such section now exists or is hereafter

amended.

(Ord. 218 §4, 1982; Ord. 435 §1, 1996; Ord. 466 §1, 1997; Ord. 703 §3, 2012; Ord. 755 §2, 2018; Ord. 780 §2, 2018; Ord. 831, §2, 2022)

Sec. 4-53. - Sales tax collection.

- (a) The collection, administration and enforcement of the sales tax shall be performed by the Executive Director of the Department of Revenue of the State (the "Executive Director"), at no charge to the Town, in the same manner as the collection, administration and enforcement of the state sales tax. Unless otherwise provided by Article 2 of Title 29, C.R.S., the provisions of Article 26 of Title 39, C.R.S., shall govern the collection, administration and enforcement of the sales tax.
- (b) The Executive Director shall make monthly distributions of sales tax collections to the Town Treasurer or other Town official designated by the Board of Trustees.

(Ord. 218 §4, 1982)

Sec. 4-54. - Sales tax vendor's fees.

All vendors shall be entitled as collection agent for the Town to withhold an amount equal to zero percent (0%) of the total amount to be remitted by the vendor to the Executive Director each month to cover the vendor's expense in the collection and remittance of the sales tax.

(Ord. 435 §1, 1996; Ord. 677 §1, 2009)

Sec. 4-55. - Confidentiality of information.

- (a) Upon receipt from the Executive Director of the monthly listing of all returns filed by retailers in the Town pursuant to Section 29-2-106(4)(b), C.R.S., the appropriate officers or employees of the Town shall use their best efforts to determine if any retailers in the Town were omitted from the listing and to notify the Executive Director, on behalf of the Board of Trustees, of any such omissions within ninety (90) days of receipt of the monthly listing.
- (b) The Mayor is hereby authorized to execute a memorandum of understanding with the Department of Revenue providing for the control of confidential data, so as to enable the Town to receive information concerning the status of each vendor's account and other information the provision of which is permitted by Section 29-2-106(4)(c), C.R.S. Except in accordance with judicial order or as otherwise provided by law, no official or employee of the Town receiving information from the Department of Revenue pursuant to Section 29-2-106(4)(c), C.R.S., shall divulge or make known to any person not an official or employee of the Town any information which identifies or permits the identification of the amount of sales tax collected or paid by any individual vendor.

(Ord. 435 §1, 1996)

Sec. 4-56. - Deficiency notices and dispute resolution.

- (a) Pursuant to the provisions of Section 29-2-106.1, C.R.S., upon the determination by the Town Treasurer that the sales tax is due in an amount greater than the amount paid by a taxpayer, the Town Treasurer is hereby authorized to mail or cause to be mailed a deficiency notice to the taxpayer by certified mail. The deficiency notice shall

contain the information required by said Section 29-2-106.1, C.R.S., and may also contain other information deemed relevant by the Town Treasurer.

- (b) Resolution of any dispute concerning deficiencies or denials of a taxpayer's claim for refunds shall be in accordance with Section 29-2-106.1, C.R.S.
- (c) The Town Treasurer is hereby authorized to prepare and make available to any taxpayer forms for claiming refunds of sales taxes paid.

(Ord. 435 §1, 1996)

#### Sec. 4-57. - Use of revenues.

Immediately upon the receipt or collection thereof, the revenues derived from the sales tax (net of the Town's costs of collection and administration) shall be deposited, or applied in the following manner:

- (1) On January 1, 2023, and thereafter:
  - a. Fifty-two and ninety-five one hundredths percent (52.95%) of such revenues shall be deposited to the General Fund and used for any municipal purpose;
  - b. Eleven and seventy-six one hundredths percent (11.76%) of such revenues shall be deposited in the Sewer Fund.
  - c. Eleven and seventy-six one hundredths percent (11.76%) of such revenues shall be deposited in the Water Fund.
  - d. Seventeen and sixty-five one hundredths percent (17.65%) of such revenues shall be deposited to the Community Center Fund.
  - e. Five and eighty-eight one hundredths percent (5.88%) of such revenues shall be deposited to the Streets Fund.

(Ord. 218 §8, 1982; Ord. 466 §2, 1997; Ord. 490 §1, 1998; Ord. 687 §2, 2011; Ord. 703 §§3, 5, 2012; Ord. 710 §1, 2012; Ord. 831, §2, 2022)

#### Sec. 4-58. - Amendments.

Except as to the sales tax rate provided for in this Article, the items taxed and exempted from the sales tax hereunder, and the use of the sales tax revenues provided for in Sections 4-32 and 4-57 above, the Board of Trustees may amend, alter, delete or change the provisions of this Article by the adoption of an amending ordinance in accordance with law. Such amendment, alteration, deletion or change need not be submitted to the electors of the Town for their approval.

(Ord. 218 §6, 1982)

#### Sec. 4-59. - Effective date.

The provisions hereof shall be effective on January 1, 1998.

(Ord. 218 §9, 1982; Ord. 435 §1, 1996; Ord. 466 §3, 1997)

## ARTICLE V - Use Tax

### Sec. 4-71. - Purpose.

The purpose of this Article is to impose a use tax within the Town as authorized by Part 102, Article 2 of Title 29, C.R.S.

(Ord. 254 §1, 1984)

### Sec. 4-72. - Definitions.

For the purpose of this Article, the definitions of the words herein contained shall be defined in Section 39-26-201, C.R.S., and said definitions are incorporated herein by this reference.

(Ord. 254 §2, 1984)

### Sec. 4-73. - Tax levied.

There is hereby levied and there shall be collected and paid a use tax upon the privilege of storing, using or consuming within the Town any construction and building materials and motor or other vehicles on which registration is required purchased at retail, equal to three percent (3%) of retail cost thereof. Such tax shall be collected in accordance with schedules set forth in the rules and regulations promulgated by the State Department of Revenue.

(Ord. 254 §3, 1984; Ord. 435 §1, 1996)

### Sec. 4-74. - Exemptions.

In no event shall the use tax imposed by this Article extend or apply to the following:

- (1) To the storage, use or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by the Town;
- (2) To the storage, use or consumption of any tangible personal property purchased for resale in the Town, whether in its original form or as an ingredient of a manufactured or compounded product, in the regular course of 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 personal property brought into the State by a nonresident to be used in the conduct of a business in the state;
- (4) 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 furnished shipping case thereof;

- (5) To the storage, use or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a sales or use tax of another town, city or county equal to or in excess of that imposed by this Article. A credit shall be granted against the use tax imposed by this Article with respect to a person's storage, use or consumption in the Town of tangible personal property purchased by him or her elsewhere. The amount of the credit shall be equal to the tax paid by him or her by reason of the imposition of a sales tax 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 tax imposed by this Article.
- (6) To the storage, use or consumption of tangible personal property and household effects acquired outside the Town and brought into it by a nonresident acquiring residency;
- (7) 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 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 said motor vehicle outside of the Town;
- (8) 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 this use tax; or
- (9) 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 this use tax.

(Ord. 254 §4, 1984)

#### Sec. 4-75. - Collection of construction and building materials use tax.

The collection, administration and enforcement of the construction and building materials use tax shall be performed by the Town Treasurer. The Town is authorized to promulgate such rules and regulations as may be necessary for the proper collection, administration and enforcement of the use tax. No building permit shall be issued until all applicable use taxes on the construction and building materials have been paid.

(Ord. 254 §5, 1984)

#### Sec. 4-76. - Motor and other vehicle use tax collection.

- (a) The use tax provided for herein shall be applicable to every motor or other vehicle for which registration is required by the laws of the State. No registration shall be made of any motor vehicle 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 until any tax due upon the use, storage or consumption thereof pursuant to this Article has been paid.
- (b) The use tax imposed by this Article shall be collected by the authorized agent of the State Department of Revenue in the County.
- (c) The proceeds of this use tax shall be paid to the Town periodically in accordance with an agreement entered into by and between the Town and the County as agent of the State Department of Revenue.
- (d)

The Mayor is empowered to enter into and execute on behalf of the Town any agreements necessary for the administration and enforcement of this Article, in accordance with the provisions of Section 29-2-106(3), C.R.S.

(Ord. 254 §6, 1984; Ord. 435 §1, 1996)

#### Sec. 4-77. - Amendments.

The Board of Trustees, by a majority vote, may amend, alter or change this Article, except as to the rate of tax herein imposed, and as to the disposition of the revenues derived therefrom, as set forth below. Such amendment, alteration or change need not be submitted to the electors of the Town for their approval.

(Ord. 254 §7, 1984; Ord. 435 §1, 1996)

#### Sec. 4-78. - Revenues derived; disposition.

The revenues derived from or received from the three-percent use tax imposed by this Article shall be placed and kept in total in the General Fund of the Town.

(Ord. 254 §8, 1984)

#### Sec. 4-79. - Effective date.

The tax imposed by this Article shall become effective on July 1, 1984, and the use tax imposed hereby shall apply to and be collected on transactions subject to such tax made on and after that date.

(Ord. 254 §9, 1984; Ord. 435 §1, 1996)

#### Sec. 4-80. - Penalty.

Any person convicted of violating any of the provisions of this Article shall be punished by a fine as set forth in Section 1-72 of this Code.

(Ord. 254 §10, 1984; Ord. 435 §1, 1996)

#### Secs. 4-81—4-100. - Reserved.

### ARTICLE VI - Occupational Tax

#### Sec. 4-101. - Levy of tax.

There is hereby levied and assessed an annual occupation tax upon the business of selling 3.2% beer, malt, vinous or spirituous liquors, except medicinal liquors in the Town, as said occupation has been herein classified as follows:

- (1) For all fermented malt beverage (3.2% beer) licenses:
  - a. On-premise consumption: fifty dollars (\$50.00).
  - b. Off-premise consumption: fifty dollars (\$50.00).

- c. On- and off-premise consumption: fifty dollars (\$50.00).
- (2) For all liquor licenses:
  - a. Arts: one hundred dollars (\$100.00).
  - b. Beer and wine: one hundred dollars (\$100.00).
  - c. Brew-pub: two hundred dollars (\$200.00).
  - d. Club: two hundred dollars (\$200.00).
  - e. Hotel-restaurant: two hundred dollars (\$200.00).
  - f. Liquor licensed drug store: one hundred dollars (\$100.00).
  - g. Retail liquor store: one hundred dollars (\$100.00).
  - h. Racetrack: two hundred dollars (\$200.00).
  - i. Tavern: two hundred dollars (\$200.00).

(Ord. 107 §4, 1968; Ord. 138 §1, 1975; Ord. 435 §1, 1996; Ord. 457 §1, 1997)

#### Sec. 4-102. - Payment.

- (a) Such tax shall be due and payable to the Town Treasurer on January 1 of each year and shall be delinquent thereafter. Prepayment of said tax may be made in the month of December preceding the due date.
- (b) Upon receipt of said tax, the Town Treasurer shall issue a receipt showing the name of the person paying the same, the annual period for which the tax is paid and the location of the place of business for which the same is paid.
- (c) The operator shall, at all times during said year, keep the receipt posted in a conspicuous place in his or her place of business.
- (d) If any operators begin business subsequent to January 1 of any year, the tax required shall be prorated on a monthly basis for the remaining portion of the year; provided, however, that no refund shall be made to any person who discontinues said business during the year or temporarily closes said business during the year, either voluntarily or involuntarily. All prorated taxes provided for in this paragraph shall be due and payable upon the beginning of business. Interest shall accrue on all delinquent taxes at the rate of one percent (1%) per month.

(Ord. 107 §5, 1968; Ord. 435 §1, 1996)

#### Sec. 4-103. - Delinquency.

No delinquency in payment of the tax herein provided for shall be grounds for suspension or revocation of any license granted to any such operator by any licensing authority pursuant to the state statutes and in performance of any duties imposed upon the Board of Trustees, as a licensing authority by such statutes. The Board of Trustees shall exclude from consideration of suspension or revocation any delinquency in payment of the tax herein provided for.

(Ord. 107 §6, 1968; Ord. 435 §1, 1996)

#### Secs. 4-104—4-120. - Reserved.

Sec. 4-121. - Levy of tax.

There is hereby levied on and against each telephone utility company operating with 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 the tax levied hereby shall be nine hundred fifty dollars (\$950.00) annually for each calendar year, payable as provided in Section 4-122 below.

(Ord. 170 §1, 1979; Ord. 435 §1, 1996)

Sec. 4-122. - Time of payment of tax.

The tax levied by this Article shall be due and payable in four (4) equal quarterly installments, to be paid on the last business days of the months of March, June, September and December.

(Ord. 170 §2, 1979; Ord. 435 §1, 1996)

Sec. 4-123. - Filing statement.

Within thirty (30) days after the date on which the tax begins to accrue as provided in Section 4-122 above, 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.

(Ord. 170 §3, 1979)

Sec. 4-124. - Failure to pay.

If any telephone 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 Board of Trustees, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect said debt.

(Ord. 170 §4, 1979)

Sec. 4-125. - Penalty.

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 4-123 above, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine as set forth in Section 1-72 of this Code, provided that

each day after said statement shall become delinquent during which said officer, agent, manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

(Ord. 170 §5, 1979; Ord. 435 §1, 1996)

Sec. 4-126. - 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.

(Ord. 170 §6, 1979)

Sec. 4-127. - 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 be construed to mean that any telephone utility company is issued a franchise by the Town.

(Ord. 170 §7, 1979)

Sec. 4-128. - Tax in lieu of other taxes.

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 said telephone utility.

(Ord. 170 §8, 1979)

Sec. 4-129. - Certain offenses and liabilities to continue.

All offenses committed and all liabilities incurred prior to the effective date of the ordinance codified herein 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.

(Ord. 170 §9, 1979)

Secs. 4-130—4-150. - Reserved.

ARTICLE VIII - Lodging Occupation Tax

Sec. 4-151. - Legislative intent.

The Board of Trustees hereby finds, determines and declares:

(1)

For the purposes of this Article, every person who furnishes a lodging room or accommodation for consideration in the Town is exercising a taxable privilege. The purpose of this Article is to impose a tax which will be paid by every vendor providing such lodging room or accommodation in the Town, which tax proceeds are to be used for health and human services programs and activities and law enforcement services.

- (2) Pursuant to authority found in the laws of the State, the following lodging occupancy tax is adopted for the purpose of promoting the health, safety, morals and general welfare of the Town.
- (3) The provision of lodging rooms and accommodations to the traveling public results in the increased use of Town streets and rights-of-way, increased traffic and increased demands upon municipal services such as police protection, and has substantial effect upon the health, safety and welfare of the citizens of the Town and upon expenditures budgeted by the Town which is a matter of local concern.
- (4) The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform, nondiscriminatory and necessary.

(Ord. 808 §2, 2020)

#### Sec. 4-152. - Definitions.

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

*Bedroom* shall mean a room in lodging that is used for sleeping and that contains at least one bed or sleeper sofa. Garages, kitchens, bathrooms, dining rooms are deemed not to be bedrooms for this definition.

*Lodging* shall mean hotel rooming unit, motel rooming unit, short-term rental, or other accommodations that are rented to persons for periods less than thirty (30) days.

*Person* shall have the same meaning as set forth in Section 1-121.

*Rent* shall have the same meaning as set forth in Section 6-92.

*Sale* means the furnishing for consideration by any person of lodging within the Town.

*Short-term rental* shall have the same meaning as set forth in Section 6-92.

*Tax* means the tax payable by the vendor, or the aggregate amount of taxes due from the vendor, during the period for which the vendor is required to pay the occupation tax on the provision of lodging under this Article.

*Taxpayer* means the vendor obligated to pay the tax under the terms of this Article.

*Vendor* means a person furnishing lodging for consideration within the Town.

(Ord. 808 §2, 2020)

#### Sec. 4-153. - Levy of tax.

Effective January 1, 2020, there is hereby levied by the Town an occupation tax on the provision of lodging upon every person that furnishes any hotel room, motel room, short-term rental, or other similar accommodation for consideration for less than thirty (30) consecutive days within the Town in the amount of two dollars (\$2.00) per day, per occupied bedroom or per

other accommodation without defined bedrooms. Effective January 1, 2023, such lodging occupation tax shall be increased to the amount of four dollars (\$4.00) per day, per occupied bedroom or per other accommodation without defined bedrooms.

(Ord. 808 §2, 2020; Ord. 832, §2, 2022)

Sec. 4-154. - Exemption transactions.

The following entities and transactions are exempt from the duty to pay tax under this Article but not the duty to collect and remit the tax levied hereby:

- (1) The United States Government, the State of Colorado, its departments and institutions and the political subdivisions thereof including the city, when acting in their governmental capacities and performing governmental functions and activities; and
- (2) Charitable, religious, and eleemosynary organizations that have received from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities.

(Ord. 808 §2, 2020)

Sec. 4-155. - Collection of tax.

- (a) Every vendor providing lodging taxable under this Article shall remit such tax quarterly, on or before the last business days of the months of March, June, September and December, for lodging provided in the previous quarter. Every vendor shall submit payment of the taxes with a return which shall contain such information used for computation of the tax and be in such form as the Town Administrator or his or her designee may prescribe.
- (b) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.
- (c) It shall be the duty of every vendor to 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 Administrator or his or her designee in order to determine the amount of the tax for which the vendor is liable under the Article. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Town Administrator or designee.

(Ord. 808 §2, 2020)

Sec. 4-156. - Health and Human Services Fund created.

- (a) There is hereby established a Health and Human Services Fund. At least fifty-one percent (51%) but no more than ninety-nine percent (99%) of the revenues derived from the occupation tax on lodging described in Section 4-153 shall be deposited in the Health and Human Services Fund. All expenditures from the Health and Human Services Fund shall be used exclusively for programs or activities that provide:
  - (1) Accessibility to physical and mental health services, including but not limited to addiction treatment, counseling, and emergency services;
  - (2) Food and resource assistance;
  - (3) Alternative transportation;

- (4) Services and assistance for seniors and people with disabilities;
  - (5) Access to education, training, and employment assistance;
  - (6) Support and assistance to people in and near the Nederland area, including but not limited to housing assistance;
  - (7) Child care assistance and programs and services for children; or
  - (8) Household energy assistance.
- (b) At least once per year, the Board of Trustees shall determine the allocation of revenue from the occupation tax on lodging services to the Health and Human Services Fund. The remaining revenue derived from the occupation tax on lodging shall be allocated to law enforcement services.
  - (c) The Board of Trustees may, by resolution, adopt rules and procedures for administering the Health and Human Services Fund such as establishment of an advisory committee, the role and conduct of the advisory committee, the expenditure of funds, and any other rules and regulations it deems necessary for the effective use and disposition of the funds.

(Ord. 808 §2, 2020)

Sec. 4-157. - Audit of records.

- (a) For the purpose of ascertaining the correct amount of the occupation tax on the provision of lodging due from any person engaged in such business in the Town under this Article, the Town Administrator, his or her designee, or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.
- (b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Administrator, his or her designee, or an authorized agent. If any taxpayer refuses to furnish any of the foregoing information voluntarily when requested, the Town Administrator may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.
- (c) Any exempt organization or person claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in the lodging business in the Town.

(Ord. 808 §2, 2020)

Sec. 4-158. - Tax overpayments and deficiencies.

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 Administrator or his or her designee determines that within three (3) years of the due date, a vendor overpaid the occupation tax on the provision of lodging, the Town shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Administrator or his or her designee determines the amount paid is less than the amount due under this Article, the vendor shall pay the difference together with the interest within ten (10) days after receiving written notice and demand. The Town Administrator may extend that time for good cause.

(Ord. 808 §2, 2020)

- (a) All specific information gained under the provisions of this Article that is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential unless otherwise required by law. Except as directed by judicial order or as provided in this Article, no Town officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who knowingly divulges any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Article or by law, shall be guilty of a violation hereof.
- (b) The Town Administrator or his or her designee may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.
- (c) Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or their duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the Town.

( Ord. 808 §2, 2020)

Sec. 4-160. - Forms and regulations.

The Town Administrator or his or her designee shall have the authority to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Article and the collection and enforcement of the tax obligations imposed hereby. The Town Administrator or his or her designee is also authorized to prescribe forms to aid in the making of returns, the ascertainment, assessment and collection of said occupation tax on the provision of lodging, and in particular and without limiting the general language of this Article, to prescribe:

- (1) A form of report on the provision of lodging to be supplied to all vendors;
- (2) The records which vendors providing lodging are to keep concerning the tax imposed by this Article.

( Ord. 808 §2, 2020)

Sec. 4-161. - Enforcement and penalties.

- (a) It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Article, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Article. Each day, or portion thereof, that any violation of this Article continues shall constitute a separate offense.
- (b) 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 if the tax is not remitted as required by this Article, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Administrator is hereby authorized to waive, for good cause shown, any penalty assessed.

- (c) If any part of a deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency together with interest from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency together with interest and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written demand by the Town Administrator.
- (d) If any vendor fails to make a return and pay the tax imposed by this Article, the Town may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The Town shall mail notice of such estimate, by certified mail and regular mail, to the vendor at the address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Administrator ten (10) days from the date of mailing of the notice; provided, however, that within the ten-day period such delinquent taxpayer may petition the Town Administrator for a revision or modification of such assessment and shall, within such ten-day period, furnish the Town Administrator with a written appeal petition and include the documents, facts and figures showing the correct amount of such taxes due and owing.
- (e) Such appeal petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. After review of the petition, the Town Administrator may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Article. Such assessment shall be considered the final order of the Town Administrator, and may be reviewed under the Rule 106(a)(4) of the Colorado rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Administrator of such intention within ten (10) days after of the final order of assessment.

(Ord. 808 §2, 2020)

Sec. 4-162. - Tax constitutes lien.

- (a) The tax imposed by this Article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Administrator whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by the Boulder County Sheriff or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Administrator at public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.
- (b) Whenever the business or property of a taxpayer subject to this Article is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this Article, and for which the taxpayer is in any way liable under the terms of this Article, shall be a prior and preferred lien against all the property of the taxpayer, 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 person subject to this Article under process or order of any court, without first ascertaining from the Town the amount of any taxes due

and payable under this Article and, if there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the 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.

- (c) The tax imposed by this Article shall be, and remain, a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

(Ord. 808 §2, 2020)

Sec. 4-163. - Recovery of unpaid tax.

- (a) The Town may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.
- (b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction of the amount sought to be collected.
- (c) The return of the taxpayer or the assessment made by the Town shall be *prima facie* proof of the amount due.
- (d) Such actions may be actions in attachment, and writs of attachment may be issued to the Boulder County Sheriff, and in any such proceeding no bond shall be required of the Town Administrator, nor shall any sheriffs deputy require of the Town an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town may prosecute appeals in such cases without the necessity of providing bond therefor.
- (e) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the Boulder County Treasurer for collection in the same manner as delinquent ad valorem taxes.

(Ord. 808 §2, 2020)

Sec. 4-164. - Hearings, subpoenas and witness fees.

- (a) Hearings before the Town pursuant to the provisions of this Article shall be held in accordance with this Article and rules and regulations promulgated by the Town. Any subpoena issued pursuant to this Article may be enforced by the Nederland Municipal Judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town, such fees shall be paid in the same manner as other expenses under the terms of this Article, and, when a witness is subpoenaed at the instance of any party to any such proceeding, the Town may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Town, at its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.
- (b)

The Nederland Municipal Judge, upon the application of the Town, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and the giving of testimony before the Town's duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the Court.

(Ord. 808 §2, 2020)

Sec. 4-165. - Depositions.

The Town or any party in an investigation or hearing before the Town Administrator may cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

(Ord. 808 §2, 2020)

Sec. 4-166. - Statute of limitations.

- (a) Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed, nor shall notice of lien be filed, or distress warrant be issued, or 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 payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three-year period, notice of lien with respect to which has been filed prior to the expiration of such period.
- (b) In case of a false or fraudulent return with intent to evade taxation, the tax, together with interest and penalties thereon, 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 and the Town Administrator may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(Ord. 808 §2, 2020)

Secs. 4-167—4-170. - Reserved.

ARTICLE IX - Fees

*Footnotes:*

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***Editor's note—*** (Ord. 808, § 4, adopted May 19, 2020, renumbered former Art. VIII as Art. IX.)

Sec. 4-171. - Fees set by resolution; review.

- (a) Except as may be otherwise established by individual ordinance, all fees, rates or charges for permits, licenses or services as established in this Code shall be set from time to time by resolution duly adopted by the Board of Trustees. It is the intent that all municipal fees and charges shall, at a minimum, be reviewed annually and that additions, deletions or adjustments in such fees and charges shall be adopted before December 31 of each year, becoming effective at the beginning of the next fiscal year. Failure to conduct an annual review of any fee,

assessment or charge shall not in any way affect the continuing validity thereof, and all fees, assessments and charges shall remain in full force until amended by subsequent resolution adopted by the Board of Trustees. This Section is not intended to apply to fines, nor to any deposit or penalty, whether expressed as an absolute amount or as a percentage, in this Code.

- (b) In addition to all fees, assessments and charges established elsewhere in this Code, there shall be included in the fees and charges set annually certain administrative fees, which may include, but shall not be limited to:
- (1) Returned check charges;
  - (2) Research charges; and
  - (3) Document charges, including photocopying charges.

(Ord. 435 §1, 1996; Ord. 447 §1, 1997; Ord. 457 §1, 1997; Ord. 511 §§1, 2, 1999; Ord. 540 §1, 2000; Ord. 552 §1, 2001; Ord. 582 §§1, 2, 2003; Ord. 641 §1, 2007; Ord. 646 §2, 2008; Ord. 648 §7, 2008; Ord. 654 §1, 2008; Ord. 658 §1, 2008; Ord. 660 §1, 2008; Ord. 808 §4, 2020)

**Editor's note—** Ord. 808, § 4, adopted May 19, 2020, renumbered former § 4-151 as § 4-171.

Secs. 4-172—4-190. - Reserved.

## ARTICLE X - Purchasing

### *Footnotes:*

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**Editor's note—** Ord. 808, § 3, adopted May 19, 2020, renumbered former Art. IX as Art. X.

Sec. 4-191. - Purchases under \$1,000.00 by department heads.

- (a) Purchases under one thousand dollars (\$1,000.00) by department heads. Each department head shall have the power and responsibility to make purchases of all supplies, apparatus, equipment, materials and other tangible property when:
  - (1) The amount of the expenditure does not exceed the sum of one thousand dollars (\$1,000.00); and
  - (2) The item to be purchased is included in the budget for the department and the funds have been appropriated.
- (b) Purchases under ten thousand dollars (\$10,000.00) by Town Administrator. The Town Administrator shall have the power and responsibility to make purchases of all supplies, apparatus, equipment, materials and other tangible property when:
  - (1) The amount of the expenditure does not exceed the sum of ten thousand dollars (\$10,000.00); and
  - (2) The item to be purchased is included in the budget and the funds have been appropriated.

(Ord. 499 §1, 1999; Ord. 602 §1, 2005; Ord. 808 §3, 2020)

**Editor's note—** Ord. 808, § 3, adopted May 19, 2020, renumbered former § 4-171 as § 4-191.

Secs. 4-192—4-200. - Reserved.

Sec. 4-201. - Definitions.

The definitions contained in the Colorado Marijuana Code in the Colorado Revised Statutes, the state administrative regulations adopted pursuant to such statutes, the Town's retail marijuana licensing ordinances, and Section 6-273 of this Code, each as amended from time to time, are incorporated into this Article by reference.

(Ord. 833, §2, 2022)

Sec. 4-202. - Levy of tax.

Effective January 1, 2023 there is hereby levied by the Town a sales tax upon the lawful sale of retail marijuana and retail marijuana products by a retailer within the Town at the rate of five percent (5.0%) of the purchase price paid by the purchaser thereof rounded off to the nearest penny. The tax shall be collected by the licensed vendor and paid to the Town. The tax imposed by this Section is in addition to, and not in lieu of, the general sales tax owed and payable to the Town pursuant to Section 4-52 and the State of Colorado's retail marijuana sales tax pursuant to Article 28.8 of Title 39, C.R.S. No amount of the tax collected pursuant to this Section may be retained by the licensee to cover the expenses of collecting and remitting the tax.

(Ord. 833, §2, 2022)

Sec. 4-203. - Collection of tax.

- (a) Every retailer collecting the special retail marijuana sales tax shall remit such tax quarterly, on or before the last business days of the months of March, June, September, and December, for the sale of retail marijuana and retail marijuana products in the previous quarter. Every retailer shall submit payment of the taxes with a return which shall contain such information used for computation of the tax and be in such form as the Town Administrator or his or her designee may prescribe.
- (b) It shall be the duty of every retailer to 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 Administrator or his or her designee in order to determine the amount of the tax for which the vendor is liable under the Article. It shall be the duty of every such retailer to keep and preserve for a period of three (3) years all such books, invoices and other records and the same shall be open for examination by the Town Administrator or designee.

(Ord. 833, §2, 2022)

Sec. 4-204. - Parks and Recreation Fund created.

- (a) There is hereby established a Parks and Recreation Fund. At least fifty-one percent (51%) of the revenues derived from the marijuana sales tax described in Section 4-202 shall be deposited in the Parks and Recreation Fund. The fund may also consist of gifts and donations to the fund; proceeds from fees collected from park and recreation

facilities and/or events; proceeds of the sale of any park or recreation property or equipment whether real, personal, or mixed; and other appropriations to the fund made by the Board of Trustees.

- (b) All expenditures from the Parks and Recreation Fund shall be used exclusively for:
  - (1) Acquisition of park land;
  - (2) Acquisition and maintenance of personal property for use with park and recreation land and facilities;
  - (3) Improvement and maintenance of park and recreation land and facilities;
  - (4) Other such expenditures for the benefit of park and recreation land and facilities.
- (c) At least once per year, the Board of Trustees shall determine the allocation of revenue from the marijuana sales tax to the Parks and Recreation Fund.
- (d) The Board of Trustees may, by resolution, adopt rules and procedures for administering the Parks and Recreation Fund such as the expenditure of funds, and any other rules and regulations it deems necessary for the effective use and disposition of the fund.

(Ord. 833, §2, 2022)

Sec. 4-205. - Audit of records.

- (a) For the purpose of ascertaining the correct amount of the retail marijuana sales due from any licensee, the Town Administrator, his or her designee, or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.
- (b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Administrator, his or her designee, or an authorized agent. If any taxpayer refuses to furnish any of the foregoing information voluntarily when requested, the Town Administrator may issue a subpoena to require that the taxpayer or its representative attend a hearing or produce any such books, accounts and records for examination.

(Ord. 833, §2, 2022)

Sec. 4-206. - Tax overpayments and deficiencies.

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 Administrator or his or her designee determines that within three (3) years of the due date, a vendor overpaid the marijuana sales tax, the Town shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Administrator or his or her designee determines the amount paid is less than the amount due under this Article, the vendor shall pay the difference together with the interest within ten (10) days after receiving written notice and demand. The Town Administrator may extend that time for good cause.

(Ord. 833, §2, 2022)

Sec. 4-207. - Tax information confidential.

- (a) All specific information gained under the provisions of this Article that is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential unless otherwise required by law. Except as directed

by judicial order or as provided in this Article, no Town officer, employee, or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who knowingly divulges any information classified herein as confidential, in any manner, except in accordance with proper judicial order, or as otherwise provided in this Article or by law, shall be guilty of a violation hereof.

- (b) The Town Administrator or his or her designee may furnish to officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.
- (c) Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or their duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers, or the inspection of such confidential information by an officer, employee, or legal representative of the Town.

(Ord. 833, §2, 2022)

#### Sec. 4-208. - Forms and regulations.

The Town Administrator or his or her designee shall have the authority to adopt, amend, alter, and repeal administrative rules and regulations as may be necessary for the proper administration of this Article and the collection and enforcement of the tax obligations imposed hereby. The Town Administrator or his or her designee is also authorized to prescribe forms to aid in the making of returns, the ascertainment, assessment and collection of said retail marijuana sale tax, and in particular and without limiting the general language of this Article.

(Ord. 833, §2, 2022)

#### Sec. 4-209. - Enforcement and penalties.

- (a) It shall be unlawful for any person to intentionally, knowingly, or recklessly fail to pay the tax imposed by this Article, or to make any false or fraudulent return, or for any person to otherwise violate any provisions of this Article. Each day, or portion thereof, that any violation of this Article continues shall constitute a separate offense. Failure to pay the tax imposed may constitute a basis for non-renewal of a retail marijuana license pursuant to Section 6-281 of the Nederland Municipal Code.
- (b) 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 if the tax is not remitted as required by this Article, and one and one-half percent (1.5%) in interest shall accrue each month on the unpaid balance. The Town Administrator is hereby authorized to waive, for good cause shown, any penalty assessed.
- (c) If any part of a deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency together with interest from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency together with interest and in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written demand by the Town Administrator.

- (d) If any vendor fails to make a return and pay the tax imposed by this Article, the Town may make an estimate, based upon available information of the amount of tax due and add the penalty and interest provided above. The Town shall mail notice of such estimate by certified mail and regular mail, to the vendor at the address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Administrator ten (10) days from the date of mailing of the notice; provided, however, that within the ten-day period such delinquent taxpayer may petition the Town Administrator for a revision or modification of such assessment and shall within such ten-day period, furnish the Town Administrator with a written appeal petition and include the documents, facts and figures showing the correct amount of such taxes due and owing.
- (e) Such appeal petition shall be in writing and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. After review of the petition, the Town Administrator may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Article. Such assessment shall be considered the final order of the Town Administrator, and may be reviewed under the Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Administrator of such intention within ten (10) days after of the final order of assessment.

(Ord. 833, §2, 2022)

Sec. 4-210. - Tax constitutes lien.

- (a) The tax imposed by this Article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Administrator whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by the Boulder County Sheriff or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Administrator at public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.
- (b) Whenever the business or property of a taxpayer subject to this Article is placed in receivership, bankruptcy or assignment for the benefit of creditors, or seized under distraint for taxes, all taxes, penalties and interest imposed by this Article, and for which the taxpayer is in any way liable under the terms of this Article, shall be a prior and preferred lien against all the property of the taxpayer 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 person subject to this Article under process or order of any court, without first ascertaining from the Town the amount of any taxes due and payable under this Article, and, if there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of the 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.
- (c) The tax imposed by this Article shall be, and remain, a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred.

Sec. 4-211. - Recovery of unpaid tax.

- (a) The Town may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.
- (b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon, when due, the Town may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the tax became due) having jurisdiction for the amount sought to be collected.
- (c) The return of the taxpayer or the assessment made by the Town shall be *prima facie* proof of the amount due.
- (d) Such actions may be actions in attachment, and writs of attachment may be issued to the Administrator, nor shall any sheriff's deputy require of the Town an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town may prosecute appeals in such cases without the necessity of providing bond therefor.
- (e) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred to the Boulder County Treasurer for collection in the same manner as delinquent ad valorem taxes.

(Ord. 833, §2, 2022)

Sec. 4-212. - Hearings, subpoenas and witness fees.

- (a) Hearings before the Town pursuant to the provisions of this Article shall be held in accordance with this Article and rules and regulations promulgated by the Town. Any subpoena issued pursuant to this Article may be enforced by the Nederland Municipal Judge pursuant to Section 13-10-112(2), C.R.S. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the district court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town, such fees shall be paid in the same manner as other expenses under the terms of this Article, and, when a witness is subpoenaed at the instance of any party to any such proceeding, the Town may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Town, at its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.
- (b) The Nederland Municipal Judge, upon the application of the Town, may compel the attendance of witnesses, the production of books, papers, records or memoranda, and giving of testimony before the Town's duly authorized hearing officers, by an action for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

(Ord. 833, §2, 2022)

Sec. 4-213. - Depositions.

The Town or any party in an investigation or hearing before the Town Administrator may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in courts of this state and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda.

(Ord. 833, §2, 2022)

Sec. 4-214. - Statute of limitations.

- (a) Except as otherwise provided in this Section, the taxes for any period, together with interest thereon and penalties with respect thereto, imposed by this Article shall not be assessed, nor shall notice of lien be filed, or distress warrant be issued, or 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 payable. Nor shall any lien continue after such period, except for taxes assessed before the expiration of such three-year period, notice of lien with respect to which has been filed prior to the expiration of such period.
- (b) In case of a false or fraudulent return with intent to evade taxation, the tax, together with interest and penalties thereon, 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 and the Town Administrator may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing.

(Ord. 833, §2, 2022)

CHAPTER 5 - Franchises and Communication Systems

ARTICLE I - Reserved

Secs. 5-1—5-40. - Reserved.

ARTICLE II - Electric and Gas Franchise

Sec. 5-41. - Definitions.

Whenever the word Town is hereinafter employed it shall designate the Town of Nederland, Boulder County, Colorado, the grantor, and whenever the word Company is used it shall designate not only Public Service Company of Colorado, a Colorado corporation, the grantees, but also its successors and assigns. (Ord. 249 Art. I, 1983)

Sec. 5-42. - Grant of authority.

There is hereby granted to the Company the franchise right, privilege and authority to locate, build, construct, acquire, purchase, extend, maintain and operate into, within and through the Town a plant or plants, substations and works for the purchase, generation, manufacture, storage, exchange, transmission and distribution of electrical energy and gaseous fuel, for light, heat and power or other purposes, with the rights and privileges for the period and upon the terms and conditions

hereinafter specified to furnish and sell said electrical energy and gaseous fuel to the Town and the inhabitants thereof, by means of pipes, mains, conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across and through any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places in the Town and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, under, along, across and through any and all such new streets, alleys, viaducts, bridges, roads, lanes and other public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town.

(Ord. 249 Art. II §1, 1983)

Sec. 5-43. - Manner of use; repair.

- (a) The Company is further granted the right, privilege and authority to excavate in, occupy and use any and all streets, alleys, viaducts, bridges, roads, lanes and other public ways and places, under the supervision of properly constituted authority, for the purpose of bringing gaseous fuel and electrical energy into, within and through the Town and supplying gaseous fuel and electrical energy to the Town and the inhabitants thereof and in the territory adjacent thereto. The Company shall so locate its plants, substations, works and transmission structures, lines, equipment and conduits within the Town so as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of said streets, alleys or other public ways and places. Should it become necessary for the Company, in exercising its right and performing its duties hereunder, to interfere with any sidewalk, gravel or paved street or any other public place, public improvement or private improvement, the Company shall, at its own cost and expense, promptly repair in a workmanlike manner such sidewalk, graveled or paved street, road, alley or other public improvement after the installation of its poles, conduits or other structures.
- (b) If such repairs are not made within a reasonable period of time and upon not less than ten (10) days' notice to the Company (which notice shall not be required in case of an emergency causing serious risk to the safety of persons or property), the Town at its option may make the same and bill the Company the amount paid by the Town for such repairs. The Company shall be liable for damages caused by failure to make such repairs and shall use due care not to interfere with or damage any water mains, sewers or other structures now or which may hereafter be placed in said streets, alleys or other public places.
- (c) The Company agrees to comply with any requirements furnished in writing to the Company, which the Town may impose through the Board of Trustees or its duly delegated authority, from time to time, with respect to digging or making a cut or other opening in a sidewalk, street or public way of the Town.

(Ord. 249 Art. II §2, 1983)

Sec. 5-44. - Town held harmless.

The Company shall save the Town harmless from all liability or damages and all reasonable expenses, including attorney fees, accruing against the Town arising out of the exercise by the Company of the rights and privileges hereby granted. The Company shall be given notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and shall be permitted at its own expense to appear and defend or assist in the defense of the same.

Sec. 5-45. - Changes at company expense.

If at any time it shall be necessary for the Company to relocate any facility lying within, on, over, across or above any street, public way or public property to permit the Town to make any public improvement or build any public project, such relocations or changes shall be made by the Company at its own expense. Such relocation shall be accomplished by the Company in accordance with a schedule established by the Town after consultation with the Company and shall be done in a manner as provided in Section 5-43 above.

(Ord. 249 Art. II §4, 1983)

Sec. 5-46. - Use of facilities by town.

The Town shall have the right without cost to use all poles and suitable overhead structures and underground trenches of the Company within the Town for the purpose of installing traffic control devices and wires or for any reasonable Town use, provided that this use of said facilities by the Town shall not interfere in any unreasonable manner with the Company's use of same and the Town saves the Company harmless from any claims or expense resulting from the Town's use. In addition, the Town shall have the right to use any other underground facilities of the Company that are mutually agreeable.

(Ord. 249 Art. II §5, 1983)

Sec. 5-47. - General standards of service.

The Company shall maintain an adequate source of supply in a quality to meet generally accepted standards of performance in the furnishing of electricity and gaseous fuel to the customers in the Town. Continued efforts shall be maintained to furnish the same in an efficient manner and at the lowest practicable cost.

(Ord. 249 Art. II §6, 1983)

Sec. 5-48. - Rates; regulations.

The Company shall furnish gaseous fuel and electrical energy within the corporate limits of the Town or any addition thereto, to the Town and to the inhabitants thereof, and to any person doing business in the Town or any addition thereto, at the applicable and effective rates and under the terms and conditions set forth in the rate schedules, standards for service, rules and regulations, and service connection and extension policies, as are effective from time to time with the State Public Utilities Commission, all of which collectively are hereinafter referred to as "Company tariffs."

(Ord. 249 Art. III §1, 1983)

Sec. 5-49. - No discrimination.

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

Sec. 5-50. - Extensions.

The Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution systems as the business of the Company and the growth of the Town justify, in accordance with Company's tariffs.

(Ord. 249 Art. III §3, 1983)

Sec. 5-51. - Rules and regulations.

The Company from time to time may, so long as not inconsistent with any of the terms hereof, promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of electrical energy and gaseous fuel, payment therefor, and the interference with or alteration of any of the Company's property upon the premises of its customers, as shall be necessary to ensure continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefor, provided that the Company shall keep on file in its Boulder office, available to the public, copies of its rate schedules, standards for service, rules and regulations and service connection and extension policies currently in effect and as are effective from time to time with the State Public Utilities Commission.

(Ord. 249 Art. III §4, 1983)

Sec. 5-52. - Municipal service.

The Company shall during the term of this franchise furnish upon order by the Town, at the various sites of consumption by the Town, gas and electricity in accordance with the Company's tariffs.

(Ord. 249 Art. III §5, 1983)

Sec. 5-53. - Street lights and traffic signals.

- (a) The Company, when providing street lighting service and electrical energy for traffic signals within the Town, shall charge the Town at rates not in excess of those now or hereafter prevailing in the Boulder Division for the same or similar service, unless otherwise directed by the Public Utilities Commission.
- (b) The Company agrees to replace or install street lights and poles as requested by the Town, in accordance with Company tariffs.

(Ord. 249 Art. III §6, 1983)

Sec. 5-54. - Construction and design of facilities.

The Company, prior to constructing any transmission lines or any generating plant, building, substation, regulator station or similar structure within the Town, shall furnish to the Town plans for such facility and the landscaping thereof. Such plans shall be reviewed by the Town to ensure that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with and further that aesthetic and good planning principles have been given due consideration.

(Ord. 249 Art. IV §1, 1983)

Sec. 5-55. - Underground distribution lines in new areas.

If required by the Town with respect to a particular development, the Company will place underground newly constructed electric distribution lines within newly developed areas in the Town in accordance with the Company's tariffs.

(Ord. 249 Art. IV §2, 1983)

Sec. 5-56. - Overhead conversion.

The Company will cooperate with the Town in undertaking and developing a program of converting to underground existing overhead electric distribution lines in the Town where economically feasible to do so and according to Company tariffs.

(Ord. 249 Art. IV §3, 1983)

Sec. 5-57. - Technological improvements.

The Company will introduce technological advances in its equipment and service in the Town when such advances are technically and economically feasible, and of benefit to the Town and its residents, with payment in accordance with approved Company tariffs.

(Ord. 249 Art. IV §4, 1983)

Sec. 5-58. - Compliance with air and water pollution laws.

The Company will so operate its plants and works located in the Town as to comply with applicable air pollution and water pollution laws.

(Ord. 249 Art. IV §5, 1983)

Sec. 5-59. - Cooperation with other utilities.

The Company shall, when undertaking a project of undergrounding, work with other utilities or companies which have their lines overhead to have all lines undergrounded as a part of the same project. The Company will also cooperate with other utilities or companies when they are placing their lines underground. In addition, with respect to overhead utilities, the Company agrees to cooperate in all reasonable respects with other utility companies, to provide access to poles for use by such other companies, provided that the Company may make provisions to assure that such other companies' use of poles will not interfere with the Company's use of such poles or put the Company to any expense (which is not reimbursed by such other companies) and may require such other companies to hold the Company harmless from any claims or expenses resulting from the joint use of poles. The Company may charge a reasonable maintenance charge consistent with the Company's actual maintenance expenses.

(Ord. 249 Art. IV §6, 1983; Ord. 435 §1, 1996)

Sec. 5-60. - Franchise payment.

As a further consideration for this franchise, and accepted by the Town in lieu of all occupancy, occupation and license taxes or other taxes on the right to do business, or other special taxes, assessments or excises upon the property of the Company (except uniform taxes or assessments applicable to all taxpayers or businesses), the Company shall pay to the Town a sum equal to three percent (3%) of the first five thousand dollars (\$5,000.00) of the total annual gross revenue derived from the sale of electrical energy within the corporate limits of the Town, and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of electric energy in excess of five thousand dollars (\$5,000.00) to each customer for service used at any one (1) location; and three percent (3%) of the first five thousand dollars (\$5,000.00) of the total annual gross revenue derived from the sale of gaseous fuel within the corporate limits of the Town, and a sum equal to two percent (2%) of the annual gross revenue derived from the sale of gaseous fuel in excess of five thousand dollars (\$5,000.00) to each customer for service used at any one (1) location. The term gross revenue as used herein shall be construed to mean any revenue derived within the Town for the sale of electrical energy and gaseous fuel after the net write-off of uncollectible accounts and correction of bills theretofore rendered, and in the event that the gross revenue of the Company for any period of time during the term of this franchise is subsequently reduced by virtue of a refund to any of the customers of the Company upon which the above-referred-to franchise payment is calculated and as a result thereof the Company has paid in excess of the percent of its gross revenue provided herein as so adjusted for any such period of time, the Company shall be entitled to a refund from the Town of all of said amounts paid in excess of said percentage of its gross revenue as adjusted by such refund. The Company shall pay the actual amount of said franchise fee on or before January 31, April 30, July 31 and October 31 of each year for the immediately preceding three-month calendar periods ending December 31, March 31, June 30 and September 30, respectively. If payment is not received within ten (10) days of the franchise due date, a percentage late fee equal to the current Company's late fee to its customers within the Town shall be assessed against the amount due. Payments for the portions of the initial and terminal years of this franchise shall be made on the basis of revenue as above derived for the months and portions of months in which this franchise is in effect. For the purpose of ascertaining or auditing the correct amount to be paid under the provisions of this paragraph, the Town Treasurer and/or any committee appointed by the Board of Trustees shall have access to the books of said Company for the purpose of checking the gross revenue received from operations within the Town.

(Ord. 249 Art. V §1, 1983)

#### Sec. 5-61. - Term; effective date.

This Article shall become effective, as provided by law, thirty (30) days after its publication following final passage, upon acceptance in writing by the Company within said period, and the terms, conditions and covenants thereof shall remain in full force and effect to and including July 11, 2007.

(Ord. 249 Art. VI §1, 1983; Ord. 577 §1, 2003; Ord. 603 §1, 2005)

#### Sec. 5-62. - Removal.

Upon the expiration of this franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it is hereby granted the right to enter upon the streets, alleys, bridges, viaducts, roads, lanes, public ways or other public places of the Town, for the purpose of removing therefrom any or all of its plants, structures, pipes, mains, conduits, cables, poles and wire, or equipment pertaining thereto at any time after the Town has had ample time and

opportunity to purchase, condemn or replace them. In so removing said pipes, mains, conduits, cables, poles, wire and equipment, the Company shall, at its own expense and in a workmanlike manner, refill any excavations that shall be made by it in the graveled or paved streets, alleys, bridges, viaducts, roads, lanes, public ways and other public places after the removal of mains, pipes, conduits, poles or other structures.

(Ord. 249 Art. VI §2, 1983)

Sec. 5-63. - Police power reserved.

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State, or with orders of other authorities having jurisdiction in the premises.

(Ord. 249 Art. VI §3, 1983)

Sec. 5-64. - Forfeiture.

It is agreed that in case of the failure of the Company to perform and carry out any of the stipulations, terms, conditions and agreements herein set forth in any substantial particular, and with respect to which redress is not otherwise provided, the Town acting by and through the Board of Trustees may, after hearing, determine such substantial failure; and thereupon, after notice given the Company of such determination, the Company shall have a reasonable time not to exceed six (6) months in which to remedy the conditions respecting which such determinations shall have been made. After the expiration of such time and failure to correct such conditions, the Board of Trustees may declare this franchise forfeited, and thereupon the Company shall have no further right, privilege or authority hereunder.

(Ord. 249 Art. VI §4, 1983)

Sec. 5-65. - Consent to assignment.

The franchise and rights herein contained shall not be leased, assigned or otherwise alienated by the Company without the express consent of the Town to be declared by ordinance.

(Ord. 249 Art. VI §5, 1983)

Secs. 5-66—5-80. - Reserved.

ARTICLE III - Emergency Telephone Service

Sec. 5-81. - Charge imposed.

There is hereby imposed, pursuant to Section 29-11-101 et seq., C.R.S., upon each telephone exchange access facility, wireless communication access and interconnected voice-over-internet-protocol service within the Town an emergency telephone charge in an amount of seventy-five cents (\$0.75) per month, the proceeds from which shall be collected and

administered according to the terms of the Intergovernmental Agreement Concerning the Implementation of an "E911" Emergency Telephone Service, to which the Town is a party and any subsequent amendments thereto (the "Intergovernmental Agreement"). The Board of Trustees further authorizes the Boulder Regional Emergency Telephone Service Authority Board, consistent with the Intergovernmental Agreement, to set such lesser charges as the Authority Board may from time to time determine are appropriate in the course of the Authority Board's exercise of its functions under the Intergovernmental Agreement.

(Ord. 315 §2, 1989; Ord. 730 §1, 2014)

**Sec. 5-82. - Collection of charge.**

Telephone service supplies providing telephone service in the Town are hereby authorized to collect the emergency telephone charge imposed by this Article in accordance with Section 29-11-101, et seq., C.R.S.

(Ord. 315 §3, 1989)

**Secs. 5-83—5-100. - Reserved.**

**CHAPTER 6 - Business Licenses and Regulations**

**ARTICLE I - Business Licenses**

**Sec. 6-1. - Purpose.**

The purpose of this Article is the regulation and registration of businesses operating within the Town to protect the health, safety and welfare of the citizens of the Town and ensure the proper collection of taxes which support the Town.

(Ord. 218 §1, 1982; Ord. 435 §1, 1996; Ord. 689 §1, 2011)

**Sec. 6-2. - License required.**

Every person or entity responsible for collecting municipal sales taxes must obtain a license from the Town before operating, conducting or carrying on any trade, profession or business within the Town. Businesses that serve the public but do not collect sales tax due to the service nature of their operations must also obtain a license. A separate license shall be obtained for each location of the business, and multiple businesses housed in the same fixed location shall require separate licenses. A change of business location or ownership shall necessitate application for a new license. It is unlawful for any person to engage in the business of selling tangible personal property at retail without having obtained such license. Nonprofit organizations, federal, state or municipal corporations, are hereby exempt from the license requirements set forth in this Article.

(Ord. 218, §3, 1982; Ord. 435 §1, 1996; Ord. 689 §1, 2011)

**Sec. 6-3. - License application.**

An application for a business license shall be made to the Town Clerk on forms provided by the Town. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license. It is unlawful for any person to make any false statement or misrepresentation in connection with any application for a license. The Town Administrator is hereby authorized to promulgate any necessary rules or regulations associated with the license application.

(Ord. 218 §3, 1982; Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-4. - License fees.

Each application for a new or renewal license shall be accompanied by an annual license fee as set forth in the Town's fee schedule. If a licensee submits a renewal application after the end of the quarter in which it is due, he or she shall be assessed a twenty dollar (\$20.00) late fee in addition to the annual license fee.

(Ord. 435 §1, 1996; Ord. 540 §2, 2000; Ord. 665 §1, 2008; Ord. 689 §1, 2011)

#### Sec. 6-5. - Payment of fee.

Before issuance of any license, the fee required for the license must be paid at the office of the Town Clerk.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-6. - Issuance.

Upon receipt of the required fee and compliance with Section 6-4 above, the Town Clerk will issue a license that indicates that the license application or renewal fee has been paid for the specified year.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-7. - Carrying or posting license required.

The license for a particular business location shall be posted at all times in a conspicuous place in the place of business. If the business is not operated, conducted or carried on at a fixed location, then the licensee must carry the license upon his or her person when operating, conducting or carrying on any retail trade, profession or business. Every licensee shall produce his or her license for examination when requested to do so by any Town police officer or by any person representing the Town.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-8. - License nontransferable.

Except as provided in Section 6-7, no license issued under the provisions of this Article shall be transferable from person to person or place to place.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-9. - Period of license; renewal.

All licenses are valid for one (1) year and shall expire at the end of the calendar quarter during which the original application was made. The licensee shall be responsible for renewing the license each year. The Town Clerk may not refuse to issue such renewal except for revocation of the prior license for cause, as provided in this Code.

(Ord. 218 §3, 1982; Ord. 435 §1, 1996; Ord. 689 §1, 2011; Ord. 725 §2, 2013)

#### Sec. 6-10. - Suspension.

A license may be suspended by the Town Administrator or a designated representative after notice and an administrative hearing:

- (1) When any money due the Town has not been paid. This includes failure to pay civil penalties, fines, taxes, impact fees or any other money owed to the Town.
- (2) When any activity conducted by the licensee, his or her employee or agent violates any federal, state or local rule, regulation or law.
- (3) Upon failing to comply with the terms and conditions of the license.
- (4) Upon any grounds of suspension provided by ordinance.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-11. - Probation following suspension.

Each license suspended pursuant to Section 6-10 above shall, immediately after the period of suspension is completed, commence a ninety-day probationary period. During the probationary period, the licensed business may operate. The purpose of the probationary period is to provide the licensee with adequate time to cure the conditions that formed the basis for the suspension. At the conclusion of the probationary period, the Town Administrator or a designated representative shall investigate the licensee's efforts to remedy the relevant conditions. If the Town Administrator or a designated representative determines that said conditions have been eliminated or otherwise adequately cured, no further action shall be taken by the Town. If the Town Administrator or designated representative determines that the reasons for suspension have not been eliminated or otherwise adequately cured, the Town Administrator shall conduct a hearing on the revocation of the license in accordance with Section 6-12 below.

(Ord. 689 §1, 2011)

#### Sec. 6-12. - Revocation of license.

A license may be revoked by the Town Administrator or a designated representative after notice and an administrative hearing:

- (1) When it appears that the license was obtained by fraud, misrepresentation or false statements within the application;
- (2) When it appears that the activity conducted pursuant to such license is a public nuisance as defined by this Code or statute or violates any federal, state or local rule, regulation or law.
- (3) Upon failing to comply with the terms and conditions of the license.

- (4) Upon a licensee's failure, during a post-suspension probationary period, to adequately cure the reasons for suspension of the license in accordance with Section 6-11 above.
- (5) Upon any ground of revocation provided by this Code.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-13. - Notice and hearing prior to suspension or revocation.

All hearings to revoke or suspend a license shall be before the Town Administrator or a designated representative. Should the licensee or his or her representative fail to appear at the hearing, the official conducting the hearing (the "hearing officer") may still conduct the hearing and take action if proper notice was given. For the purposes of this Section, notice of a hearing shall be deemed proper if sent to the licensee's last known mailing address by regular U.S. Mail, First Class, postage prepaid, postmarked at least ten (10) days prior to the hearing date. The suspension or revocation of any license shall not release or discharge anyone from his or her civil liability for the payment of the taxes, penalty and interest nor from criminal prosecution for any related offense. The hearing officer shall give prompt written notice of his or her decision to the licensee.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-14. - Appeal of suspension or revocation to board of trustees.

A licensee may appeal a hearing officer's decision to suspend or revoke his or her license to the Board of Trustees by filing a written request with the Town Clerk within ten (10) days of the date of the hearing officer's written decision. The Town Clerk shall set the appeal before the Board of Trustees at the next available regular meeting for which the Board of Trustee's packet deadline can be met. The Board of Trustees shall give prompt written notice of its decision to the licensee. The Board of Trustee's decision shall constitute the Town's final decision on the matter and may be appealed to District Court in accordance with the Colorado Rules of Civil Procedure.

(Ord. 689 §1, 2011)

#### Sec. 6-15. - Cease and desist.

If any business is operating without a license, the Town Administrator or his or her designee may issue an order to the business to cease and desist all further operation until a license is issued for the business. The order shall give the business three (3) days to pay all amounts due the Town; or to post a bond in the amount owing the Town and to request in writing a hearing. If the business does nothing, it shall cease operations on the third day. The hearing, if requested, shall be before the Board of Trustees and scheduled as provided by Section 6-13 above. These proceedings shall not relieve or discharge anyone from the civil liability for the payment of the taxes, penalty and interest nor from criminal prosecution for any related offense.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

#### Sec. 6-16. - Penalty.

Failure to comply with the terms of this Article shall constitute a civil infraction punishable by the Municipal Court. Any person who is found guilty of, or pleads guilty or nolo contendere to the commission of, the civil infraction shall be subject to the fine as set forth in Section 1-72 of this Code. For each day, or portion thereof, during which any violation continues, a person may be cited for a separate civil infraction. The penalties specified in this Section shall be cumulative and nothing shall be construed as either prohibiting or limiting the Town from pursuing such other remedies or penalties, including an action at law or equity.

(Ord. 435 §1, 1996; Ord. 689 §1, 2011)

**Sec. 6-17. - Special event permits; temporary businesses.**

At the request of a sponsor of a community-wide event, the Town Administrator or a designated representative may issue a special event permit to such sponsor in accordance with Article IV of Chapter 6 of this Code. Such a special event permit shall allow all concessionaries, temporary merchants, street vendors and other invitees of the sponsor who would otherwise be required to obtain individual business licenses under this Chapter to operate for the limited duration of the special event under the sponsor's special event license.

(Ord. 689 §1, 2011)

**Sec. 6-18. - Nonprofit organization required to register.**

Nonprofit organizations providing services or otherwise operating within Town limits are required to register with the Town Administrator and provide proof of their tax-exempt status on forms provided by the Town Administrator.

(Ord. 689 §1, 2011)

**Secs. 6-19—6-30. - Reserved.**

**ARTICLE II - Alcoholic Beverages**

**Sec. 6-31. - Definitions.**

As used in this Article, the words or phrases shall have the same meanings as in Title 44, Articles 3, 4, and 5, C.R.S.

(Ord. 107 §1, 1968; Ord. 435 §1, 1996; Ord. 725 §3, 2013; Ord. 806 §1, 2020)

**Sec. 6-32. - Declaration of neighborhood.**

For any license application pursuant to this Article, the neighborhood shall include all property within the boundaries of the Town.

(Ord. 435 §1, 1996)

**Sec. 6-33. - Declaration of policy and purpose.**

The Board of Trustees hereby finds, determines and declares that, considering the nature of the business of selling at retail fermented malt beverage, malt, vinous and spirituous liquors for beverage purposes, the relation of such business as to the welfare, as well as to the relations thereof to the expenditures required of the Town and a proper, just and equitable distribution of tax burdens within the Town, and all other penalties proper to be considered in relation thereto, the classification of said business as a separate occupation is reasonable, proper, uniform, nondiscriminatory and the amount of tax imposed by this Article is reasonable, proper, uniform, nondiscriminatory and necessary for a just and proper distribution of tax burdens within the Town.

(Ord. 107 §3, 1968; Ord. 806 §2, 2020)

Sec. 6-34. - Application fees; investigation fee; license and permit fees.

- (a) The fees to be paid as an application fee for the issuance of a license under this Article are the maximum amounts provided in Title 44, Articles 3 and 4, C.R.S.
- (b) Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated. The Police Department shall furnish the results of such investigation to the Town Clerk, together with a recommendation with respect to the granting or denial of the license, and reasons therefor.
- (c) The license and permit fees shall be paid, in advance, to the Town for a license and shall be of the maximum amounts provided in Title 44, Articles 3 and 4, C.R.S.

(Ord. 393 §1, 1994; Ord. 435 §1, 1996; Ord. 646 §3, 2008; Ord. 806 §3, 2020)

Sec. 6-35. - Collection.

The Town shall have the right to recover all sums due by the terms of this Article by an action of law in any court of competent jurisdiction. Such remedy shall be cumulative with all other remedies provided herein for the enforcement of this Article.

(Ord. 107 §7, 1968)

Sec. 6-36. - Penalties.

Failure to comply with the terms of this Article by payment of taxes, securing and posting a receipt therefor, and to otherwise comply with the terms of this Article shall constitute an offense and violation of this Article. Every person violating this Article shall upon conviction be fined as set forth in Section 1-72 of this Code. No conviction for any such violation shall be a basis for revocation or suspension of the license of the defendant issued under the laws of the State.

(Ord. 107 §8, 1968; Ord. 435 §1, 1996)

Sec. 6-37. - Town not required to issue licenses.

The adoption of this Article and tax shall not imply any obligation on the Town to issue licenses for any of these or other liquor license classifications, or to any applicants for any such licenses.

Sec. 6-38. - Reserved.

Sec. 6-39. - Town Liquor Licensing Authority established; penalties.

- (a) The Town hereby establishes a Local Liquor Licensing Authority for the Town. The Board of Trustees shall serve as the Local Liquor Licensing Authority. The Liquor Licensing Authority shall have and exercise all of the powers and duties of the local licensing authority provided by Articles 3, 4 and 5 of Title 44, C.R.S., and all related regulations promulgated by the State.
- (b) Penalties. Any person who violates a provision of this Article II of Chapter 6 or causes such violation shall be subject to the penalties provided in Section 6-36 of this Code.

( Ord. 806 §4, 2020)

**Editor's note—** Ord. 806, § 4, adopted Feb. 4, 2020, repealed § 6-39 and enacted new provisions to read as herein set out. Former § 6-39 pertained to adoption of Colorado Liquor Code, and derived from Ord, 553, § 1, adopted in 2002.

Sec. 6-40. - Delegation of authority to town clerk.

- (a) The Town Clerk is hereby vested with authority to review and approve applications for liquor license renewals, special event licenses, transfers of ownership, art gallery permits and temporary permits.
- (b) The Town Clerk shall not approve any such application unless all of the following are met:
  - (1) The applicant has timely submitted a complete application and the payment of all fees.
  - (2) The Police Department has reviewed the application and provided written comments that contain no objection concerning the application.
  - (3) There exist no facts or information on the application illustrating reasonable grounds or good cause to deny the application.
  - (4) There have been no violations of the Colorado Beer or Liquor Code by the applicant in the previous two (2) years.
- (c) In addition, before approval, the Town Clerk shall confirm the following when appropriate:
  - (1) For special event licenses:
    - a. Timely and proper posting of a conspicuous public notice sign as required by Article 5, Title 44, C.R.S.
    - b. Whether the applicant satisfies the eligibility criteria set forth in Article 5, Title 44, C.R.S.
    - c. After investigation, no sufficient grounds for denial appear to exist and no protests have been filed by affected persons.
    - d. That the applicant has not exceeded and does not propose to exceed the maximum number or special event calendar days permitted by Article 5, Title 44, C.R.S.
  - (2) For temporary permits:
    - a. Timely filing of a complete application and payment of all fees for the transfer of the corresponding liquor license.

- b. Whether the premises subject to the proposed permit are currently subject to a valid liquor license.
- (3) For transfers of ownership: Whether the requirements of Article 3, Title 44, C.R.S., and the applicable regulations have been met.
- (4) For an art gallery permit:
  - a. Whether the applicant operates an establishment whose primary purpose is to exhibit and offer for sale works of fine art as defined in Section 6-15-101, C.R.S., or precious or semiprecious metals or stones as defined in Section 18-16-102, C.R.S.
  - b. Whether the applicant has established that the applicant is able to offer complimentary alcohol beverages without violating Section 44-3-42, C.R.S., or creating a public safety risk to the neighborhood.
- (d) In the event the Town Clerk cannot or will not approve any application, the Town Clerk shall automatically and promptly schedule the application for consideration by the Board of Trustees, acting as the Local Liquor Licensing Authority, at its next regular meeting.
- (e) Any applicant dissatisfied with a decision of the Town Clerk under this Section may appeal the same to the Board of Trustees by filing a written protest with the Town Clerk within ten (10) days after the date of the decision being appealed. The Town Clerk shall promptly set the appeal before the Board of Trustees at its next regular meeting.
- (f) The Town Clerk may, for good cause, waive the forty-five-day time requirement for filing a license renewal application.
- (g) The Town Clerk shall regularly report to the Board of Trustees in a timely manner all licensing actions taken by the Town Clerk under the provisions of this Article.
- (h) The Town Clerk shall report the issuance of any special event permit to the Colorado Liquor Enforcement Division in accordance with the requirements of Article 5, Title 44, C.R.S.

(Ord. 646 §5, 2008; Ord. 648 §9, 2008; Ord. 662 §1, 2008; Ord. 695 §§2, 3, 2011; Ord. 806 §5, 2020)

#### Sec. 6-41. - Tastings.

- (a) Tastings, as that term is defined in the Colorado Liquor Code at Section 44-3-103(56), C.R.S., may be conducted by retail liquor store and liquor-licensed drugstore licensees in accordance with this Section and pursuant to Section 44-3-301, C.R.S. It is unlawful for any person or licensee to conduct tastings within the Town unless authorized in accordance with this Section.
- (b) A retail liquor store or liquor-licensed drugstore licensee desiring to conduct tastings must submit a permit application or permit application renewal for that purpose in accordance with this Section.
- (c) A tastings permit shall be valid for the period of the then-existing liquor license, and the permit may be renewed at the time of any liquor license renewal.
- (d) An application for a tastings permit must be submitted to the Town Clerk no later than thirty (30) days prior to the date of the first tasting requested in the application or at the time of license renewal, whichever occurs first.
- (e) At a minimum, the application must include the following information:
  - (1) The name of the licensee requesting the tastings permit and the location of the premises of the retail liquor store or liquor-licensed drugstore.
  - (2)

A written plan, including diagrams, to establish how the applicant will conduct tastings in compliance with the provisions of the Colorado Liquor Code and this Code and without creating a public safety risk to the neighborhood.

- (3) A schedule of the specific dates and times of requested tastings for the period of the permit. Such schedule shall conform to all requirements imposed by Subsection (h) below. Following approval of a tastings permit and the tastings schedule by the Town, the licensee may amend such schedule by delivering to the Town Clerk, at least seventy-two (72) hours prior to an unscheduled event, a notice of amendment of the Town-approved schedule.
- (4) A copy of a certificate of training for individuals who will conduct tastings.
- (5) Any other information requested by the Town Clerk reasonably necessary to ensure compliance with the requirements of this Section, state law or the applicant's license conditions.
- (f) The application fee for an annual tastings permit shall be one hundred dollars (\$100.00) and shall be paid to the Town at the time of application.
- (g) The Town Clerk shall approve, approve with restrictions or deny the application for a tastings permit or refer such decision to the Authority.
  - (1) The Town Clerk may deny an application if the application fails to establish that the applicant is able to conduct tastings in compliance with this Section or Section 44-3-301(10), C.R.S., or if such tastings create or threaten to create a public safety risk to the neighborhood. A decision to deny a tastings permit application shall be made in writing and shall be provided to the applicant within five (5) business days of the date of the decision. Approval of an application for a tastings permit shall also constitute approval of the schedule for tastings submitted with the application unless such schedule fails to conform to all applicable requirements imposed by Subsection (h) below.
  - (2) An application for a tastings permit may be denied by the Town Clerk if the licensee has violated the Colorado Liquor Code during the twelve (12) months immediately preceding the date of the application. If the applicant has violated the Colorado Liquor Code during the twelve (12) months immediately preceding the date of the application, the Town Clerk shall have discretion to approve or deny the application based upon the following criteria:
    - a. The length of time the licensee has been in business;
    - b. The number of previous violations by the licensee, if any;
    - c. The degree of cooperation with police and Town officials in relation to the violation;
    - d. Whether the licensee's staff has attended alcohol awareness training, the number of people who have attended and the number of times attended;
    - e. Whether the licensee has a process in place on the licensed premises to prevent similar future violations;
    - f. Whether the violation was committed by the owner or a person with a majority interest in the license or by employees of the licensee; and
    - g. Any other circumstances provided by the licensee or others which may guide the Town Clerk in determining sanctions or whether to approve the application.
  - (3) A denial of the application may be appealed to the Local Liquor Licensing Authority. Said appeal shall be filed with the Town Clerk within ten (10) days of the Town Clerk's decision.

(h) The following regulations shall apply to all tastings:

- (1) Tastings shall be conducted only by a person who has completed a server training program that meets the standards established by the liquor enforcement division in the Colorado Department of Revenue and who is either a retail liquor store licensee or a liquor-licensed drugstore licensee, or an employee of such licensee, and only on a licensee's licensed premises.
- (2) Tastings permits issued during the term of a current license shall be valid for the period of the then-existing liquor license. All other tastings permits shall be issued concurrent with the retail liquor store license and shall be valid for the term of said license.
- (3) No tasting may be conducted unless the licensee has provided written notice to the Town Clerk at least seventy-two (72) hours in advance stating the specific days and hours on which the tastings shall occur. There shall be no limitation on the number of days which a licensee may specify in each notice. However, no notice may specify any date which is beyond the current license period.
- (4) The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (½) ounce of spirituous liquor. The licensee shall not serve more than four (4) individual samples to a patron during a tasting.
- (5) Tastings shall be conducted only during operating hours in which the licensee on whose premises the tastings occur is permitted to sell alcoholic beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m. Tastings may be no longer than five (5) hours, which need not be consecutive.
- (6) The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed alcohol sample.
- (7) The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the tastings.
- (8) The licensee shall not serve a person who is under twenty-one (21) years of age or who is visibly intoxicated.
- (9) Alcohol samples shall be in open containers and shall be provided to patrons free of charge.
- (10) Tastings may occur on no more than four (4) of the six (6) days from a Monday to the following Saturday, not to exceed a total of one hundred four (104) days each calendar year.
- (11) No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial cost and all other responsibility for a tasting.
- (12) The alcohol used in tastings shall be purchased through a licensed wholesaler, licensed brewpub or winery licensed pursuant to Section 44-3-403, C.R.S., at a cost that is not less than the laid-in cost of such alcohol.
- (13) A copy of the state certified training certificates and the tasting schedule must be available for inspection by the Town Clerk or Town Marshal at all times during business hours.
- (14) A licensee conducting a tasting shall be subject to the same revocation, suspension and enforcement provisions as otherwise apply to the licensee.
  - (i) The licensed premises, including any places of storage where alcohol beverages are stored or dispensed, shall be subject to inspection by the state or local licensing authorities and their investigators, or peace officers, during all business hours and all other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by licensees, access shall only be required

during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by authorized representatives of the licensing authority or peace officers, such licensee shall open said area for inspection.

(Ord. 652 §1, 2008; Ord. 806 §6, 2020)

Secs. 6-42—6-50. - Reserved.

### ARTICLE III - Peddlers and Solicitors

Sec. 6-51. - License required.

It is unlawful for any solicitor or peddler, as defined in Section 6-52, to engage in such business within the corporate limits of the Town without first obtaining a permit and license therefor from the Town Clerk.

(Ord. 435 §1, 1996)

Sec. 6-52. - Definitions.

As used in this Article, the following words and phrases shall have the meanings ascribed to them in this Section:

*Peddler* means any person, whether a resident of the Town or not, who sells and delivers or offers for sale to consumers any goods, wares or merchandise, traveling from place to place, from house to house or from street to street, who sells or offers for sale and delivery any goods or other such articles while traveling on foot or by vehicle or any other type of conveyance. However, such definition shall not include members of nonprofit groups, including, but in no way limited to, Boy Scouts and Girl Scouts engaged in fundraising activities for such group.

*Solicitor* means any person whether a 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 the sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not; provided, however, that such definition shall not include members of nonprofit groups including, but in no way limited to, Boy Scouts and Girl Scouts engaged in fundraising activities for such group.

(Ord. 435 §1, 1996)

Sec. 6-53. - Sale of certain agricultural products excluded.

The terms of this Article shall not apply to farmers or gardeners who sell and deliver or offer for sale fruits, vegetables or other country produce raised by them.

(Ord. 435 §1, 1996)

Sec. 6-54. - License fees.

- (a) The license and permit fee which shall be charged in advance by the Town Clerk for any such license and permit, except those issued to nonprofit entities, shall be as set forth in Section 4-151:
- (b) For full-time residents of the Town, an annual license fee and permit may be obtained by paying to the Town the sum as set forth in Section 4-151 per year in advance. The term of the annual license shall be from January 1 of the year for which application therefor is made to December 31 of such calendar year.
- (c) For nonresidents of the Town, an annual license and permit may be obtained by paying to the Town the sum as set forth in Section 4-151 per year in advance. The term of an annual license shall be from January 1 of the year for which application therefor is made to December 31 of such calendar year.
- (d) None of the license fees provided for in this Section 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 or permit 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 they 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.

(Ord. 435 §1, 1996)

#### Sec. 6-55. - Exhibition of license.

Solicitors and peddlers are required to exhibit their licenses and permits at the request of any citizen of the Town.

(Ord. 435 §1, 1996)

#### Sec. 6-56. - Revocation of license.

- (a) Permits and 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 an ordinance of the Town;
  - (4) Conviction of any crime or misdemeanor involving moral turpitude; or
  - (5) Conducting the business of soliciting or peddling in an unlawful manner or in such 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 on the application, at least five (5) days prior to the date set for the hearing.

(Ord. 435 §1, 1996)

Secs. 6-57—6-70. - Reserved.

## ARTICLE IV - Public Assembly or Special Event

Sec. 6-71. - Permit required.

A special event permit shall be required prior to the planned assemblage of forty (40) or more persons upon the public streets or public places of the Town.

(Ord. 197 §1, 1981; Ord. 688 §1, 2011; Ord. 726 §1, 2013; Ord. 801 §2, 2019)

Sec. 6-72. - Permit application.

Application for such permit shall be made in writing to the Town Administrator or designee. Applications shall be made to the Town Administrator or designee on forms provided by the Town which shall request, at a minimum:

- (1) Name of the responsible organizer;
- (2) Address and phone number where the organizer can be reached;
- (3) Purpose, time, date and place of the assembly;
- (4) Projected number of persons expected;
- (5) Zero waste event checklist, as provided by the Town; and
- (6) Other pertinent information as applicable to the assembly (see Section 6-75).

(Ord. 197 §2, 1981; Ord. 688 §1, 2011; Ord. 726 §1, 2013; Ord. 801 §3, 2019)

Sec. 6-73. - Application deadline.

Applications shall be made a minimum of sixty (60) days prior to the date of the planned assembly to allow for adequate and timely processing of the application in advance of the event.

(Ord. 197 §3, 1981; Ord. 435 §1, 1996; Ord. 688 §1, 2011; Ord. 726 §1, 2013; Ord. 801 §4, 2019)

Sec. 6-74. - Review process.

Upon receipt of an application for a public assembly/special event permit, the Town Administrator or designated representative shall submit it to the Town Marshal's office, the Nederland Fire Protection District Chief, the Public Works Manager and any other department potentially affected by the proposed assembly. The Town Administrator or designated representative may convene a Technical Review Committee with the department representatives and the event organizer to discuss the event and any conditions the Town will be attaching to the permit. After completion of his or her review, the Town

Administrator shall issue a written decision approving, conditionally approving or denying the application, which shall be either personally delivered to the applicant or sent via certified mail to the applicant's address indicated on the application. An applicant may request to receive verbal notification of the Town Administrator's decision in addition to written notice. The Town Administrator shall promulgate any rules or procedures necessary to administer the requirement of this Section. The Town Administrator or designee may refer an application to the Board of Trustees, in his or her discretion.

(Ord. 197 §4, 1981; Ord. 435 §1, 1996; Ord. 688 §1, 2011; Ord. 726 §1, 2013)

#### Sec. 6-75. - Conditions authorized.

The Town Administrator or designated representative or the Board of Trustees, in the event an application is referred to it, shall review the application and may approve, approve with conditions, withhold approval until certain conditions are met or deny the application. The Town Administrator or designee or the Board of Trustees shall consider the following concerns in making its determination and may impose reasonable conditions to address such concerns:

- (1) Availability of parking;
- (2) Methods of traffic control;
- (3) Trash, recycling and composting plan;
- (4) Hazard to persons or property and insurance coverage for related liability;
- (5) Availability and needs related to security;
- (6) Availability of sanitation facilities; and
- (7) Provision for cleanup.

(Ord. 197 §5, 1981; Ord. 688 §1, 2011; Ord. 726 §1, 2013)

#### Sec. 6-76. - Appeals.

An applicant may appeal the denial or any condition placed on the approval of his or her application by the Town Administrator or designee to the Board of Trustees by submitting a written request and explanation of the basis for the appeal to the Town Administrator within seven (7) days of the written decision issued in accordance with Section 6-74 above. The Town Administrator shall schedule the matter before the Board of Trustees at the next regular Board of Trustees meeting for which the packet deadline may be met.

(Ord. 688 §1, 2011; Ord. 726 §1, 2013)

#### Sec. 6-77. - Deposit required for rental of public facilities.

A deposit is required to assure completion of cleanup, collection of sales tax or compliance with specific conditions placed on the permit. The fee deposit for application conditions, except for collection of sales tax, shall be refundable upon successful completion of application conditions. The deposit shall not exceed the reasonable cost of compliance with such conditions. Nonfulfillment of said specific conditions shall be sufficient basis for the applicant's forfeiture of his or her deposit, in which instance the Town shall use the deposit to meet the conditions.

(Ord. 197 §6, 1981; Ord. 688 §1, 2011; Ord. 726 §1, 2013)

Sec. 6-78. - Fee required.

The fee required by Section 4-151 of this Code shall be paid prior to issuance of any permit under this Article.

(Ord. 197 §7, 1981; Ord. 435 §1, 1996; Ord. 688 §1, 2011; Ord. 726 §1, 2013)

Sec. 6-79. - Terms of permit and duties of permit holder.

A permit issued under this Article shall authorize the one-time occurrence of a special event or assembly. For annual or other periodic events, a new permit must be obtained each year or recurring period. The permit holder must comply with the following duties:

- (1) The permit holder shall comply with all terms and conditions of the special event permit.
- (2) Immediately following the completion of the special event, the permit holder shall ensure that the area used for the special event is cleaned and restored to the same condition as existed prior to the event. If the property used for the event has not been properly cleaned or restored, the permit holder shall be required to reimburse the Town for any costs incurred by the Town to restore the area.

(Ord. 197 §8, 1981; Ord. 688 §1, 2011; Ord. 726 §1, 2013; Ord. 801 §5, 2019)

**Editor's note—** Section 5 of Ord. No. 801, adopted Aug. 20, 2019, changed the title of § 6-79 from "Terms of permit" to read as herein set out.

Sec. 6-80. - Penalty.

Any person found guilty of violating any provision of this Article shall be punished by a fine as set forth in Section 1-72 of this Code.

(Ord. 197 §9, 1981; Ord. 435 §1, 1996; Ord. 688 §1, 2011; Ord. 726 §1, 2013)

Secs. 6-81—6-90. - Reserved.

## ARTICLE V - Short-term Rental Licensing

*Footnotes:*

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**Editor's note—** Section 2 of Ord. No. 798, adopted Oct. 1, 2019, repealed Art. V in its entirety and enacted new provisions to read as herein set out. Former Art. V, §§ 6-91—6-98, pertained to rental property and derived from Ord. 141 §§ 1—6, 8, adopted in 1976; Ord. 435 § 1, adopted in 1996; and Ord. 506 § 1, adopted in 1999.

Sec. 6-91. - Purpose.

The purpose of this Article is to:

- (1) Reasonably regulate and allow limited short-term rentals of residential real property;
- (2)

Preserve the residential character of the Town and establish operating standards to reduce impacts on adjacent neighbors resulting from short-term rentals;

- (3) Provide a licensing process for the Town to track and enforce these requirements as needed and ensure appropriate collection of taxes; and
- (4) Establish the regulations for four (4) types of short-term rental licenses: Primary Residence, Class A, Class B, and Class C.

(Ord. 798 §2, 2019)

#### Sec. 6-92. - Definitions.

For the purposes of this Article, the following definitions shall apply:

*Accessory dwelling unit* shall have the same meaning as set forth in Section 16-6 of the Nederland Municipal Code.

*Advertise* means any act, method or means of drawing attention to a short-term rental for purposes of promoting the same for rent or occupancy.

*Bedroom* shall mean a room in lodging unit that is used for sleeping and that contains at least one bed or sleeper sofa. Garages, kitchens, bathrooms, dining rooms are deemed not [to] be bedrooms for the purposes of this definition.

*Dwelling unit* shall have the same meaning as set forth in Section 16-6 of the Nederland Municipal Code.

*Host* means any person who is the licensee of a primary residence and who offers a dwelling unit, or portion thereof, for short-term rental.

*Hosting platform* means a manner through which a host may offer a dwelling unit, or portion thereof, for short-term rental. A hosting platform includes, but is not limited to, an internet-based platform that allows a host to advertise and potentially arrange for temporary occupation of the dwelling unit, or portion thereof, through a publicly searchable website, whether the short-term renter pays rent directly to the host or to the hosting platform.

*Host present* or *host presence* means the host is actually and physically remaining on the licensed premise during the short-term rental period. In the case of a parcel comprised of a single primary unit and one or more authorized Accessory Dwelling Units and/or Accessory Buildings, the host is considered present if he or she is present in any unit on such parcel.

*Licensed premises* means the dwelling specified in an approved application for a license under this Article.

*Licensee* shall mean the person to whom a short-term rental license has been issued by the Town Clerk.

*Primary residence* means a person's fixed, permanent, and principal domicile for more than six months out of each calendar year and to which the person intends to return following any periods of absence. A primary residence is established by the person's actual physical occupancy of the domicile and as demonstrated by at least the following documents: (1) driver's license or Colorado state identification card; and (2) voter registration, motor vehicle registration, or designated residence for income tax purposes. A person shall have only one primary residence.

*Rent* means allow the use of real property for a period of time. Rent includes such terms as lease, let, and borrow.

*Short-term rental* means the rent for any form of consideration of a dwelling, dwelling unit, accessory dwelling unit, or portion of any dwelling unit to a particular person or persons for periods of time less than thirty (30) days. A short-term rental is a use that is accessory to the primary or principal use of such dwelling or dwelling unit. Short-term rental does not apply to or include commercial hotels or motels.

( Ord. 798 §2, 2019; Ord. 808 §5, 2020)

Sec. 6-93. - Short-term rental license required.

- (a) It shall be unlawful for any person to operate a short-term rental in the Town of Nederland without a license issued under this Article V.
- (b) It shall be unlawful for any person to operate a short-term rental not in compliance with any and all Town or state laws.
- (c) It shall be unlawful for any person to advertise a short-term rental in the Town of Nederland without a license issued under this Article V.
- (d) A license issued under this Article is not required for rentals of residential property for a consecutive period equal to or greater than thirty (30) days.
- (e) Property which is deed-restricted as affordable housing shall not be eligible for a short-term rental license.
- (f) Only one license of any type (Primary Residence, Class A, Class B, or Class C) license may be issued to a person.

( Ord. 798 §2, 2019)

Sec. 6-94. - Primary residence short-term rental license.

- (a) A primary residence short-term rental license may be issued to a person who owns a dwelling unit and is the primary resident of such dwelling unit.
- (b) Short-term rental duration and required residency timeframes for a Primary Residence license:
  - (1) A licensed premises with a host present may be rented as a short-term rental for an unlimited number of days during the calendar year.
  - (2) Whole house rentals: A licensed premises with no host present shall not be rented more than one hundred eighty (180) days per calendar year. It shall be unlawful to operate a short-term rental of a licensed premises with no host present for one hundred eighty-one (181) or more days in a calendar year.

( Ord. 798 §2, 2019)

Sec. 6-95. - Operating standards and requirements.

A short-term rental is allowed only if it conforms to each of the operating standards and requirements set forth in this Section:

- (a) In the licensed premises, the licensee shall post in a prominent place in the dwelling unit a notice containing the following:
  - (1) Licensee's contact information;

- (2) Emergency contact information if the licensee cannot be reached;
  - (3) Information on the Town's garbage and refuse regulation;
  - (4) Trash and recycling schedule, if applicable;
  - (5) Parking restrictions, if applicable;
  - (6) Water restrictions, if applicable;
  - (7) Fire restrictions, if applicable;
  - (8) Information on the Town's regulations against hunting and feeding wildlife;
  - (9) Evacuation directions in the event of fire or emergency;
  - (10) Location of the fire extinguisher;
  - (11) Town contact information for purposes of complaints concerning the licensed premises; and
  - (12) Any other information deemed necessary by the Town Clerk or Town Administrator to ensure the public's health and safety.
- (b) There shall be a licensee or emergency contact who is available full time to manage the property during any period which the property is occupied as a short-term rental. The licensee or emergency contact shall be required to respond to all complainants within two (2) hours by phone or in person.
  - (c) The licensee shall equip the licensed premises with the following operational equipment: smoke detector, carbon monoxide detector, fire extinguisher, and other life safety equipment as required by the Town Clerk.
  - (d) The licensee shall display the license number on all hosting platforms and advertising listings of the licensed premises.
  - (e) The licensee shall pay all sales taxes and fees owed to the Town in a timely manner.
  - (f) The maximum occupancy of a dwelling unit rented as a short-term rental shall not exceed the lesser number of two (2) persons eighteen (18) years or older per bedroom or the capacity of the septic system for the dwelling unit. There is no occupancy limitation on persons under the age of eighteen (18).
  - (g) The operating standards and requirements in this Section apply to all four types of licenses: Primary Residence, Class A, Class B, and Class C.

( Ord. 798 §2, 2019; Ord. 805 §§1, 2, 2020 )

Sec. 6-96. - Application for a short-term rental license.

- (a) License application. Applicants for a short-term rental license, including renewal applicants, shall submit a completed application form to the Town Clerk on a form provided by the Town. Such form shall require, at a minimum, the following information:
  - (1) The full name, residential address, and telephone number for the licensee applicant.
  - (2) The full name, address, and telephone number for the emergency contact who will be available to respond to complainants within two (2) hours.
  - (3) The address of the proposed licensed premises including a description or illustration of the area(s) that will be used for short-term rental purposes with a total number of bedrooms and an illustration of the off-street parking plan for the short-term rental.

- (4) Documentation that the applicant has lawful possession of the licensed premises as demonstrated by the deed or lease agreement on the property.
  - (5) Documentation of primary residency by at least the following documents: (1) driver's license or Colorado state identification card; and (2) voter registration, motor vehicle registration, or designated residence for income tax purposes.
  - (6) Proof of liability insurance sufficient to compensate renters for injuries that may be sustained in the dwelling unit proposed to be rented within the coverage limits as determined by the Town Clerk.
  - (7) An application fee in an amount as established by resolution pursuant to Section 4-151 of this Code.
  - (8) A certification by the applicant that the dwelling unit is equipped with operational smoke detectors, carbon monoxide detectors, fire extinguishers, and other life safety equipment as required by the Town Clerk.
  - (9) A signed and completed short-term rental self-inspection form, which form is available from the Town Clerk.
  - (10) An acknowledgement that the licensed premises of the dwelling unit may be subject to a request for a pre-arranged inspection by building, fire, and zoning officials, and that a failure to allow such pre-arranged inspection shall, in the discretion of the Town Clerk, result in a suspension of the short-term rental license pursuant to Section 6-101 of this Code.
  - (11) Such other information determined necessary by the Town Clerk to evaluate the compliance of the applicant, licensed premises or proposed short-term rental activity with the requirements of this Code.
- (b) If any of the information in the license application changes or is no longer valid, the licensee shall notify the Town Clerk within ten (10) days after knowledge of the changed information.
  - (c) The Town Clerk is hereby authorized to promulgate any necessary rules or regulations associated with the license application.
  - (d) A short-term rental license is valid for a term of one (1) year and shall expire at the end of the calendar quarter during which the original license was issued. The licensee shall be responsible for renewing the license each year.

( Ord. 798 §2, 2019; Ord. 805 §3, 2020)

Sec. 6-97. - Class A short-term rental license for accessory dwelling unit—Detached.

- (a) A person who owns an accessory dwelling unit-detached which is established on September 16, 2019, may apply for a Class A short-term rental license provided the requirements of this Section and Section 6-96 are met.
- (b) An accessory dwelling unit-detached with a Class A license may be rented as a short-term rental for an unlimited number of days during the calendar year.
- (c) To apply for a Class A license, a person shall demonstrate compliance with all the requirements of Section 6-96 and shall demonstrate compliance with the following requirements:
  - (1) The principal dwelling unit was legally established and constructed as evidenced by a certificate of occupancy dated on or before April 16, 2019;
  - (2) Documentation that the person has operated the accessory dwelling-unit detached as a short-term rental before April 16, 2019;
  - (3) If the accessory unit is licensed for short-term rental, only the accessory unit and not any other dwelling unit on the same property may be licensed or used as a rental;

- (4) If a principal dwelling unit is licensed for short-term rental, then no accessory unit on the same property may be licensed or used as a rental;
- (d) An applicant may apply for a Class A short-term rental license until September 16, 2020 at 5:00 p.m. Following such date and time, Class A short-term rental licenses will no longer be available.
- (e) Class A licenses are not available for the principal dwelling unit.

(Ord. 798 §2, 2019)

Sec. 6-98. - Class B short-term rental license for non-primary resident premises.

- (a) A person who owns a non-primary residence may apply for a Class B short-term rental license provided the requirements of this Section and Section 6-96, with the exception of the primary residency requirement, are met.
- (b) A premises with a Class B license may be rented as a short-term rental for forty-five (45) days during a calendar year. It shall be unlawful to operate a short-term rental of a licensed premises for forty-six (46) or more days in a calendar year.
- (c) To apply for a Class B license, a person shall demonstrate compliance with all the requirements of Section 6-96, with the exception of Section 6-96(a)(5) (primary residency requirement), and shall demonstrate compliance with the following requirements:
  - (1) The premises was legally established and constructed as evidenced by a certificate of occupancy dated on or before September 16, 2019;
  - (2) Documentation that the person has operated the dwelling unit as a short-term rental since at least April 16, 2019.
- (d) An applicant may apply for a Class B short-term rental license until September 16, 2020 at 5:00 p.m. Following such date and time, Class B short-term rental licenses will no longer be available.

(Ord. 798 §2, 2019)

Sec. 6-99. - Class C short-term rental license for non-primary resident premises in certain zoning district.

- (a) A person who owns a dwelling unit in the zoning districts of Central Business District (CBD), General Commercial (GC), or Industrial (I) may apply for a Class C license for a short-term rental to operate a short-term rental.
- (b) To apply for a Class C license, a person shall demonstrate compliance with all the requirements of Section 6-96, with the exception of Section 6-96(a)(5) (primary residency requirement).

(Ord. 798 §2, 2019)

Sec. 6-100. - License nontransferable.

All short-term rental licenses are nontransferable. It shall be unlawful to transfer or assign the license to another person or location and such conduct shall render the license subject to suspension or revocation.

(Ord. 798 §2, 2019)

Sec. 6-101. - Suspension and revocation; enforcement.

- (a) The Town shall have the authority to suspend or revoke a short-term rental license and assess administrative penalties for a violation of this Article.
- (b) The Town Clerk or designee will investigate non-anonymous complaints. The subject of the complaint may include, without limitation, such things as parking, trash, noise, or other concerns related to the short-term rental.
- (c) Upon a determination that a violation of this Article exists, the Town Clerk will issue a notice of suspension or notice of revocation with the associated penalty in accordance with the following procedures:
  - (1) The Town Clerk will serve a notice of suspension or notice of revocation by first class and certified mail to the address of the licensee. The notice shall identify:
    - a. The name of the licensee and the license number;
    - b. The applicable section of the violation together with a description of the violation;
    - c. The action, if any, required to correct the violation;
    - d. The amount of the penalty; and
    - e. The effective date of the suspension or revocation which shall commence no earlier than fifteen (15) days after the date of the notice.

The notice shall inform the licensee of the right to appeal the decision appeal right as set forth herein.

- (2) The licensee may appeal the suspension/revocation notice by filing an appeal with the Town Clerk within ten (10) days of the date of the notice. An appeal shall stay the suspension or revocation until a final written decision is issued. The appeal shall state in writing why a suspension or revocation is not warranted, which may include a statement contesting the violation itself and information addressing how the licensee has taken measures to address the violation.
- (3) Upon receipt of the appeal, the matter shall be set for a hearing before the Town Administrator or his/her designee. Notice of the hearing shall be provided to the licensee. At the hearing, the licensee and the Town may present evidence and testimony concerning the violation and the appeal. In determining whether to uphold the suspension or revocation, or modify its terms, consideration shall be given to the criteria set forth in Section 6-102(b) for renewal of a license. Following the conclusion of the hearing, the Town Administrator or designee shall issue a written decision which shall constitute the final decision.
- (d) Any properties used for short-term rental purposes in violation of this Article, shall be subject to the following penalties in addition to those set forth in Section 6-103 of this Article:
  - (1) First offense: a fine as set by a Board of Trustee Resolution.
  - (2) Second offense within a twelve-month period: a fine as set by a Board of Trustee Resolution.
  - (3) Third offense within a twelve-month period: revocation of license without possibility of reapplication for one (1) year together with a fine as set by a Board of Trustee Resolution.

Failure to pay the penalty shall constitute another violation of this Article, which shall subject the license to suspension or revocation.

( Ord. 798 §2, 2019; Ord. 805 §§4, 5, 2020 )

(a) Upon receipt of a timely renewal application, the Town Clerk shall review the application and shall administratively approve the renewal of the license, provided that in the year immediately preceding the date of renewal the following conditions are satisfied:

- (1) The property has not been in violation of this Article;
- (2) The property has not had its short-term rental license suspended; and
- (3) The property has not been the subject of a nuisance violation conviction or plea of guilty or no contest.

If any one of the conditions are not satisfied, the Board of Trustees shall review, upon the property owner's request, the renewal application at a public hearing. The Town Clerk or designee shall deliver notice of the public hearing by first class mail to the owners of all properties within 200 feet of the subject property, and post the notice of the hearing at a conspicuous location on the subject property.

- (b) At the public hearing, in deciding whether to renew the license, the Board of Trustees shall consider the severity of the violation(s), the culpability of licensee, any measures taken to remedy the violation to ensure it will not reoccur. The Board of Trustees may consider information provided by Town staff, the property owner and/or operator of the short-term rental property, and the neighbors subject to the 200-foot notice.
- (c) If a renewal application is denied, no application for a short-term rental license shall be accepted for such property for one (1) year after the date of the denial decision.

( Ord. 798 §2, 2019; Ord. 805 §6, 2020 )

#### Sec. 6-103. - Violation and penalty.

- (a) Short-term rental of property without a short-term rental license constitutes a civil infraction punishable in the Municipal Court or any court of competent jurisdiction. The minimum penalty for such a violation is set by a Board of Trustee Resolution.
- (b) Each separate act in violation of this Article is a separate offense. Each calendar day that a violation exists shall be a separate offense and violation of this Article. In addition to the suspension and revocation proceedings pursuant to section 6-101, violations of this Article may be punishable in the Municipal Court. Any person who violates the requirements of this Article may be punished in accordance with the general penalty provisions set forth in Section 1-72 of this Code.

( Ord. 798 §2, 2019 )

#### Secs. 6-104—6-110. - Reserved.

#### ARTICLE VI - Sidewalk Display

#### Sec. 6-111. - Permit required.

No person shall sell, display for sale or advertise for sale upon any sidewalk any goods or services to the public without a permit issued in accordance with the provisions of this Article. For purposes of this Article, "sidewalk" means that portion of a public right-of-way between the curb lines or the lateral lines of the traveled portion and the adjacent property lines which is constructed, designed, maintained, and intended for the use of pedestrians.

(Ord. 240 §1, 1983; Ord. 435 §1, 1996; Ord. 692 §1, 2011)

#### Sec. 6-112. - Permit requirements.

Applications for a sidewalk display permit will require:

- (1) Proof of sales tax permit or not-for-profit status;
- (2) Proof of health department permit, if applicable;
- (3) The applicant shall indemnify and hold harmless the Town, its officers, employees and agents against any and all claims arising from any occurrence occasioned by the permitted use. The applicant for a sidewalk display permit shall agree to maintain and show proof that during the period of the permit, comprehensive general public liability and property damage insurance will be carried, covering any personal injury or property damage arising from the permitted use, with liability limits of fifty thousand dollars (\$50,000.00) for property damage and three hundred thousand dollars (\$300,000.00) for personal injury. The policy shall name the Town, its officers, employees and agents as insureds and shall provide that the insurance is primary insurance and that no other insurance maintained by the Town will be called upon to contribute to a loss covered by the policy. The policy shall further provide for thirty (30) days' notice of cancellation or material change to the Town;
- (4) The applicant shall agree to be responsible for maintaining the area within and in proximity to the sidewalk display in a neat, clean and hazard-free condition;
- (5) A photo/drawing of the set-up and an illustration of the required four-foot minimum pedestrian travel way shall be submitted;
- (6) A nonrefundable application fee as set forth in Section 4-151 shall accompany the application;
- (7) A statement of intent shall be submitted, including proposed use, a description of products to be sold and hours of operation.

(Ord. 240 §2, 1983; Ord. 435 §1, 1996; Ord. 692 §1, 2011)

#### Sec. 6-113. - Permit application procedures.

The Town Administrator or designated representative shall review each application and approve or disapprove the application. A complete application must be received by the Town Administrator at least fifteen (15) days before the proposed sidewalk display is to commence. The Town Administrator is authorized to promulgate any rules and regulations necessary or desirable to implement this permitting process.

(Ord. 240 §3, 1983; Ord. 435 §1, 1996; Ord. 692 §1, 2011)

#### Sec. 6-114. - Permit periods; renewals.

A sidewalk display permit shall be valid from January 1 to December 31 of any single year. A renewal for a sidewalk display permit shall be automatic each year upon payment of a fee as set forth in Section 4-151, unless terminated or revoked in accordance with Section 6-116 below.

(Ord. 240 §4 1983; Ord. 435 §1, 1996)

Sec. 6-115. - Transfers of permit.

A sidewalk display permit shall not be transferable or assignable.

(Ord. 240 §5, 1983; Ord. 692 §1, 2011)

Sec. 6-116. - Termination of permit.

A sidewalk display permit issued hereunder may be revoked or terminated by the Town Administrator for a violation of this Article or a breach of a condition of the permit.

Upon revocation, termination or expiration of a permit, the permittee shall remove all structures or improvements from the permit area and restore the area to its condition prior to issuance of the permit.

(Ord. 240 §6, 1983; Ord. 692 §1, 2011)

Sec. 6-117. - Temporary termination of permits.

A sidewalk display permit issued hereunder may be temporarily revoked or terminated by the Town Administrator for purposes such as construction activity taking place in and around the area identified in the permit. The Town shall give thirty (30) days' notice of the temporary revocation or termination, unless construction activity is of an emergency nature, so determined by the Town. In an emergency situation, notification of the temporary revocation or termination may be given within twenty-four (24) hours.

(Ord. 240 §7, 1983; Ord. 692 §1, 2011)

Secs. 6-118—6-130. - Reserved.

ARTICLE VII - Explosives

Sec. 6-131. - Generally.

The manufacture, storage and use of explosives within the Town is to be governed by this Article, which shall be known as the Blasting Ordinance of the Town. It shall be unlawful to manufacture, store or use explosives except in compliance with this Article.

(Ord. 380 §1, 1994)

Sec. 6-132. - Definitions.

As used in this Article, the following words shall be construed to have the meanings defined below:

*Blasting operations* means the use of explosives within the Town.

*Blasting permit* means a permit issued by the Town in accordance with the provisions of this Article to allow blasting operations within the Town.

*Blasting plan* means the plan for conduct of any blasting operations, and any amendments thereto, which has been approved by the Town as provided in this Article.

*Explosives* means any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities or packing that an ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for hand-loading rifle, pistol and shotgun ammunition or rifle, pistol and shotgun ammunition, or fireworks.

(Ord. 380 §1, 1994; Ord. 435 §1, 1996)

#### Sec. 6-133. - Permit required.

A blasting permit issued by the Building Inspector shall be required for the use of any explosives within the Town. In order to obtain a permit, the applicant must pay a nonrefundable permit fee, as set forth in Section 4-151 of this Code, upon application and must have met all of the requirements of this Article and any other applicable local, state or federal law, ordinance, rule and regulation. A blasting permit is personal to the individual to whom it is issued and may not be assigned.

(Ord. 380 §1, 1994; Ord. 383 §1, 1994; Ord. 435 §1, 1996)

#### Sec. 6-134. - Qualifications for permit.

In order to obtain a blasting permit, the applicant must:

- (1) Have been issued a current explosives permit issued by the State Department of Employment and Training pursuant to Section 9-7-101, et seq., C.R.S.
- (2) Provide proof of workers' compensation insurance, and general liability and property damage insurance coverage in an amount of at least one million dollars (\$1,000,000.00).
- (3) Provide a corporate surety bond in the principal sum of one million dollars (\$1,000,000.00) or a public liability insurance policy for the same amount for the purpose of the payment of damages to persons or property which arise from, or are caused by, the blasting operations of a holder of a blasting permit.
- (4) Provide evidence that the permittee is qualified to safely use explosives, which may be shown by verification of attendance at an explosive safety class with the County Sheriff's Department.

(Ord. 380 §1, 1994; Ord. 435 §1, 1996)

#### Sec. 6-135. - Blasting operations.

- (a) Blasting operations shall be conducted only between the hours of 8:00 a.m. and 5:00 p.m. Monday through Thursday, and 8:00 a.m. and 3:00 p.m. on Fridays unless the approved blasting plan provides for blasting at alternate times.
- (b) Explosives may only be handled by the permittee.
- (c) No person on the property for which a blasting permit is issued shall be under the influence of alcohol, intoxicants, narcotics or other DEA-controlled substances during blasting operations.
- (d) No person on the property for which a blasting permit is issued shall smoke tobacco or any other substance or have in his or her possession any matches, lighters or other spark-producing materials during blasting operations.
- (e) No open flames shall be allowed on the property for which a blasting permit is issued during blasting operations.
- (f) Only nonelectric initiation systems with a twenty-five (25) ms delay interval may be used. Electric detonators or blasting caps are allowed only for the initiation of the blast.
- (g) Prior to firing a blast, the permittee shall make certain that surplus explosive materials are in a safe place and that all persons and vehicles are at a safe distance or under sufficient cover.
- (h) The permittee shall remove all debris, blasting caps and other materials related to the blasting operations from the site prior to leaving the site each day of blasting operations.

(Ord. 380 §1, 1994)

#### Sec. 6-136. - Notification prior to blasting operations.

- (a) The Town Building Official, Town Marshal and Public Works Foreman shall be notified at least forty-eight (48) hours prior to any blasting operations. The Town Marshal shall again be notified thirty (30) minutes prior to any ignition of an explosive.
- (b) The permittee must comply with the requirements of Section 9-1.5-101, et seq., C.R.S., regarding location of underground facilities prior to any blasting operations.
- (c) The occupants of all property within two hundred (200) feet of the property for which a blasting permit is issued must be notified at least twenty-four (24) hours in advance, and again five (5) minutes in advance, of any blasting operations by placing a notice of such blasting operations on the doors of all buildings within such area. The permittee shall certify that such notice has been provided in writing to the Town.

(Ord. 380 §1, 1994)

#### Sec. 6-137. - Blasting plan.

The permittee must submit, as part of the permit application, a detailed plan of the proposed blasting operations. All blasting operations shall be conducted in strict accordance with the approved blasting plan. Any changes to the planned blasting operations must be submitted as an amendment to the blasting plan to the Town and approved by the Town prior to conducting any blasting operations. The plan shall include:

- (1) A map to twenty (20) scale with North indicated by arrow, depicting the property for which a blasting permit is sought; the work area relative to any structures or other underground or overhead improvements; the location and duration of storage of any explosive materials to be used in the blast before, during and after each blast;

the spacing, depth and diameter of bore holes; the area to be cleared of vehicles and persons immediately prior to and during any blast; and anything else required by applicable law, rule or regulation, or which the Town determines is necessary to reasonably protect the public health, safety and welfare of the residents of the Town.

- (2) A description of the maximum amount of explosives per delay; the type of explosive product used; the method of ignition of the explosive; the loud warning signal that is to be sounded prior to each blast; the manner of locating and detonating any misfires; the manner in which qualified emergency and utility personnel are to be put on notice and called to respond in the event of an emergency; the manner of clearance of the site after blasting operations, including returning the site to its original condition; and anything else required by applicable law, rule or regulation, or which the Town determines is necessary to reasonably protect the public health, safety and welfare of the residents of the Town.

(Ord. 380 §1, 1994)

Sec. 6-138. - Blasting specifications.

The Town may not approve a blasting plan unless it meets the following minimum specifications:

- (1) The maximum borehole diameter shall be two and one-half (2½) inches;
- (2) The minimum borehole depth shall be four (4) feet;
- (3) A seismograph must be used to monitor vibrations next to a structure when a structure is less than one hundred (100) feet from a borehole loaded with explosives.
- (4) The amount of explosives must be a scaled distance formula of a minimum of: S.D. = D/W  $\frac{1}{2}$  by the use of a seismograph using a peak particle velocity of 1.5 inches per second:

S.D. =	65
D =	Distance from the blast to the structure of concern in feet
W =	Maximum charge weight of explosives, in pounds, per delay of 25 ms or more or by the use of a seismograph using a peak particle velocity of 1.5 inches per second

- (5) All boreholes containing explosives shall be adequately covered. Absent extenuating circumstances, adequate coverage may be blasting mats when the distance to the nearest structure is less than or equal to two hundred fifty (250) feet, and earth cover when the borehole is more than two hundred fifty (250) feet from the nearest structure.
- (6) No blasting may occur within ten (10) feet of a structure.

(Ord. 380 §1, 1994)

Sec. 6-139. - Manufacture and storage of explosives.

Explosives may not be manufactured or stored anywhere within the Town; provided however, that explosives may be stored at the location of blasting operations in accordance with the terms of a blasting plan.

(Ord. 380 §1, 1994)

Sec. 6-140. - Corrective measures.

- (a) The Town, upon discovery of any defect in the work or for the permittee failing to complete the blasting operations or removal of debris for which a blasting permit is issued, may:
  - (1) In the event of an emergency, order a private contractor to do everything necessary to complete such work to acceptable standards, particularly where hazards exist due to the failure of the permittee to restore or maintain the site in accordance with the provisions and conditions of his or her permit.
  - (2) In the event of a nonemergency, give notice to the permittee and his or her sureties in writing of the nature and location of such defects, including notice of a reasonable time, not less than twenty-one (21) calendar days, within which such defects are to be repaired. Such period of time may be extended by the Town upon application, for good cause shown.
- (b) In the event of failure of the permittee to perform the required work within the period provided by such notice, a private contractor on order of the Town shall make such repairs as may be necessary.
- (c) The Town shall recover any and all costs of work performed by its personnel or by a private contractor, including the cost of labor, equipment, materials and administrative costs at the expense of the permittee by applying any deposit, bond, letter of credit or other security in its possession to payment thereof, and shall recover any remaining unpaid balance of such costs from the permittee.

(Ord. 380 §1, 1994; Ord. 435 §1, 1996)

Sec. 6-141. - Revocation of permit.

The Town may revoke the permit granted by this Article if the applicant is found, after notice and a hearing, to have violated any of the provisions listed in Section 6-135 above, or in any of the following circumstances:

- (1) The permittee violates any of the provisions of the ordinances of the Town governing the activities permitted by the permit;
- (2) The permittee obtains a permit by fraud or misrepresentation;
- (3) Revocation is necessary to maintain the public health, safety and welfare; or
- (4) The permittee fails to maintain the required insurance, bond, letter of credit or other guarantees of performance during the course of the construction and of the warranty period specified by the Town.

The Town shall advise the permittee in writing of the grounds for revocation of the permit, and the permittee shall be allowed to appeal such revocation to the Board of Trustees.

(Ord. 380 §1, 1994; Ord. 435 §1, 1996)

Sec. 6-142. - Violation and penalties.

- (a) Any person violating any provision of this Article shall be charged with a civil infraction and shall be subject to a penalty as set forth in Section 1-72 of this Code.
- (b) In addition, the Town is authorized to enforce this Article by injunction, including both the enjoining of contemplated actions or inactions in violation of this Article, including excavation or fill activities undertaken without or in violation of the terms of a permit; and mandatory injunction to require the removal of excavation or fill accomplished without or in violation of the terms of such a permit. In any such injunction action, the Town shall be awarded its costs of suit, and any costs incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article. In addition, the Town shall be entitled to recover its attorneys' fees incurred in bringing any action to compel compliance with the provisions of this Article or to compel compliance with any plan approved hereunder.

(Ord. 380 §1, 1994; Ord. 435 §1, 1996; Ord. 803 §4, 2019)

Secs. 6-143—6-160. - Reserved.

## ARTICLE VIII - Miscellaneous Permits

Sec. 6-161. - Permits for amplified music.

The Zoning Administrator may grant permits for amplified music under the following conditions:

- (1) No more than four (4) total hours.
- (2) Not allowed between 9:00 p.m. and noon.
- (3) For special events: maximum one (1) per year.
- (4) For Town business: maximum of twelve (12) per year and one (1) per week.

(Ord. 504 §3, 1999)

Sec. 6-162. - Chicken hen permit.

- (a) No person shall keep a chicken hen, as permitted by Chapter 7 of this Code, without having first obtained a chicken hen permit from the Town.
- (b) An application for a chicken hen permit shall be made to the Town Administrator on forms provided by the Town Administrator. Filed applications must be accompanied by an application fee as established from time to time by resolution of the Board of Trustees, as authorized by Section 4-151 of this Code. No permit shall issue unless and until such permit fee has been paid in full.
- (c) A chicken hen permit shall be issued by the Town Administrator if the proposed keeping of the animals complies with the requirements of Chapters 7 and 16 of this Code. The Town Administrator is authorized to impose conditions upon any such permit to ensure compliance with such requirements.
- (d)

A chicken hen permit may be suspended or revoked by the Town Administrator, after a hearing, for violating any term or condition of the permit or for violating any provision of this Code concerning the keeping of chicken hens. A permit holder shall be provided at least ten (10) days' written notice of any such hearing and of the alleged causes for suspension or revocation. The Town Administrator shall issue a written decision to the permittee within ten (10) days of the conclusion of such hearing.

- (e) The chicken hen permit fee established by Subsection (b) above, is hereby established to be fifty dollars (\$50.00) as of August 2, 2011. This permit fee may be amended by the Board of Trustees by resolution as referenced in Subsection (b) above.

(Ord. 694 §§3, 4, 2011)

Secs. 6-162—6-180. - Reserved.

## ARTICLE IX - Licensing of Sexually Oriented Businesses

Sec. 6-181. - Definitions.

Certain words and phrases used in this Article shall have the meanings ascribed to them in Section 16-292 of this Code.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-182. - License required.

- (a) No sexually oriented business license shall be issued for any sexually oriented business located within any zone district other than the industrial district.
- (b) No person shall operate a sexually oriented business without first having obtained a valid type A or type B sexually oriented business license issued by the Town.
  - (1) A type A sexually oriented business license shall be required for sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, are allowed pursuant to a valid license issued under this Chapter.
  - (2) A type B sexually oriented business license shall be required for all sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, are not allowed.
- (c) It shall be unlawful to operate or cause to be operated a sexually oriented business when said person knows or reasonably should know that:
  - (1) The business does not have a sexually oriented business license;
  - (2) The business has a sexually oriented business license that is under suspension;
  - (3) The business has a sexually oriented business license that has been revoked;
  - (4) The business has a sexually oriented business license that has expired;
  - (5)

The business operates under a type B sexually oriented business license and allows alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, on the premises;

- (6) The business is in violation of any applicable provision of this Chapter.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-183. - Fees.

- (a) The annual fee for a sexually oriented business license is two hundred twenty-five dollars (\$225.00).
- (b) The annual manager's license fee is seventy-five dollars (\$75.00).
- (c) An applicant for either a type A or type B sexually oriented business license shall pay a nonrefundable application fee of five hundred twenty-five dollars (\$525.00) at the time of filing an application.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-184. - Application for license.

- (a) As used in this Article, the term Licensing Officer shall refer to the Town Clerk, unless a different Town official is designated by resolution adopted by the Board of Trustees. The Licensing Officer is responsible for granting, denying, revoking, renewing and suspending sexually oriented business licenses for proposed or existing sexually oriented businesses.
- (b) The Town Administrator is responsible for ascertaining whether a proposed sexually oriented business for which a sexually oriented business license application has been submitted complies with all location requirements of Section 16-294 of this Code.
- (c) The Town Marshal is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Subparagraph 6-187(c)(1)(i) below.
- (d) The Building Official is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable building codes and ordinances.
- (e) Any person desiring to operate a sexually oriented business shall file with the Licensing Officer an original and two (2) copies of a sworn sexually oriented business license application on the standard application form supplied by the Licensing Officer.
- (f) The completed application shall contain the following information and shall be accompanied by the following documents:
  - (1) If the applicant is an individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is twenty-one (21) years of age or older, in the case of a type A sexually oriented business license, or eighteen (18) years of age or older in the case of a type B sexually oriented business license.
  - (2) If the applicant is a legal entity, the application shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized and, if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado, the

full legal name, date of birth and capacity of all officers, directors, managers and principal owners, and the name of the registered agent and the address of the registered agent for service of process, if any.

- (3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the sexually oriented business's fictitious name must be stated.
- (4) Whether the applicant or any of the other individuals listed pursuant to Paragraph (f)(1) or (2) above has been convicted of a specified criminal act within the times set forth in Section 6-187(c)(1)(i) of this Article and, if so, the specified criminal act involved, the date of conviction and the place of conviction.
- (5) Whether the applicant or any of the other individuals listed pursuant to Paragraph (f)(1) or (2) above has had a previous license under this or any other sexually oriented business ordinance from another city, town or county denied, suspended or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.
- (6) Whether the applicant or any other individuals listed pursuant to Paragraph (f)(1) or (2) above has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license has previously been denied, suspended or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of denial, suspension or revocation.
- (7) Whether the applicant or any other individual listed pursuant to Paragraph (f)(1) or (2) above holds any other licenses under this Article or any other sexually oriented business ordinance from another city, town or county and, if so, the name of such city, town or county and names and locations of such other licensed businesses.
- (8) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone numbers.
- (9) Proof of the applicant's right to possession of the premises wherein the sexually oriented business will be conducted.
- (10) The applicant's mailing address and residential address.
- (11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Licensing Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (12) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado-registered land surveyor depicting:
  - a. The property lines and the structures of the property to be certified;
  - b. The location of the property lines of any church, school, dwelling, public park or child care facility within two hundred (200) feet of the property to be certified; and
  - c.

The location of the property lines and structures on the property of any other sexually oriented business within one hundred (100) feet of the property to be certified.

For purposes of this Section, a use shall be considered existing or established if it is in existence or pending at the time an application is submitted.

- (13) If an applicant who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a sexually oriented business license as applicant. If an applicant who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a sexually oriented business license as applicant.
- (g) In the event that the Licensing Officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days properly to complete the application. The time period for granting or denying a sexually oriented business license shall be stayed during the period in which the applicant is allowed an opportunity properly to complete the application.
- (h) The fact that a person possesses or is required to possess other types of state or town licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-185. - Duty to supplement application.

- (a) Applicants for a sexually oriented business license under Section 6-184 above shall have a continuing duty promptly to supplement any application information required by that Section in the event that said information changes in any way from what is stated on the application.
- (b) The failure to comply with said continuing duty to supplement an application within thirty (30) days from the date of such change shall be grounds for suspension of a sexually oriented business license.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-186. - Investigation and application.

- (a) Upon receipt of an application for a sexually oriented business license properly filed with the Licensing Officer and upon payment of the nonrefundable application fee, the Licensing Officer shall immediately stamp the application as received and send copies of the application to the Town Administrator, the Building Official and the Town Marshal. The Town Administrator, the Building Official and the Town Marshal shall promptly conduct an investigation of the applicant, application and proposed sexually oriented business in accordance with his or her responsibilities under this Section. Investigations shall be completed within twenty (20) days of receipt of the application by the Licensing Officer. At the conclusion of their investigations, the Town Administrator and the Building Official shall indicate on the copy of the application his or her approval or disapproval of the application, date it, sign it and, in the event of disapproval, state the reasons therefor. The Town Marshal shall only be required to provide the information specified in Subsection 6-184(c) above and shall not be required to approve or disapprove applications.

(b)

The Director of Community Development and the Building Official may disapprove an application if he or she finds that the proposed sexually oriented business will be or is in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the Town. After their investigations and review, the Town Administrator, the Building Official and the Town Marshal shall immediately return the copy of the application to the Licensing Officer. The Licensing Officer shall not issue a sexually oriented business license unless signed copies of the application for the same have been delivered to said officer by the Town Administrator and the Building Official and unless the Town Marshal has supplied said officer with the information specified in Subsection 6-184(c) above.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-187. - Issuance of license.

- (a) The Licensing Officer shall grant or deny an application for a sexually oriented business license within thirty (30) days from the date of its proper filing. Upon the expiration of the thirty (30) days, the applicant shall be licensed to begin operating the business for which the sexually oriented business license is sought, unless and until the Licensing Officer notifies the applicant, by first-class mail to the address on the application, of a denial of the application and states the reasons for that denial.
- (b) Grant of application for sexually oriented business license.
  - (1) The Licensing Officer shall grant the sexually oriented business license unless one (1) or more of the criteria set forth in Subsection (c) below is present.
  - (2) The sexually oriented business license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.
- (c) Denial of application for sexually oriented business license.
  - (1) The Licensing Officer shall deny the application for any of the following reasons:
    - a. An applicant is under twenty-one (21) years of age in the case of an application for a type A sexually oriented business license or under eighteen (18) years of age in the case of an application for a type B sexually oriented business license.
    - b. An applicant is overdue on his or her payment to the Town of taxes, fees, fines or penalties assessed against or imposed upon him or her in relation to a sexually oriented business.
    - c. An applicant has failed to provide information required by this Article for the issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form and has refused to provide corrected information.
    - d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Subsection 6-186(b) above.
    - e. The application or sexually oriented business license fees have not been paid.
    - f. An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this Article.
    - g. The granting of the application would violate a statute, ordinance or court order.

h. The applicant has or had a sexually oriented business license under this Article, or under the regulatory provisions of another jurisdiction, that was suspended or revoked within the previous twelve (12) months. In the case of a denial of an application due to the suspension or revocation of the applicant's license in another jurisdiction, the applicant shall be entitled to a hearing before the Board of Trustees. After the hearing, the Board of Trustees may grant the application without regard to the suspension or revocation of the applicant's license in another jurisdiction if it finds that the grounds for suspension or revocation in that jurisdiction would not be grounds for suspension or revocation of a license pursuant to this Article.

- i. An applicant has been convicted of a specified criminal act or acts for which:
  1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;
  2. Less than five (5) years have elapsed since the date of conviction or the date or release from confinement, whichever is the later date, if the conviction is of a felony offense; or
  3. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.
  4. The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act or acts may qualify for a sexually oriented business license only when the time period required above has elapsed.
  5. If the Licensing Officer denies the application, he or she shall notify the applicant, by first class mail to the address on the application, of the denial and state the reasons for the denial. A copy of such denial shall be forwarded to the Town Attorney.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-188. - Expiration of license.

- (a) Each sexually oriented business license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-184 of this Article, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts (for renewals, filing of the original survey shall be sufficient). Application for renewal of a sexually oriented business license shall be made at least thirty (30) days before the expiration date of the sexually oriented business license.
- (b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the sexually oriented business license has been corrected, the applicant shall be granted a sexually oriented business license if no more than ninety (90) days have elapsed since the date denial became final.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-189. - Suspension of license.

- (a) The Licensing Officer may suspend a sexually oriented business license for a period not to exceed one hundred fifty (150) days, unless the period is extended by operation of Subsection (b) below, if he or she determines that a licensee or an employee of a licensee has:
  - (1) Violated or is not in compliance with any section of this Article or any provision of Chapter 16 of this Code.

- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article.
  - (3) Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees or the licensee.
  - (4) Operated the sexually oriented business in violation of a building, fire, health or zoning code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the department, division or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the Licensing Officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the twenty-day period, the Licensing Officer shall forthwith suspend the sexually oriented business license and shall notify the licensee of the suspension.
  - (5) Operated the sexually oriented business in violation of the hours of operation provisions in Section 16-301 of this Code.
  - (6) Transferred a sexually oriented business license contrary to Section 6-192 of this Article. In the event of such suspension, the Licensing Officer shall forthwith notify the original licensee and the transferee of the suspension. The suspension shall remain in effect until the applicable provisions of Section 6-192 have been satisfied.
  - (7) Committed or allowed the commission of any specified sexual activity or any specified criminal act on the licensed premises, as such terms are defined in Section 16-292 of this Code.
  - (8) Displayed or allowed to be displayed any specified anatomical areas on the licensed premises, as such term is defined in Section 16-292 of this Code.
- (b) The suspension shall remain in effect until and including the last day in the Licensing Officer's order and until the violation of the statute, code, ordinance or regulation in question has been corrected.

(Ord. 633 §1, 2007; Ord. 634 §2, 2007; Ord. 648 §5, 2008)

#### Sec. 6-190. - Revocation of license.

- (a) The Licensing Officer shall revoke a sexually oriented business license upon determining that:
  - (1) A cause of suspension in Section 6-189 of this Article occurred, and the sexually oriented business license has been suspended within the preceding twelve (12) months;
  - (2) A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a sexually oriented business license;
  - (3) A licensee, manager or employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises;
  - (4) A licensee, manager or employee has knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises;
  - (5) A licensee, manager or employee knowingly operated the sexually oriented business during a period of time when the licensee's sexually oriented business license was suspended;
  - (6) A licensee has been convicted of a specified criminal act for which the time period set forth in Subparagraph 6-187 (c)(1)(i) has not elapsed;

- (7) On two (2) or more occasions within a twelve-month period, a person committed an offense, occurring in or on the licensed premises, constituting a specified criminal act for which a conviction has been obtained, and the person was an employee of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the sexually oriented business license;
  - (8) A licensee is delinquent in payment to the Town or State for any taxes or fees; or
  - (9) A licensee, manager or employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises.
- (b) When the Licensing Officer revokes a sexually oriented business license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-191. - Suspension or revocation hearing.

- (a) A licensee shall be entitled to a hearing before the Board of Trustees if the Town seeks to suspend or revoke his or her sexually oriented business license based on a violation of this Article or any provision of Chapter 16 of this Code. The business may continue to operate during the hearing process.
- (b) When there is probable cause to believe that a cause for suspension or revocation exists, the Town Attorney may file a written complaint with the Licensing Officer setting forth the circumstances of the alleged violation.
- (c) The Licensing Officer shall provide a copy of the complaint to the licensee, together with a notice to appear before the Board of Trustees for the purpose of a hearing on a specified date to show cause why the licensee's sexually oriented business license should not be suspended or revoked.
- (d) At the hearing, the Board of Trustees shall hear such statements and consider such evidence as the Police Department or other enforcement officers, the owner, occupant, lessee or other party in interest or any other witness shall offer that is relevant to the violation alleged in the complaint. The Board of Trustees shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Board of Trustees determines that a cause for suspension or revocation exists, it shall issue an order suspending or revoking the sexually oriented business license within thirty (30) days after the hearing is concluded, based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license. In performing its duties pursuant to this Section, the Board of Trustees may retain independent counsel to advise it with regard to any matter.
- (e) The order of the Board of Trustees made pursuant to Subsection (d) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the sexually oriented business license.
- (f) The Board of Trustees shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Board of Trustees conducts. It is unlawful for any

person to fail to comply with any subpoena issued by the Board of Trustees. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State.

- (g) All hearings held before the Board of Trustees regarding suspension or revocation of a sexually oriented business license issued under this Article shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Board of Trustees and shall pay all costs of preparing such record.
- (h) In the event of suspension, revocation or cessation of business, no portion of the sexually oriented business license fee shall be refunded.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-192. - Transfer of license.

- (a) A licensee shall not operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application for a sexually oriented business license.
- (b) A licensee shall not transfer his or her sexually oriented business license to another person unless and until such other person satisfies the following requirements:
  - (1) Obtains an amendment to the sexually oriented business license from the Licensing Officer that provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with the Licensing Officer setting forth the information called for under Section 6-184 in the application; and
  - (2) Pays a transfer fee of twenty percent (20%) of the annual sexually oriented business license fee.
- (c) No sexually oriented business license may be transferred when the Licensing Officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.
- (d) Any attempt to transfer a sexually oriented business license, either directly or indirectly in violation of this Section, is hereby declared void.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-193. - Manager's license required; change of manager; inactive status.

- (a) A manager or designee shall be on the premises of a sexually oriented business at all times during operation. It shall be unlawful for any person to work as a manager of a sexually oriented business without first obtaining a manager's license for such premises.
- (b) In the event a manager ceases to be employed at the premises listed in his or her application, the manager shall immediately report such change to the Licensing Officer, but in no event shall such change be reported later than ten (10) days after cessation of employment.
- (c) Provided that a manager has complied with the requirements of Subsection (b) above, his or her license shall remain in inactive status until it expires or is reactivated. A manager who is reemployed at the premises listed in the manager's license may reactivate his or her license, provided that the Licensing Officer determines that he or she still meets the requirements of Section 6-194 below.

Sec. 6-194. - Application for manager's license.

- (a) A manager shall submit an application for a manager's license for each sexually oriented business the manager proposes to manage on a form to be provided by the Licensing Officer. The application shall contain the applicant's name, address, date of birth, telephone number, address, the name and address of the sexually oriented business that manager proposes to manage and the information required in Paragraph 6-184(f)(4) of this Article.
- (b) The Police Department shall conduct an investigation of the applicant to determine if the applicant has been convicted of a specified criminal act within the times set forth in Subparagraph 6-187(c)(1)(i) of this Article.
- (c) The Licensing Officer shall grant the application within ten (10) days of its filing unless:
  - (1) The applicant is under the age of twenty-one (21) in the case of a type A sexually oriented business license or under the age of eighteen (18) in the case of a type B sexually oriented business license;
  - (2) The applicant has failed to provide the information required by this Section;
  - (3) The license fee has not been paid;
  - (4) The applicant has been convicted of a specified criminal act within the times set forth in Subparagraph 6-187(c)(1)(i) of this Article.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-195. - Expiration of manager's license.

- (a) Each manager's license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-194 above, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts. Application for renewal of a manager's license shall be made at least thirty (30) days before the expiration date of the manager's license.
- (b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the manager's license has been corrected, the applicant shall be granted a manager's license if no more than ninety (90) days have elapsed since the date denial became final.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-196. - Suspension of manager's license.

- (a) The Licensing Officer may suspend a manager's license for a period not to exceed ninety (90) days, unless the period is extended by operation of Subsection (b) below, if he or she determines that the manager has:
  - (1) Violated or is not in compliance with any section of this Article or any provision of Chapter 16 of this Code;
  - (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article;
  - (3) Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees or the licensee; or
  - (4) Operated the sexually oriented business in violation of the hours of operation provisions in Section 16-301 of this Code.

- (b) The suspension shall remain in effect until and including the last day in the Licensing Officer's order and until the violation of the statute, code, ordinance or regulation in question has been corrected.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-197. - Revocation of manager's license.

- (a) The Licensing Officer shall revoke a manager's license upon determining that:
- (1) A cause of suspension in Section 6-196 above occurred and the manager's license has been suspended within the preceding twelve (12) months;
  - (2) The manager gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a manager's license;
  - (3) The manager knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises;
  - (4) The manager knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises;
  - (5) The manager knowingly operated the sexually oriented business during a period of time when the sexually oriented business license was suspended;
  - (6) The manager has been convicted of a specified criminal act for which the time period set forth in Subparagraph 6-187 (c)(1)(i) has not elapsed; or
  - (7) The manager has knowingly allowed any specified sexual activity to occur in or on the licensed premises.
- (b) When the Licensing Officer revokes a manager's license, the revocation shall continue for one (1) year, and the licensee shall not be issued a manager's license for one (1) year from the date revocation became effective.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

Sec. 6-198. - Suspension or revocation hearing.

- (a) A manager shall be entitled to a hearing before the Board of Trustees if the Town seeks to suspend or revoke the manager's license based on a violation of this Article or any provision of Chapter 16 of this Code. The manager may continue to manage a sexually oriented business during the hearing process.
- (b) When there is probable cause to believe that a cause for suspension or revocation exists, the Town Attorney may file a written complaint with the Licensing Officer setting forth the circumstances of the alleged violation.
- (c) The Licensing Officer shall provide a copy of the complaint to the licensee, together with notice to appear before the Board of Trustees for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.
- (d) At the hearing, the Board of Trustees shall hear such statements and consider such evidence as the Police Department or other enforcement officers, the owner, employer, occupant, lessee or other party in interest or any other witness shall offer that is relevant to the violation alleged in the complaint. The Board of Trustees shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Board of Trustees determines that a cause for suspension or revocation exists, it

shall issue an order suspending or revoking the manager's license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

- (e) The order of the Board of Trustees made pursuant to Subsection (d) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the manager's license.
- (f) The Board of Trustees shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Board of Trustees conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Board of Trustees. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State.
- (g) All hearings held before the Board of Trustees regarding suspension or revocation of a manager's license issued under this Article shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Board of Trustees and shall pay all costs of preparing such record.
- (h) In the event of suspension, revocation or cessation of business, no portion of the manager's license fee shall be refunded.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-199. - Notice.

Any notice required by this Article shall be deemed sufficient if it is deposited in first-class mail, postage prepaid, to the address on the application and shall be effective upon mailing.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-200. - Judicial review.

After denial of an application, denial of a renewal of an application or suspension or revocation of a license, such act shall be a final decision. Therefore, the applicant or licensee may seek judicial review of such administrative action pursuant to Colorado Rules of Civil Procedure. The court shall promptly review such administrative action.

(Ord. 633 §1, 2007; Ord. 648 §5, 2008)

#### Sec. 6-201. - Inspection.

- (a) An applicant, licensee or manager shall permit representatives of the Licensing Officer, Building Official, Town Administrator, Police Department, County Health Department and Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.
- (b) It shall be unlawful for any person, applicant, licensee or manager who operates a sexually oriented business or his or her agent to refuse to permit such lawful inspection of the premises at any time that it is occupied or open for business.

Secs. 6-202—6-230. - Reserved.

## ARTICLE X - Medical Marijuana Business Licensing

Sec. 6-231. - Short title.

This Article shall be known and may be cited as the "Town of Nederland Medical Marijuana Business Licensing Ordinance."

(Ord. 690 §1, 2011)

Sec. 6-232. - Findings.

The Board of Trustees adopts this Article based upon the following findings of fact:

- (1) On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added Section 14 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under Colorado law for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.
- (2) The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under Colorado law.
- (3) On April 6, 2010, the voters of the Town approved Ballot Issue 1, which removed municipal penalties related to buying, selling, possessing, consuming, transporting, cultivating, manufacturing and dispensing marijuana and its concentrate and related paraphernalia among persons twenty-one (21) years of age and older.
- (4) The Town is permitted under the Colorado Medical Marijuana Code to regulate medical marijuana-related businesses.
- (5) If medical marijuana businesses operating pursuant to the Colorado Medical Marijuana Code were allowed to be established and to operate without appropriate local regulation of their location, medical marijuana businesses might be established in areas that would conflict with the Town's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.
- (6) The medical marijuana regulations at the state level do not reflect the special character, size and nature of the Town, and so the Board of Trustees seeks to create a medical marijuana regulation that does so.
- (7) Nothing in this Article allows a person to:
  - a. Engage in conduct that endangers others or causes a public nuisance;
  - b. Possess, cultivate, grow, use or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by the Colorado Medical Marijuana Code and Ballot Initiative 1, and the implementing state statutes and administrative regulations;
  - c. Possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or

- d. Engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the Town or the State.
- (8) This Article is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the Town and the inhabitants thereof.

(Ord. 690 §1, 2011)

#### Sec. 6-233. - Purpose.

Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana businesses, it is the purpose of this Article to:

- (1) Require that a medical marijuana business, as defined in Section 6-235 below, be operated in a safe manner that does not endanger the public welfare.
- (2) Mitigate potential negative impacts that a medical marijuana business might cause on surrounding properties and persons.
- (3) Regulate the conduct of persons owning, operating and using a medical marijuana business in order to protect the public health, safety and welfare.
- (4) Establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the location and operation of medical marijuana businesses within the Town.
- (5) Impose fees to cover the cost to the Town of licensing medical marijuana businesses in an amount sufficient for the Town to recover its costs of the licensing and enforcement procedures.

(Ord. 690 §1, 2011)

#### Sec. 6-234. - Authority.

The Board of Trustees hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (1) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (2) Part 3 of Article 23 of Title 31, C.R.S., concerning municipal zoning powers;
- (3) Section 31-15-103, C.R.S., concerning municipal police powers;
- (4) Section 31-15-401, C.R.S., concerning municipal police powers; and
- (5) Section 31-15-501, C.R.S., concerning municipal authority to regulate businesses.

(Ord. 690 §1, 2011)

#### Sec. 6-235. - Definitions.

- (a) As used in this Article the following words shall have the following meanings, unless the context clearly requires otherwise:

*Adjacent* means adjacent to, or contiguous with, the proposed location of a medical marijuana business through the presence of a shared ceiling, floor or wall, except that this definition shall not apply to multi-use buildings.

*Amendment 20* means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000.

Amendment 20 added Section 14 of Article XVIII to the Colorado Constitution.

*Applicant* means a person twenty-one (21) years of age or older who has submitted an application for a license pursuant to this Article.

*Application* means an application for a license submitted pursuant to this Article.

*Ballot Issue 1* means a voter-initiated amendment to this Code adopted on April 6, 2010.

*Building Official* means the Building Official of the Town.

*Catastrophic business interruption* means the failure of a licensed medical marijuana business to conduct its ordinary and usual business activities due to catastrophic circumstances beyond the licensee's control, such as acts of God, weather, civil unrest, terrorism or the criminal activity of others.

*Colorado Medical Marijuana Code* means Article 43.3 of Title 12, C.R.S., which provides for state and local licensing and regulation of medical marijuana businesses.

*Day* means a calendar day, unless otherwise indicated.

*Dwelling unit* has the meaning provided in Section 16-6 of this Code.

*Good cause* means (for the purpose of refusing, denying, suspending or revoking a license under this Article):

- a. The licensee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this Article and any rule and regulation promulgated pursuant to this Article;
- b. The licensee has failed to comply with any special terms or conditions that were placed on its license at the time the license was issued or that were placed on its license in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or
- c. The licensee's medical marijuana business has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana business is located. Evidence to support such a finding can include: (i) a pattern of disorderly conduct as defined in Section 10-121 of this Code within the premises of the medical marijuana business, or in the immediate area surrounding the medical marijuana business, if such conduct was directly related to or arose from the operation of the medical marijuana business; (ii) a pattern of drug-related criminal conduct within the premises of the medical marijuana business, or in the immediate area surrounding the medical marijuana business, if such conduct was directly related to or arose from the operation of the medical marijuana business; or (iii) a continuing pattern of criminal conduct at any location directly related to or arising from the operation of the medical marijuana business.

*Infused product facility* means a property or structure within the Town used by a business owner to manufacture a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments and tinctures.

*License* means a license to operate a medical marijuana business issued by the Town pursuant to this Article.

*Licensee* means the person to whom a license has been issued pursuant to this Article.

*Medical marijuana business* means any medical marijuana store, optional premises for cultivation or infused product facility.

*Medical marijuana store* means a person licensed to operate a business that sells medical marijuana to registered patients or primary caregivers as defined in state law.

*Optional premises for cultivation* means the premises specified in an application for a medical marijuana center license with related growing facilities in Colorado to grow, cultivate, and produce marijuana for a purpose authorized by Section 14 of Article XVIII of the Colorado Constitution for sale to, or distribution through, a licensed medical marijuana center.

*Patient* has the meaning provided in Amendment 20 of the Colorado Constitution.

*Person* has the meaning provided in Section 1-21 of this Code.

*Primary caregiver* has the meaning provided in the Colorado Medical Marijuana Code.

*Primary entrance* means the threshold of the entrance to the medical marijuana business, whether such entrance is indoors or outdoors, that is customarily used by the public to gain access to the business.

*Town* has the meaning provided in Section 1-21 of this Code.

*Town Administrator* means the Town Administrator of the Town or the Town Administrator's designee.

- (b) In addition to the definitions provided in Subsection (a) above, the other defined terms in the Colorado Medical Marijuana Code are incorporated into this Article by reference.

(Ord. 690 §1, 2011; Ord. 813 §1, 2020)

Sec. 6-236. - License required.

- (a) No person shall operate a medical marijuana business within the Town without a valid license issued in accordance with this Article.
- (b) Any individual registered with the State as a primary caregiver and operating lawfully as such under the terms of Section 25-1.5-106(5)-(6), C.R.S., shall not be required to obtain a medical marijuana business license. Any primary caregiver operating within the jurisdictional limits of the Town and receiving compensation for such services is nevertheless subject to other Town license requirements.

(Ord. 690 §1, 2011)

Sec. 6-237. - Application for license.

- (a) A person seeking to obtain a license pursuant to this Article shall file an application with the Town Administrator. The form of the application shall be provided by the Town Administrator.
- (b) A separate license must be obtained for each medical marijuana business location.
- (c) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain all other required Town licenses and approvals related to the medical marijuana business.
- (d) An application for a license under this Article shall contain the following information:

- (1) The applicant's name, address, telephone number and social security number;
  - a. If the owner is a corporation, this shall include the name and address of any officer or director of the corporation, and of any person holding any financial interest in the corporation, whether as a result of the issuance of stock, instruments of indebtedness or otherwise; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant;
  - b. If the owner is a partnership, association or limited liability company, the name and address of all partners, members, managers or persons holding any financial interest in the partnership, association or limited liability company, including those holding an interest as the result of instruments of indebtedness; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant;
  - c. If the owner is not a natural person, the organization's documents for all entities identified in the application, and the contact information for the person that is authorized to represent the entity or entities;
- (2) The name and address of the manager of the medical marijuana business, if the manager is proposed to be someone other than the owner or if the owner is an entity other than a natural person;
- (3) The names and addresses of all persons holding any financial interest in the medical marijuana business (and the street address of the proposed medical marijuana business);
- (4) Proof of the applicant's right to occupy and use the premises for the proposed medical marijuana business, whether by deed, lease or otherwise;
- (5) A statement of the applicant's personal history, including whether:
  - a. The applicant has been denied an application for a medical marijuana business license pursuant to this Article or any similar state or local licensing law, or had such a license suspended or revoked;
  - b. Discharged a sentence in the five (5) years immediately preceding the application date for a conviction of a felony or a person who at any time has been convicted of a felony pursuant to any state or federal law regarding the possession, distribution or use of a controlled substance; or
  - c. Is under twenty-one (21) years of age.
- (6) A completed set of the applicant's and manager's fingerprints on a form approved by the Town Administrator;
- (7) A floor plan of the premises, drawn to scale, showing public and private areas, as well as secured areas for marijuana storage.
- (8) A complete copy of the applicant's state medical marijuana application, as submitted to the state licensing authority;
- (9) A statement to be initialed by the applicant that the Town accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana business;
- (10) Any additional information that the Town Administrator reasonably determines to be necessary in connection with the investigation and review of the application.

(Ord. 690 §1, 2011)

Each application submitted under this Article shall be accompanied by an application fee in the amount set forth on the fee schedule as established from time to time by resolution of the Board of Trustees in accordance with Section 4-151 of this Code.

(Ord. 690 §1, 2011)

Sec. 6-239. - Investigation of application.

- (a) Upon receipt of a properly completed application, together with all information required in connection therewith and the payment of the application fee as required by Section 6-238 above, the Town Administrator shall transmit copies of the application to:
  - (1) The Police Department;
  - (2) The Building Department;
  - (3) The Nederland Fire Department; and
  - (4) Any other person or agency which the Town Administrator determines should properly investigate and comment upon the application.
- (b) Upon receipt of a completed application, the Police Department shall obtain and review a criminal background records search on the applicant and manager from the Colorado Bureau of Investigation.
- (c) Within twenty (20) days of receipt of a completed application, those Town departments and other referral agencies described in Subsection (a) above shall provide the Town Administrator with comments concerning the application.

(Ord. 690 §1, 2011)

Sec. 6-240. - Standards for issuance of license.

The Town Administrator shall issue a license under this Article when the Town Administrator determines that:

- (1) The application (including any required attachments and submissions) is complete and signed by the applicant;
- (2) The applicant has paid the application fee and any other fees required by Section 6-238 above;
- (3) The application does not contain a material falsehood or misrepresentation;
- (4) The application contains proof of the applicant's right to occupy and use the premises in the manner proposed by the application;
- (5) The application, applicant and proposed medical marijuana business comply with all of the requirements of this Article, this Code and the Colorado Medical Marijuana Code;
- (6) The applicant and manager have good moral character. In making this determination or when considering a criminal conviction, the Town Administrator shall be governed by the provisions of Section 24-5-101, C.R.S. If the Town Administrator takes into consideration information concerning the applicant's criminal history record, the Town Administrator shall also consider any information provided by the applicant regarding such criminal

history record, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license;

- (7) The maximum number of marijuana licensed premises for medical marijuana store licenses and retail marijuana store licenses is capped at four (4) total licensed premises. Applicants for medical marijuana store licenses and retail marijuana store licenses shall be denied a license if the approval of the license would exceed the cap on marijuana licensed premises. The Local Licensing Authority permits dual operation of a medical marijuana store license and a retail marijuana store license at the same licensed premise.
- (8) The proposed location of the medical marijuana business is permitted under Section 6-255 of this Article.
- (9) The proposed medical marijuana business and the applicant, including each individual owner and manager, satisfy the requirements of the Colorado Medical Marijuana Code.

(Ord. 690 §1, 2011; Ord. 813 §2, 2020)

#### Sec. 6-241. - Denial of license.

- (a) The Town Administrator shall deny an application for a license under this Article if the Town Administrator determines that:
  - (1) Information contained in the application, or supplemental information requested from the applicant, is found to be false in any material respect; or
  - (2) The application fails to meet any of the standards sets forth in Section 6-240 above.
- (b) If an application is denied the application fee shall not be refunded.

(Ord. 690 §1, 2011)

#### Sec. 6-242. - Authority to impose conditions on license.

The Town Administrator shall have the authority to impose such reasonable terms and conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and other applicable law.

(Ord. 690 §1, 2011)

#### Sec. 6-243. - Decision by town administrator.

- (a) The Town Administrator shall approve, deny or conditionally approve an application within thirty (30) days of the receipt of the completed application unless, by written notice to the applicant, the decision period is extended for an additional period of time if necessary for the Town Administrator to complete his or her review of the application. The Town Administrator shall issue a final decision on an application no later than thirty (30) days from the date that the Town Administrator's investigation is completed.
- (b) If an application is denied, the Town Administrator shall clearly set forth in writing the grounds for denial.
- (c) In the event an application is conditionally approved, the Town Administrator shall clearly set forth in writing the conditions of approval.

- (d) For the purpose of regulating and controlling the licensing of medical marijuana businesses within the Town, the Town Administrator or his or her designated representative is the local licensing authority. The local licensing authority shall have those powers and duties as set forth in this Article and in the Colorado Medical Marijuana Code.

(Ord. 690 §1, 2011)

Sec. 6-244. - Notice of decision.

The Town Administrator shall notify the applicant of the decision on the application within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the Town Administrator's decision to the applicant by certified mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing.

(Ord. 690 §1, 2011)

Sec. 6-245. - Appeal of denial or conditional approval of license.

- (a) An applicant has the right to appeal the Town Administrator's denial or conditional approval of an application to the Board of Trustees.
- (b) An applicant's appeal of the Town Administrator's denial or conditional approval of an application shall be processed in accordance with Chapter 6, Article II of this Code; provided, however, that the applicant's written notice of appeal shall be filed with the Town Administrator within thirty (30) days after the date of mailing of the Town Administrator's decision on the application.
- (c) The applicant shall be provided with not less than ten (10) days prior written notice of the appeal hearing to be held by the Board of Trustees.
- (d) The burden of proof in an appeal filed under this Section shall be on the applicant.
- (e) If the Board of Trustees finds that the Town Administrator properly applied Sections 6-240, 6-241 and 6-242 above, the Board of Trustees shall uphold the decision of the Town Administrator. If the Board of Trustees finds that the Town Administrator misapplied said Sections 6-240, 6-241 and 6-242, the Town Administrator's decision shall be set aside and the license issued (if it was previously denied), or, the conditions of approval stricken or modified.
- (f) Any decision made by the Board of Trustees pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.
- (g) If there is any conflict between the provisions and requirements of this Section and the provisions and requirements of Chapter 6, Article II of this Code, the provisions and requirements of this Section shall control.

(Ord. 690 §1, 2011)

Sec. 6-246. - Contents of license.

A license shall contain the following information:

- (1) The name of the licensee;
- (2) The name of the business that the licensee will be operating;
- (3) The date of the issuance of the license;
- (4) The address at which the licensee is authorized to operate the medical marijuana business;
- (5) The type of medical marijuana business that is being licensed;
- (6) Any special conditions of approval imposed upon the license by the Town Administrator; and
- (7) The date of the expiration of the license.

(Ord. 690 §1, 2011)

**Sec. 6-247. - Inspection of premises.**

Prior to the issuance of a license, the premises at which the medical marijuana business will be operated shall be inspected by the Building Official to determine compliance with the Town's building and technical codes. No license shall be issued if the premises at which the medical marijuana business will be operated do not comply with the Town's building and technical codes. Throughout the term of the license the Building Official may inspect the premises at which the medical marijuana business is operated to determine continuing compliance with the Town's building and technical codes. Access to such premises may be obtained by the Building Official in accordance with the applicable provisions of such codes or other applicable law.

(Ord. 690 §1, 2011)

**Sec. 6-248. - License not transferable.**

A license is nontransferable and nonassignable without the applicable required Town approval (change in ownership, change in location, etc.). Any attempt to transfer or assign a license without Town approval voids the license.

(Ord. 690 §1, 2011)

**Sec. 6-249. - Notice of issuance of license.**

Immediately upon the issuance of a license, the Town Administrator shall send notice of issuance of the license to:

- (1) The Police Department;
- (2) The Building Department;
- (3) The Nederland Fire Department;
- (4) The Town Clerk;
- (5) The Town Treasurer; and
- (6) Any other person as determined by the Town Administrator.

(Ord. 690 §1, 2011)

**Sec. 6-250. - Duration of license; renewal.**

- (a) Except as otherwise provided in this Section, each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed as provided in this Section.
- (b) An application for the renewal of an existing license shall be made to the Town Administrator not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the Town Administrator after the date of expiration. The Town Administrator may waive the forty-five-day time requirement set forth in this Subsection if the applicant demonstrates an adequate reason, as determined by the Town Administrator.
- (c) The provisions of Sections 6-237 through 6-243 of this Article, inclusive, shall apply to the processing of an application to renew a license. The timely filing of a renewal application shall extend the current license until a final decision is made on the renewal application, including any appeal of the Town Administrator's decision to the Board of Trustees.
- (d) At the time of the filing of an application for the renewal of an existing license, the applicant shall pay the applicable fee.
- (e) In the event a medical marijuana business suffers a catastrophic business interruption and fails to provide sales tax returns to the Town, it shall notify the Town within forty-five (45) days of such occurrence. During such period of business interruption, it shall comply with all state rules and regulations for such interruptions. A business that suffers a catastrophic business interruption shall not be deemed to be "inactive" in accordance with Subsection (f) below.
- (f) In the event a medical marijuana store ceases operations for a period of one (1) year and said store occupies one (1) of the four (4) maximum licensed premises in Town, the license for such premises shall be deemed "inactive." Inactive licenses shall expire immediately upon notice issued by the Town Administrator. A licensee whose license expires due to inactivity pursuant to this Subsection may appeal the Town Administrator's determination in accordance with Article II of this Chapter. The Town shall not issue another license to take the place of one (1) of the four (4) maximum number of marijuana licensed premises until such determination of inactivity is final (through failure of the licensee to appeal within ten (10) days or the Board of Trustee's decision on the appeal).
- (g) The Town Administrator may refuse to renew a license for good cause.

(Ord. 690 §1, 2011; Ord. 813 §3, 2020)

#### Sec. 6-251. - Duties of licensee.

It is the duty and obligation of each licensee to do the following:

- (1) Comply with all of the terms and conditions of the license, and any special conditions on the license imposed by the Town Administrator pursuant to Section 6-242 of this Article;
- (2) Comply with all of the requirements of this Article;
- (3) Comply with all other applicable Town ordinances;
- (4) Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including but not limited to Section 18-18-406.3, C.R.S.; the Colorado Medical Marijuana Code and the administrative regulations issued by the Colorado Department of Public Health and Environment, all as amended from time to

time.

- (5) Permit the inspection of its records, building and/or structure and operation by the Town Administrator for the purpose of determining the licensee's compliance with the terms and conditions of the license and all applicable laws. Nothing in this Section shall abrogate or affect any applicable confidentiality provision of state or federal law.

(Ord. 690 §1, 2011)

Sec. 6-252. - Posting of license.

A license shall be continuously posted in a conspicuous location at the medical marijuana business.

(Ord. 690 §1, 2011)

Sec. 6-253. - Suspension or revocation of license.

- (a) A license issued pursuant to this Article may be suspended or revoked by the Town Administrator after a hearing for the following reasons:
  - (1) Fraud, misrepresentation or a false statement of material fact contained in the license application;
  - (2) A violation of any applicable Town or state law or regulation;
  - (3) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license by the Town Administrator pursuant to Section 6-242 of this Article;
  - (4) Failure to permit the Town access to the premises for necessary inspections;
  - (5) Failure to timely pay any bills or fees due to the Town, including but not limited to water bills, sales tax, etc.;
  - (6) A violation of any of the provisions of this Article;
  - (7) The medical marijuana business has been deemed "inactive," pursuant to Section 6-250 above; or
  - (8) Ownership of the medical marijuana business has been transferred without the new owner obtaining a license pursuant to this Article.
- (b) In connection with the suspension of a license, the Town Administrator may impose reasonable conditions.
- (c) A hearing held pursuant to this Section shall be processed in accordance with Chapter 6, Article II of this Code.
- (d) In deciding what conditions, if any, to impose in the event of a suspension, the Town Administrator shall consider:
  - (1) The nature and seriousness of the violation;
  - (2) Corrective action, if any, taken by the licensee;
  - (3) Prior violations, if any, by the licensee;
  - (4) The likelihood of recurrence;
  - (5) All circumstances surrounding the violation;
  - (6) Whether the violation was willful; and
  - (7) Previous sanctions, if any, imposed against the licensee.
- (e)

If the Town Administrator suspends or revokes a license, the licensee may appeal such action to the Board of Trustees in accordance with Chapter 6, Article II of this Code. The burden of proof in such an appeal is on the licensee to demonstrate that there was insufficient evidence of cause to suspend or revoke the license under Subsection (a) of this Section. The Board of Trustees may affirm, reverse or modify the decision of the Town Administrator. Any decision made by the Board of Trustees pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.

- (f) No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.

(Ord. 690 §1, 2011)

#### Sec. 6-254. - Limitation on sale of marijuana.

No marijuana may be sold, given away or transferred at a medical marijuana business except to patients and to primary caregivers.

(Ord. 690 §1, 2011)

#### Sec. 6-255. - Medical marijuana business location.

- (a) Except as provided in Subsection (k) of this Section, no medical marijuana business shall be located at a location that does not conform to the requirements of this Section.
- (b) No medical marijuana store shall be located except within zoning areas Neighborhood Commercial (NC), General Commercial (GC) and Central Business District (CBD).
- (c) No medical marijuana optional premises for cultivation shall be located except in zoning areas Neighborhood Commercial (NC), General Commercial (GC), Industrial (I), and Central Business District (CBD) as a special review use.
- (d) No medical marijuana-infused product facility shall be located except in zoning areas Neighborhood Commercial (NC), General Commercial (GC), Central Business District (CBD) and Industrial (I) as a special review use.
- (e) In addition to the zone district restrictions imposed by Subsections (b) through (d), no medical marijuana optional premises for cultivation or medical marijuana-infused product facility shall be located within five hundred (500) feet of any medical marijuana optional premises for cultivation or medical marijuana-infused product facility. This five hundred (500) feet distance requirement does not apply if the license is held by the same owner and the licenses are operated in the same structure.
- (f) The distances described in Subsection (e) shall be computed by direct measurement in a straight line from the primary entrance of the marijuana facility to the primary entrance of the other marijuana structure.
- (g) In addition to the zone district restrictions imposed by Subsections (b) through (d) above, no medical marijuana business shall be located:
  - (1) Within one hundred (100) feet of a licensed child care facility;
  - (2) Within one hundred (100) feet of any educational institution or school, college or university, either public or private;

- (3) Within one hundred (100) feet of any facility or structure used to provide not-for-profit educational and recreational services for youth and teens;
- (4) Adjacent to property upon which a dwelling unit is located; provided, however, this restriction does not apply to a mixed-use building containing both residential and commercial units;
- (h) The distances described in Subsection (g) above shall be computed by direct measurement from the primary entrance of the structure used for child care, school, college, university or teen center purposes to the primary entrance of the structure used for medical marijuana business purposes, using a straight line.
- (i) Each medical marijuana business shall be operated from a permanent and fixed location. No medical marijuana business shall be permitted to operate from a moveable, mobile or transitory location.
- (j) Subsection (i) above shall not prevent the physical delivery of medical marijuana to a patient or the patient's primary caregiver at a location off of the premises of the licensee's medical marijuana business if:
  - (1) The marijuana was lawfully purchased by the patient or the patient's primary caregiver from the licensee's medical marijuana business;
  - (2) The marijuana is delivered only to the patient or the patient's primary caregiver;
  - (3) The marijuana is delivered only by the licensee or an employee of the licensee; and
  - (4) The marijuana is delivered to a location within the Town.
- (k) The suitability of a location for a medical marijuana business shall be determined at the time of the initial issuance of the license for such business. The fact that changes in the neighborhood that occur after the initial issuance of the license might render the site unsuitable for a medical marijuana business under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such center so long as the license for the center remains in effect.
- (l) No medical marijuana business shall be operated as a "home occupation" as described in Section 16-76 of this Code.

(Ord. 690 §1, 2011; Ord. 813 §4, 2020; Ord. 822 §1, 2021)

#### Sec. 6-256. - Hours of operation.

A medical marijuana store may open no earlier than 8:00 a.m. and shall close no later than 7:00 p.m. the same day. A medical marijuana store may be open seven (7) days a week.

(Ord. 690 §1, 2011; Ord. 813 §5, 2020)

#### Sec. 6-257. - Signage.

All signage for a medical marijuana business shall comply with the requirements of Chapter 18, Article 5 of this Code.

(Ord. 690 §1, 2011)

#### Sec. 6-258. - Required warnings to be posted.

There shall be posted in a conspicuous location in each medical marijuana business a legible sign containing the following warnings:

- (1) A warning that the diversion of marijuana for nonmedical purposes is a violation of state law;
- (2) A warning that the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when impaired by marijuana;
- (3) A warning that loitering in or around the medical marijuana business is prohibited by state law; and
- (4) A warning that possession, distribution and consumption of marijuana for nonmedical purposes is a violation of state law.

(Ord. 690 §1, 2011)

**Sec. 6-259. - Paraphernalia.**

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers may lawfully be sold at a medical marijuana center.

(Ord. 690 §1, 2011)

**Sec. 6-260. - Display of medical marijuana.**

No marijuana shall be displayed so as to be visible to a person of normal visual acuity outside the medical marijuana business.

(Ord. 690 §1, 2011)

**Sec. 6-261. - Confidentiality of information related to medical marijuana businesses.**

- (a) The following information related to a medical marijuana business shall be deemed a confidential record and shall be exempt from the Colorado Open Records Act:
  - (1) The location of an optional premises for cultivation for a medical marijuana business;
  - (2) All identifying personal information and financial information provided by the applicant on an application for a medical marijuana business.
- (b) The Town shall keep the above information confidential and shall redact the same from public records requested under the Colorado Open Records Act or other public records laws.
- (c) Notwithstanding any other provision of law to the contrary, the Town may share information regarding a medical marijuana business with a peace officer or a law enforcement agency.

(Ord. 690 §1, 2011)

**Sec. 6-262. - Taxes.**

Each licensee shall collect and remit sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the licensee at the medical marijuana business.

(Ord. 690 §1, 2011)

Sec. 6-263. - Required record.

- (a) Each licensee shall maintain an accurate and complete record of all marijuana sold or dispensed at the medical marijuana center. The record shall contain the following information:
  - (1) The quantity of marijuana sold or dispensed;
  - (2) The source of the marijuana sold or dispensed; and
  - (3) The date and time the marijuana was sold or dispensed.
- (b) The licensee's records described in Subsection (a) of this Section shall be available for inspection by the Town upon a maximum of two (2) business days' advance notice.

(Ord. 690 §1, 2011)

Sec. 6-264. - Unlawful acts; penalties; injunctive relief.

- (a) It shall be unlawful for any person to operate a medical marijuana business without a license as required by this Article, to violate any terms or conditions of a license issued pursuant to this Article or to violate any other requirement of this Article or this Code. Each day of any such violation shall constitute a separate offense and be subject to a three-hundred-dollar-per-day fine.
- (b) The operation of a medical marijuana business without a valid license issued pursuant to this Article may be enjoined by the Town in an action brought in a court of competent jurisdiction. In any case in which the Town prevails in a civil action initiated pursuant to this Section, the Town may recover its reasonable attorney fees plus costs of the proceeding.
- (c) The remedies provided in this Section are in addition to any other remedy provided by applicable law.
- (d) Criminal acts prohibited by this Section shall constitute a civil infraction subject to those penalties set forth in Section 1-72 of this Code.

(Ord. 690 §1, 2011; Ord. 803 §5, 2019)

Sec. 6-265. - No town liability.

By accepting a license issued pursuant to this Article, a licensee releases the Town, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of the licensee, its operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. The Town Administrator may require a licensee to execute a written instrument confirming the provisions of this Section.

(Ord. 690 §1, 2011)

Sec. 6-266. - Indemnification of town.

By accepting a license issued pursuant to this Article, a licensee, jointly and severally if more than one (1), agrees to indemnify and defend the Town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever,

which arise out of or are in any manner connected with, the operation of the medical marijuana business that is the subject of the license. The licensee further agrees to investigate, handle, respond to and to provide defense for and defend against, any such liability, claims or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees. The Town Administrator may require a licensee to execute a written instrument confirming the provisions of this Section.

(Ord. 690 §1, 2011)

Sec. 6-267. - Other laws remain applicable.

The provisions of this Article do not protect licensees, operators, employees, customers and clients of a permitted medical marijuana business from prosecution pursuant to any laws that may prohibit the cultivation, sale, use or possession of controlled substances. In addition, as of the date of the adoption of this Article, the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment 20), and this Article affords no protection against prosecution under such federal and state laws. Licensees, operators, employees, customers and clients of a permitted medical marijuana business assume any and all risk and any and all liability arising or resulting from the operation of the center under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town, shall not become a personal liability of such person or of the Town.

(Ord. 690 §1, 2011)

Sec. 6-268. - Rules and regulations.

The Town Administrator shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this Article.

(Ord. 690 §1, 2011)

## ARTICLE XI - Regulation of Marijuana

Sec. 6-269. - Short title.

This Article shall be known and may be cited as the "Regulation of Marijuana" Ordinance.

(Ord. 720 §1, 2013)

Sec. 6-270. - Findings.

The Town adopts this Article based upon the following findings:

- (1) On November 6, 2012, the voters of the State of Colorado approved Amendment 64. Amendment 64 added Section 16 of Article XVIII to the Colorado Constitution and created a limited exception from criminal liability under Colorado law for adults twenty-one (21) and over to possess and cultivate marijuana for recreational use

and to establish the licensing and regulation of marijuana establishments in a manner like alcohol as described in Amendment 64.

- (2) The Town of Nederland is permitted under Section 16(5)(f) of Article XVIII of the Colorado Constitution to regulate marijuana-related establishments.
- (3) The majority of Nederland residents voted to regulate marijuana like alcohol, and as such, the Town of Nederland will regulate marijuana establishments in a manner similar to alcohol.
- (4) This Article is necessary and proper to provide for the health, safety and welfare of the Town and the inhabitants thereof.

(Ord. 720 §1, 2013)

#### Sec. 6-271. - Purpose.

It is the purpose of this Article to:

- (1) Require that a marijuana establishment, as defined in this Article, be operated in a safe manner that does not endanger the public welfare.
- (2) Mitigate potential negative impacts that a marijuana establishment might cause on surrounding properties and persons.
- (3) Regulate the conduct of persons owning, operating and using a marijuana establishment in order to protect the public health, safety and welfare.
- (4) Establish a nondiscriminatory mechanism by which the Town can control, through appropriate regulation, the time, place and manner of operation of marijuana establishments within the Town.
- (5) Impose fees to cover the cost to the Town for licensing marijuana establishments in an amount sufficient for the Town to recover its costs of the licensing and enforcement procedures.

(Ord. 720 §1, 2013)

#### Sec. 6-272. - Authority.

The Town hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (1) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;
- (2) Part 3 of Article 23 of Title 31, C.R.S., concerning municipal zoning powers;
- (3) Section 31-15-103, C.R.S., concerning ordinance adoption;
- (4) Section 31-15-401, C.R.S., concerning municipal police powers;
- (5) Section 31-15-501, C.R.S., concerning municipal authority to regulate businesses;
- (6) Section 16(5)(e) of Article XVIII of the Colorado Constitution, concerning local regulation of marijuana;
- (7) Section 16(5)(f) of Article XVIII of the Colorado Constitution, concerning the time, place and manner of operation;
- (8) Article 14 of Title 25, C.R.S., concerning the Colorado Clean Indoor Air Act.

Sec. 6-273. - Definitions.

As used in this Article the following words shall have the following meanings, unless the context clearly requires otherwise.

In addition to the definitions provided in this Section, the other defined terms in Section 16 of Article XVIII of the Colorado Constitution are incorporated into this Article by reference:

*Applicant* means a U.S. citizen and a Colorado resident of two (2) years who is twenty-one (21) years of age or older and who has submitted an application for license pursuant to this Article.

*Application* means an application for a marijuana establishment license submitted pursuant to this Article.

*Approved* means the application has been submitted with the application fee and vetted through all the appropriate Town agencies and has been deemed to be compliant with respect to zoning, fire and building safety and criminal background checks.

*Board of Trustees* means Nederland's Town Board of Trustees.

*CCIAA* means the Colorado Clean Indoor Air Act, Section 25-14-201, et seq., C.R.S., as existing or hereafter amended.

*Clone* means a marijuana cutting or plant culture that does not have roots, a rootball or root hairs observable to the naked eye and shall not be considered marijuana plant as defined in the federal sentencing guidelines at 2D1.1, Note 17.

*Colorado Retail Marijuana Code (CRMC)*, Section 12-34.4-101, et seq., C.R.S., as existing or as hereafter amended.

*Consumer* means a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one (21) years of age or older, but not for resale to others.

*Day* means a calendar day, unless otherwise indicated, i.e. business day.

*Display* means to show or exhibit marijuana, marijuana resin or marijuana product; or otherwise make visible marijuana, marijuana resin or marijuana product.

*Enclosed, locked space* means to surround or encompass; to fence or hem in on all sides by some visible obstruction that shall include a device for securing a door, gate, lid, drawer, or the like in position when closed, consisting of a bolt or system of bolts propelled and withdrawn by a mechanism operated by a key, dial, etc.

*Endanger* means to present a risk of harm to oneself or others.

*Exterior display* means any form of display (see the definition of *display* above) viewable by general public, including a sign or advertisement containing images thereof.

*Good cause* means, for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance:

- a. The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions, or provisions of this Article, any rules promulgated pursuant to this Article, any supplemental local law, rules or regulations, or the requirements of the CRMC and any rules and regulations promulgated thereunder;
- b.

The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the state or local licensing authority;

- c. The licensed premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

*Industrial hemp* means any product that is derived from the genus *Cannabis* that is intended to be used only for industrial and commercial purposes such as but not limited to food materials, seed, seed cake, oil, stalk, leaf, pulp, fiber, polymers, cell fluid or biofuels, but will not include any products or extracts that can induce impairment. *Industrial hemp* does not include marijuana or marijuana products intended for recreational use.

*License* means a license to operate a marijuana establishment issued by the Town pursuant to this Article.

*Licensee* means the person to whom a license has been issued pursuant to this Article.

*Local licensing authority* means the Town Board of Trustees.

*Location* means a particular parcel of land that may be identified by an address or other descriptive means.

*Marijuana* or *marihuana* 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 marihuana concentrate. *Marijuana* or *marihuana* 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 capable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product. Nor shall *marijuana* include any cultivation by-products such as but not limited to nonconsumable green waste plant material or soils.

*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 cultivation facility* means an entity licensed to cultivate, prepare and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities and to other marijuana cultivation facilities, but not to consumers.

*Marijuana establishment* means an entity operating as a marijuana cultivation facility, a marijuana product manufacturing facility, a marijuana testing facility or a retail marijuana store.

*Marijuana product* means concentrated marijuana product and marijuana product 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* means an entity licensed to purchase marijuana; manufacture, prepare and package marijuana product; and sell marijuana and marijuana product to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

*Marijuana resin* means raw marijuana trichomes gathered by mechanical means such as but not limited to dry sieving or water sieving methods, but shall not include marijuana product extracted using industrial and commercial grade solvents such as but not limited to naphtha, butane, propane, hexane, natural gas or super critical CO<sub>2</sub>.

*Marijuana testing facility* means an entity licensed to analyze and certify the safety and potency of marijuana.

*Marijuana transporter* means an entity or person that is licensed by the State pursuant to either C.R.S. Section 12-43.3-406 or Section 12-43.4-406 to transport marijuana and marijuana products from one marijuana establishment to another marijuana establishment and to temporarily store the transported marijuana and marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products under any circumstances.

*Mature flowering plant* means the gametophytic or reproductive state of marijuana in which the plant is in a designated flowering space with a light cycle intended to produce flowers, trichomes and cannabinoids characteristic of recreational marijuana.

*Medical marijuana business* means any business licensed by Article 43.3 of Title 12, C.R.S., which provides for state and local licensing and regulation of medical marijuana businesses.

*Openly* means not protected from unaided observation lawfully made from outside its perimeter not involving physical intrusion.

*Operating fee* means the fee charged by the Town to recover its proximate actual costs of administering this Article, including but not limited to costs related to inspection, administration and enforcement of marijuana establishments.

*Person* means the same as provided in Section 1-21 of this Code.

*Premises* means a distinct and definite location, which may include a building, a part of a building, a room or any other definite contiguous area.

*Primary entrance* means the threshold of the entrance to the marijuana establishment, whether such entrance is indoors or outdoors, that is customarily used by the public to gain access to the business.

*Publicly* means an area that is open to general access without restriction.

*Retail marijuana store* means a premises licensed to purchase marijuana from marijuana cultivation facilities and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

*Sealed containers* means any container used for holding marijuana, marijuana resin or marijuana product, which container is sealed with the intended use for off-premises consumption.

*State licensing authority* means the Executive Director of the Colorado Department of Revenue.

*Town* has the same meaning provided in Section 1-21 of this Code.

*Vegetative* means the sporophytic state of the marijuana plant which does not produce resin or flowers and are bulking up to a desired production size for flowering in a designated space with a light cycle not intended to produce flowers, trichomes and cannabinoids characteristic of recreational marijuana.

Sec. 6-274. - Hemp farming.

The production, manufacture and processing of industrial hemp shall comply with Section 35-61-101, et seq., C.R.S. (State Industrial Hemp Regulatory Program).

(Ord. 720 §1, 2013)

Sec. 6-275. - Marijuana establishment application.

The local licensing authority shall have those powers and duties as set forth in this Article and Section 16 of Article XVIII of the Colorado Constitution and the CRMC, except when any such power, duty or authority is delegated to another entity or person, such as the Town Clerk, under this Article.

- (1) No person shall operate a marijuana establishment within the Town without an approved state and local license for the specific type of establishment.
- (2) A person seeking to obtain a license pursuant to this Article shall file an application with the local licensing authority on a form provided by the local licensing authority.
- (3) The applicant shall be accompanied by the designated operating fee for the type of marijuana establishment, as established from time to time by resolution of the Board of Trustees.
- (4) A license must be obtained for each marijuana establishment location.
- (5) A license issued pursuant to this Article does not eliminate the need for the licensee to obtain all other required Town licenses and approvals related to the marijuana establishment.
- (6) An application for a license under this Article shall contain the following information:
  - a. The applicant's name, address, telephone number and social security number, or federal employer ID number.
  - b. If the owner is a corporation, this shall include corporate articles of incorporation, the name and address of any officer or director of the corporation, and of any person holding any financial interest in the corporation, whether as a result of the issuance of stock, instruments of indebtedness, or otherwise; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.
  - c. If the owner is a partnership, association or limited liability company, partnership agreement or operating agreement, the name and addresses of all partners, members, or persons holding any financial interest in the partnership, association or limited liability company, including those holding an interest as the result of instruments of indebtedness; provided, however, this shall not require disclosure of information pertaining to a bank, savings and loan association or other commercial lender which has loaned funds to the applicant.
  - d. If the owner is not a natural person, the organization documents for all entities identified in the application, and the contact information for the person that is authorized to represent the entity or entities.
  - e. The name and address of the manager of the marijuana establishment, if the manager is proposed to be someone other than the owner, or if the owner is an entity other than a natural person.
  - f.

The names and addresses of all persons holding any financial interest in the marijuana establishment; and the street address of the proposed marijuana establishment.

- g. Proof of the applicant's right to occupy and use the premises whether by deed, lease or otherwise.
- h. A statement of the applicant's personal history, including:
  1. If the applicant has been denied an application for a medical marijuana business or liquor license or any similar state or local licensing law, or had such a license suspended or revoked;
  2. If the applicant has been convicted of a felony or has completed any portion of a sentence due to a felony conviction within the preceding five (5) years, or if the applicant has completed any portion of a sentence for a conviction of a felony regarding the possession, distribution, manufacturing, cultivation or use of a controlled substance within the preceding ten (10) years;
  3. If the applicant is a U.S. citizen and Colorado resident of two (2) years and is twenty-one (21) years of age or older;
  4. If the applicant is a law officer and/or employee of the state or local licensing authority, no license shall be issued to a law officer and/or employee of the state or local licensing authority; and
  5. A completed set of the applicant's and manager's fingerprints on a form approved by local law enforcement.
    - i. A copy of the applicant's state and local sales tax licenses.
    - j. A floor plan of the premises, drawn to scale, showing public and private areas, as well as areas for marijuana storage, cultivation, testing, manufacturing and dispensing.

(Ord. 720 §1, 2013; Ord. 721 §1, 2013)

#### Sec. 6-276. - Confidentiality of information.

The following information related to a marijuana establishment shall be maintained in strict accordance with all applicable law, including but not limited to the Colorado Open Records Act, any other public records laws, and the CRMC. Notwithstanding any other provision of law to the contrary, the Town may share information regarding a marijuana establishment with state or local law enforcement in the course of an investigation.

- (1) All protected personal information or documents provided by the applicant on an application for a marijuana establishment, such as bank account numbers, social security numbers and personal telephone numbers and addresses; and
- (2) Any information about a marijuana consumer gathered in the course of business by a marijuana establishment.

(Ord. 720 §1, 2013)

#### Sec. 6-277. - Investigation of application.

No application shall be approved or license shall be issued if the premises at which the marijuana establishment will be operated does not comply with the Town's building and technical codes.

(1)

Upon receipt of a properly completed application by certified mail, together with all information required in connection therewith and the payment of the local operating fee as required by Section 6-275, the Town Clerk shall transmit the required information to:

- a. The Building Department;
  - b. The Fire Department;
  - c. The Police Department; and
  - d. Any other county or state agency which the Town Clerk determines should properly investigate the application and or premises to be licensed.
- (2) Those Town departments and other local agencies described in Paragraph (1) of this Section shall investigate and notify the Town Clerk of their findings and conclusions concerning zoning, building safety, fire safety and criminal background check.
- (3) The local licensing authority shall approve, deny or conditionally approve a pending application for a retail marijuana store, after conducting a public hearing on the application, within forty-five (45) business days of the receipt of the completed application received by certified mail. Notice of the public hearing before the local licensing authority shall be posted and published not less than ten (10) days prior to the hearing in accordance with Section 12-43.4-302, C.R.S. The Town Clerk is authorized to approve, deny or conditionally approve a pending application for any other type of retail marijuana establishment without conducting a public hearing on the application. The Town Clerk shall render his or her decision within forty-five (45) business days of the receipt of the completed application by certified mail.
- (4) the Town Clerk shall notify the applicant of the decision on the pending application by mailing a copy of the decision to the applicant by certified mail, postage prepaid, at the address designated in the application. Notice is deemed to have been properly given upon mailing. The Town Clerk is further authorized to notify the applicant of the decision verbally at the time of mailing. A marijuana establishment may not operate until it is licensed by the state licensing authority pursuant to the CRMC and approved by the Town in accordance with this Section.
- (5) In the event an application is conditionally approved, the Town Clerk shall clearly set forth in writing the conditions of approval.

(Ord. 720 §1, 2013; Ord. 721 §2, 2013)

#### Sec. 6-278. - Denial and appeals.

- (a) The local licensing authority or Town Clerk shall deny an application for a license under this Article if it determines that:
- (1) Information contained in the application is found to be false in any material respect; or
  - (2) The application fails to meet any of the standards set forth in Section 6-279 below. If an application is denied, the operating fee shall be refunded by fifty percent (50%).
- (b) An applicant has the right to appeal a decision of the Town Clerk to deny or to conditionally approve an application by filing a written notice of appeal within seven (7) days of the date of the decision. The matter shall be scheduled before the Board of Trustees no later than thirty (30) days from the date the notice of appeal is filed with the Town Clerk's office. On appeal, the Board of Trustees shall determine whether the Town Clerk's determination that denial

is required by Paragraph 6-278(a)(1) or (2) above or, in the case of conditional approval, that the condition imposed is reasonably calculated to ensure compliance with this Article, is supported by a preponderance of the evidence available to the Town Clerk when he or she rendered his or her decision. The burden on appeal shall be on the applicant.

- (c) Any decision made by the local licensing authority pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure.
- (d) The applicant's failure to timely appeal a decision in accordance with Subsection (b) or (c) hereof, as applicable, is a waiver of the applicant's right to contest the decision.

(Ord. 720 §1, 2013; Ord. 721 §3, 2013)

Sec. 6-279. - Standards for approval of licenses; cap on number of licenses.

- (a) The Town Clerk shall issue a local license under this Article when the local licensing authority or Town Clerk, as appropriate, determines that:
  - (1) The application, including any required attachments and submissions, is complete and signed by the applicant.
  - (2) The applicant has paid all required fees.
  - (3) The application does not contain a material falsehood or misrepresentation.
  - (4) Prior to the issuance of a license, the premises at which the marijuana establishment will be operated has been inspected by the local agencies described in Paragraph 6-277(1) above to determine compliance with the Town's building and technical codes and is permitted under Section 6-284 of this Article.
  - (5) The application, applicant and proposed marijuana establishment complies with all of the requirements of this Article, this Code and all state laws and administrative regulations pertaining to retail marijuana.
  - (6) The applicant and manager are of good moral character. In making this determination or when considering a criminal conviction, the local licensing authority and Town Clerk shall be governed by the provisions of this Article and Section 24-5-101, C.R.S. If the local licensing authority or Town Clerk takes into consideration information concerning the applicant's criminal history record, the local licensing authority or Town Clerk shall consider the period of time between the applicant's last criminal conviction as described in Section 6-275 above in the consideration of the application for a license.
  - (7) The proposed marijuana establishment and the applicant, including each individual owner, investor and manager, satisfy the requirements of this Code.
  - (8) There are any special conditions on a license as may be necessary to protect the public health, safety and welfare, and to obtain compliance with the requirements of this Article and other applicable law but such conditions shall not be "unreasonably impracticable" as defined in Section 16 of Article XVIII of the Colorado Constitution.
  - (9) The license has not been transferred without the applicable required Town approval (change in ownership, change in location, fees, etc.). Any attempt to transfer or assign a license without Town approval voids the license.
- (b)

The maximum number of marijuana licensed premises for medical marijuana store licenses and retail marijuana store licenses is four (4) total licensed premises. Applicants for medical marijuana store licenses and retail marijuana store licenses shall be denied a license if the approval of the license would exceed the cap on marijuana licensed premises. The Local Licensing Authority permits dual operation of a medical marijuana store license and a retail marijuana store license at the same licensed premises.

(Ord. 720 §1, 2013; Ord. 721 §§4, 5, 2013; Ord. 813 §6, 2020)

#### Sec. 6-280. - Contents of license.

A license shall contain the following information:

- (1) The name of the licensees;
- (2) The name of the business that the licensees will be operating;
- (3) The date of the issuance of the license;
- (4) The address at which the licensees are authorized to operate the marijuana establishment;
- (5) The type of marijuana establishment that is being licensed;
- (6) Any special conditions of approval imposed upon the license by the local licensing authority or Town Clerk; and
- (7) The date of the expiration of the license.

(Ord. 720 §1, 2013; Ord. 721 §6, 2013)

#### Sec. 6-281. - Renewal of license.

- (a) Except as otherwise provided in this Section, each license issued pursuant to this Article shall be valid for one (1) year from the date of issuance and may be renewed as provided in this Section.
- (b) Ninety (90) days prior to the expiration date of an existing license, the Town Clerk shall notify the licensee of such expiration date by certified mail at the business's last known mailing address.
- (c) A renewal of an existing license shall be made to the Town Clerk not less than forty-five (45) days prior to the date of expiration by certified mail. No renewal shall be accepted by the Town Clerk after the date of expiration. The Town Clerk may waive the forty-five-day time requirement set forth in this Subsection in writing sent by certified mail if the applicant demonstrates an adequate reason, as determined by the Town Clerk.
- (d) At the time of renewal of an existing license, the applicant shall pay the applicable fees.
- (e) The provisions of Sections 6-275 through 6-279, inclusive, shall be updated and applied if applicable to an existing application on file with the Town to renew a license. The timely payment of license fees shall extend the current license until a final decision is made on the renewal, including any appeal of the decision.
- (f) The Town Clerk shall deny a renewal application upon a finding that the business or the applicant fails to meet the requirements of this Article or has failed to satisfy or comply with any conditions previously imposed upon the license.
- (g) In addition to the denial criteria set forth under Subsection (f) above, the Town Clerk, in his or her discretion, may revoke or elect not to renew a retail marijuana store license if he or she determines that the licensed premises have been inactive, without good cause, for at least a period of one (1) year. Inactive licenses shall expire

immediately upon written notice issued by the Town Clerk by certified mail.

- (h) An applicant has the right to appeal a decision of the Town Clerk made under Subsection (f) or (g) of this Section by filing a written notice of appeal within seven (7) days of the date of the decision. The matter shall be scheduled before the Board of Trustees no later than thirty (30) days from the date the notice of appeal is filed with the Town Clerk's office. On appeal, the Board of Trustees shall determine whether the Town Clerk's findings and determination are supported by a preponderance of the evidence available to the Town Clerk when he or she rendered his or her decision. The burden on appeal shall be on the applicant.

(Ord. 720 §1, 2013; Ord. 721 §7, 2013)

#### Sec. 6-282. - Duties of licensee.

It is the duty and obligation of each licensee to do the following:

- (1) Operate all licensed premises in a safe manner that does not endanger the public welfare.
- (2) Comply with all of the terms and conditions of the license, and any special conditions on the license imposed pursuant to Section 6-279 of this Article;
- (3) Comply with all of the requirements of this Article;
- (4) Comply with all other applicable Town ordinances;
- (5) Comply with all state and local laws and administrative regulations pertaining to retail marijuana, including but not limited to Section 16 of Article XVIII of the Colorado Constitution, state statutes and the administrative regulations issued by the Colorado Department of Revenue, all as amended from time to time;
- (6) Permit the inspection of its records, building and/or structure, and operation by the licensing authorities for the purpose of determining the licensee's compliance with the terms and conditions of the license and all applicable laws. Nothing in this section shall abrogate or affect any applicable confidentiality provision of state or federal law;
- (7) Each licensee shall collect and remit all applicable taxes on all marijuana, marijuana product and other tangible personal property sold by the licensed marijuana establishment; and
- (8) All licenses shall be continuously posted in a conspicuous location at the marijuana establishment.

(Ord. 720 §1, 2013; Ord. 721 §8, 2013)

#### Sec. 6-283. - Time of operation.

- (a) Hours of operation may commence no earlier than 8:00 a.m. and end no later than midnight the same day.
- (b) A retail marijuana store may be open seven (7) days a week.

(Ord. 720 §1, 2013)

#### Sec. 6-284. - Place of operation.

- (a) No marijuana establishment shall be located at a location that does not conform to the requirements of this Section, except as provided in Subsection (l) of this Section (see Section 16-32 of this Chapter).
- (b)

No retail marijuana store shall be located except within zoning areas General Commercial (GC) and Central Business District (CBD), and, with a special review use approval pursuant to Article III of Chapter 16, Neighborhood Commercial (NC).

- (c) No marijuana product manufacturing facility shall be located except with a special review use approval pursuant to Article III of Chapter 16 in zoning areas Neighborhood Commercial (NC), Central Business District (CBD), General Commercial (GC) and Industrial (I).
- (d) No marijuana testing facility shall be located except with a special review use approval pursuant to Article III of Chapter 16 in zoning areas Neighborhood Commercial (NC), Central Business District (CBD), General Commercial (GC) and Industrial (I).
- (e) No marijuana cultivation facility shall be located except with a special review use approval pursuant to Article III of Chapter 16 in zoning areas Neighborhood Commercial (NC), Central Business District (CBD), General Commercial (GC) and Industrial (I).
- (f) In addition to the zone district restrictions imposed by Subsections (b) through (e), no marijuana cultivation facility, marijuana product manufacturing facility, or marijuana testing facility shall be located within five hundred (500) feet of any other marijuana cultivation facility, marijuana product manufacturing facility, or marijuana testing facility. This five hundred (500) feet distance requirement does not apply if the license is held by the same owner and the licenses are operated in the same structure.
- (g) The distances described in Subsection (f) shall be computed by direct measurement in a straight line from the primary entrance of the marijuana facility to the primary entrance of the other marijuana structure.
- (h) In addition to the zone district restrictions imposed by Subsections (b) through (e) above, no retail marijuana store shall be located:
  - (1) Within one hundred (100) feet of a licensed child care facility;
  - (2) Within one hundred (100) feet of any educational institution or school, college or university, either public or private;
- (i) The distances described in Subsection (h) shall be computed by direct measurement in a straight line from the primary entrance of the structure used for child care, educational institution, school, college, or university to the primary entrance of the structure used for a retail marijuana store using a route of direct pedestrian access.
- (j) Each marijuana establishment shall be operated from a permanent and fixed location. No marijuana establishment shall be permitted to operate from a moveable, mobile or transitory location.
- (k) A person who holds both a business license pursuant to Article 43.3 of Title 12, C.R.S., and a business license pursuant to this Article may operate both licenses in the same premises provided they meet all applicable requirements of the CRMC and of this Article.
- (l) The suitability of a location for a marijuana establishment shall be determined upon receipt of an application by certified mail. The fact that changes in the neighborhood that occur after the initial issuance of the license might render the site unsuitable for a marijuana establishment under this Section shall not be grounds to suspend, revoke or refuse to renew the license for such an establishment so long as the license for the establishment remains active.

(Ord. 720 §1, 2013; Ord. 721 §§9, 10, 2013; Ord. 739 §2, 2016; Ord. 819 §1, 2021)

- (a) All signage for a marijuana establishment shall comply with the requirements of Chapter 18, Article 5 of this Code (also see Section 18-96 of this Code).
- (b) All cultivation of marijuana shall be in an enclosed, locked space and shall not have a plant count that exceeds more than one (1) plant per square foot and shall provide a minimum of at least a three-foot clearance for fire safety between all points of ingress and egress. The plant-per-square-foot limitations in this Section shall not apply to clones or seedlings or other means of propagation.
- (c) All marijuana establishments shall maintain all security requirements as mandated by the CRMC and all other applicable state laws.
- (d) Marijuana cultivation facility license:
  - (1) A marijuana cultivation facility license shall be issued to persons producing marijuana, marijuana clones, marijuana seeds or marijuana resin for the following purposes only:
    - a. To cultivate, manufacture, rectify or breed marijuana;
    - b. To sell marijuana, marijuana clones, marijuana seeds or marijuana resin of their own manufacture within the State. A marijuana cultivation facility licensed under this Article may solicit business directly from a licensed marijuana cultivation facility, marijuana product manufacturing facility or retail marijuana store but not consumers; any marijuana sold at wholesale by a marijuana cultivation facility shall be subject to applicable wholesale taxes.
    - c. Marijuana cultivation facilities shall not be open to the public, except other marijuana establishment license holders.
  - (2) Marijuana cultivation facility licenses may be combined in a common area solely for the purposes of cultivating, manufacturing, rectifying or breeding marijuana, marijuana clones, marijuana seeds or marijuana resin and used to provide marijuana to more than one (1) licensed marijuana establishment so long as the holder of the licenses is also a common owner of each licensed marijuana establishment to which marijuana is provided.
  - (3) Each marijuana cultivation facility licensee shall retain evidence of each transaction of marijuana, marijuana clones, marijuana seeds or marijuana resin with a licensed marijuana establishment in the form of a receipt (may be issued on paper or electronically) showing the name of the licensed marijuana establishment, the date of transaction, a description of the marijuana, marijuana clones, marijuana seeds or marijuana resin, and the price paid for each. The licensee shall retain all receipts for a period of three (3) years and make it available to the state and local licensing authorities at all times during regular business hours.
- (e) Marijuana product manufacturing facility license:
  - (1) A marijuana product manufacturing facility license shall be issued to persons manufacturing and selling marijuana products for the following purposes:
    - a. To purchase, manufacture, prepare, package marijuana and/or sell marijuana products manufactured within the State. A marijuana product manufacturing facility licensed under this Section may solicit business directly from a licensed marijuana cultivation facility, marijuana product manufacturing facility or a retail marijuana store but not consumers; any marijuana or marijuana products sold at wholesale by a marijuana product manufacturing facility shall be subject to applicable wholesale taxes.
  - (2)

Prior to operating an additional sales room location, a marijuana product manufacturing facility that has received a license pursuant to this Article shall send a copy of the application or supplemental application for an additional sales room to the local licensing authority. The local licensing authority may deny the proposed sales room location if the local licensing authority determines that issuance of the proposed sales room license would be in conflict with the reasonable requirements of the neighborhood.

- (3) A marijuana product manufacturing facility that also holds a marijuana cultivation facility license may engage in the wholesale sale of marijuana, marijuana clones, marijuana seeds or marijuana resin that the licensee manufactured at its licensed premises where the marijuana was manufactured or at a licensed sales room to another licensed marijuana establishment. Any marijuana sold at wholesale by a marijuana manufacturing facility shall be subject to applicable wholesale taxes.
  - (4) Each marijuana product manufacturing facility licensee shall retain evidence of each transaction of marijuana or marijuana product with a licensed marijuana establishment in the form of a receipt (may be on paper or electronically) showing the name of the licensed marijuana establishment, the date of transaction, a description of the marijuana or marijuana product and the price paid for each. The licensee shall retain all receipts for a period of three (3) years and make it available to the state and local licensing authorities at all times during business hours.
- (f) Retail marijuana store license:
- (1) A retail marijuana store license shall be issued to persons retailing or displaying marijuana, marijuana clones, marijuana seeds, marijuana resin, marijuana products and marijuana accessories to consumers, provided that:
    - a. Marijuana intended for off-premises consumption must be in properly labeled sealed containers compliant with state regulations;
    - b. The marijuana, marijuana clones, marijuana seeds, marijuana resin or marijuana products are purchased from a licensed marijuana establishment, other than those that are manufactured by the licensee; and
    - c. At no time shall marijuana be externally displayed in any storefront or other publicly viewed fashion.
  - (2) There shall be posted in a conspicuous location in each retail marijuana store a legible sign 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 marijuana 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 older for you to purchase marijuana for a person under twenty-one years of age.

It is illegal under state law to drive a motor vehicle or operate machinery when impaired by marijuana.

It is illegal to consume marijuana or marijuana products in public.

It is illegal to transport marijuana or marijuana products across state lines.

Fines and imprisonment may be imposed by the courts for violation of these provisions.

- (3) A retail marijuana store that also holds a marijuana cultivation facility license may engage in the wholesale sale of marijuana, marijuana clones, marijuana seeds or marijuana resin that the licensee manufactured at its licensed premises where the marijuana was manufactured or at its retail marijuana store to another licensed marijuana establishment. Any marijuana sold at wholesale by a retail marijuana store shall be subject to applicable wholesale taxes.
- (4) Each retail marijuana store licensee shall retain evidence of each transaction of marijuana, marijuana clones, marijuana seeds, marijuana resin or marijuana products with a licensed marijuana establishment in the form of a receipt showing the name of the licensed marijuana establishment, the date of transaction, a description of the marijuana, marijuana clones, marijuana seeds, marijuana resin or marijuana products and the price paid for each. The licensee shall retain all receipts for a period of three (3) years and make it available to the state and local licensing authorities at all times during regular business hours.
- (5) It shall be unlawful for any retail marijuana store or any person, partnership, association, organization or corporation interested financially in or with a retail marijuana store to be interested financially, directly or indirectly, in the business of any other retail marijuana store licensed pursuant to this Article.
- (g) Marijuana testing facility license. A marijuana testing facility license shall be issued to persons analyzing and certifying the safety and potency of marijuana, marijuana clones, marijuana seeds, marijuana resin or marijuana products at a licensed premises. The licensee shall retain all receipts for a period of three (3) years and make it available to the state and local licensing authorities at all times during regular business hours.

(Ord. 720 §1, 2013)

Sec. 6-286. - Unlawful acts; penalties; injunctive relief.

The provisions of this Article shall not apply to the sale or distribution of sacramental marijuana sold and used for religious purposes.

- (1) It shall be unlawful for any person to operate a marijuana establishment without possessing both a valid state and local license. Each day of any such violation shall constitute a separate offense and be subject to a three-hundred-dollar-per-day fine; and may be enjoined by the Town in an action brought in a Court of competent jurisdiction. In any case in which the Town prevails in a civil penalty initiated pursuant to this Section, the Town may recover its reasonable attorney fees plus costs of the proceeding.
- (2) It shall be unlawful to sell, advertise or consume marijuana, marijuana clones, marijuana seeds, marijuana resin or marijuana products in establishments that sell alcohol, or in any designated area used to serve anyone under twenty-one (21) years of age.
- (3) It shall be unlawful to sell, serve, give away, dispose of, exchange or deliver marijuana or marijuana products to any person under the age of twenty-one (21) or to anyone who does not present a government issued identification at the time of purchase.
- (4) It shall be unlawful to sell, serve, give away, dispose of, exchange or deliver or permit the sale, serving, giving or procuring of any marijuana or marijuana products to a visibly intoxicated person.
- (5)

It shall be unlawful for any adult twenty-one (21) years of age and over to purchase marijuana or marijuana products with the intent of delivering to a person under twenty-one (21) years of age or a non-Colorado resident for out-of-state transport with or without remuneration.

- (6) It shall be unlawful to sell more than a quarter of an ounce of marijuana or more than a quarter of an ounce equivalent of marijuana products during a single transaction to a nonresident of the State.
- (7) It shall be unlawful to sell a non-Colorado resident marijuana plants, seeds or clones.
- (8) It shall be unlawful for any person to cultivate marijuana unless it is in an enclosed, locked space.
- (9) It shall be unlawful for any person to exceed the personal use of marijuana limitations for vegetative and mature flowering plants per adult unless as authorized by Section 14 of Article XVIII of the Colorado Constitution. Limitations in this Section shall not apply to clones.
- (10) It shall be unlawful for any person to extract marijuana concentrates using any industrial grade solvents such as but not limited to butane, diethyl ether, hexane, naphtha, petroleum ether, propane or natural gas or super critical CO<sub>2</sub> on any property zoned residential. This shall not apply to food grade ethanol. All extraction equipment in contact with solvents must be food grade stainless steel or glass.
- (11) It shall be unlawful to sell marijuana cultivated, sprayed, fertilized or otherwise exposed with any chemical or substance banned by the department of agriculture for food production. Violation of this Section shall be grounds for revocation of a license.
- (12) It shall be unlawful to sell marijuana or marijuana products that are contaminated with insects, mold or any other ingredient or agent not listed or publicly posted. Any product found to be contaminated shall be disposed of.
- (13) It shall be unlawful to dispose of any fertilizers, pesticides, fungicides and or chemicals in a manner not compliant with safe disposal practices as defined by either the Department of Health and/or Department of Agriculture, whichever is applicable.
- (14) The remedies provided in this Section are in addition to any other remedy provided by applicable law.
- (15) Acts prohibited by this Section shall constitute civil infractions subject to those penalties set forth in Section 1-72 of this Code.

(Ord. 720 §1, 2013; Ord. 727 §1, 2014; Ord. 739 §3, 2016; Ord. 803 §6, 2019)

Sec. 6-287. - Suspension; revocation; fines.

- (a) In addition to any fines or other sanctions prescribed by Article II of Chapter 6 of this Code, this Article or rules promulgated pursuant to this Article, the local licensing authority has the power, on their own motion or on complaint, after investigation and opportunity for a hearing at which the licensee shall be afforded an opportunity to be heard, to suspend, revoke or fine a marijuana establishment license issued by the Town for a violation by the licensee or by any of the agents or employees of the licensee. The Town Clerk has 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 a hearing that the local licensing authority is authorized to conduct for the following reasons:
  - (1) Fraud, misrepresentation or a false statement of material fact contained in the license application;

- (2) A pattern of intentional violations of any applicable Town or state law or regulation;
  - (3) A violation of any of the terms and conditions of the license, including any special conditions of approval imposed upon the license pursuant to Section 6-279 of this Article;
  - (4) Refusal to permit the Town access to the premises for necessary inspections;
  - (5) Failure to timely pay any bills or fees due to the Town, including but not limited to water bills, sales tax, etc.;
  - (6) The marijuana establishment has been deemed "inactive," pursuant to Section 6-281; and
  - (7) Ownership of the marijuana establishment has been transferred without the new owner obtaining a license pursuant to this Article.
- (b) In connection with the suspension of a license, the local licensing authority may impose special conditions but such conditions shall not be unreasonably impracticable.
- (c) A hearing held pursuant to this Section shall be processed in accordance with Chapter 6, Article II of this Code.
- (d) In deciding what conditions, if any, to impose in the event of a suspension the local licensing authority shall consider:
- (1) The nature and seriousness of the violation;
  - (2) Corrective action, if any, taken by the licensee;
  - (3) Prior violations, if any, by the licensee;
  - (4) The likelihood of recurrence;
  - (5) All circumstances surrounding the violation;
  - (6) Whether the violation was willful; and
  - (7) Previous sanctions, if any, imposed against the licensee.
- (e) Any decision made by the local licensing authority pursuant to this Section shall be a final decision and may be appealed to the District Court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application.
- (f) No fee previously paid by a licensee in connection with the application shall be refunded if such license is suspended or revoked.

(Ord. 720 §1, 2013; Ord. 721 §§11, 12, 2013)

**Sec. 6-288. - No town liability.**

By accepting a license issued pursuant to this Article a licensee releases the Town, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of the licensee, its operators, employees or agents for a violation of any state or federal law.

(Ord. 720 §1, 2013)

**Sec. 6-289. - Other laws remain applicable.**

Except for conduct covered by the Colorado Constitution and this Article, this Article affords no protection against prosecution under other state laws. Licensees, operators, employees, customers of an approved marijuana establishment assume any and all risk and any and all liability arising or resulting from the operation of the marijuana establishment under state law. Further, to the greatest extent permitted by state law, any actions taken under the provisions of this Article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the Town shall not become a personal liability of such person or of the Town.

(Ord. 720 §1, 2013)

#### Sec. 6-290. - Signs.

In addition to complying with all other sign regulations of this Code, retail marijuana stores and medical marijuana dispensaries shall display a six-inch-by-six-inch sign, purchased from the Town, clearly visible and legible at the entrance to the business, that gives notice that it is a retail marijuana store or medical marijuana dispensary, and of the fact that the premises are off limits to minors or those under the age of twenty-one (21) years for retail stores, or eighteen (18) years for dispensaries, as the case may be. No sign for a marijuana establishment business shall be lit with flashing lights or advertise marijuana or pictorial representations of marijuana other than the one provided by the Town.

(Ord. 720 §3, 2013)

#### Sec. 6-291. - Marijuana transporters.

The Town shall not approve nor issue any license to a marijuana transporter within the Town limits.

(Ord. 750 §3, 2017)

#### Secs. 6-292—6-300. - Reserved.

### CHAPTER 7 - Health, Sanitation and Animals

#### ARTICLE 1 - Administration and Abatement of Nuisances

#### Sec. 7-1. - Definitions.

As used in this Chapter, the following terms shall have the meanings indicated:

*Abatement* means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a violation by such means, in such a manner and to such an extent as the applicable authorized inspector or Municipal Judge determines is necessary in the interest of the general health, safety and welfare of the community.

*Brush* means plant growth growing out of place at the location where growing and shall include all cuttings from trees and bushes; and also high and rank shrubbery growth which may conceal filthy deposits.

*Inoperable vehicle* means any automobile, truck, tractor, motorcycle or self-propelled vehicle which is in 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. The existence of any of the following conditions shall raise the presumption that a vehicle is inoperable:

- a. Placement of the vehicle or parts thereof upon jacks, blocks, chains or other supports.
- b. Absence of one (1) or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.

*Litter* means the scattering or dropping of rubbish, trash or other matter, organic or mineral.

*Noxious weed* means an alien plant, or parts thereof, which is classified as a List A, List B or List C Noxious Weed pursuant to the Colorado Noxious Weed Act, Sections 35-5.5-101 through 119, C.R.S. "List A" includes rare noxious weed species that by law are subject to eradication wherever detected statewide in order to protect neighboring lands and the State as a whole. "List B" includes noxious weed species with discrete statewide distributions that by law are subject to eradication, containment or suppression in portions of the State designated by the State Agriculture Commissioner, or designee, in order to stop the continued spread of these species. "List C" includes widespread and well-established noxious weed species for which control is recommended but not required by the State, although local governing bodies may require management.

- a. *Eradicate* means to remove the reproductive portions of noxious weed species or specified noxious weed populations in largely uninfested areas to zero and/or permanently eliminate the species or populations.
- b. *Contain* means to maintain an intensively managed buffer zone that separates infested regions where suppression activities prevail, from largely uninfested regions where eradication activities prevail.
- c. *Suppress* means to reduce the vigor of weed populations within an infested region, decrease the propensity of noxious weed species to spread to surrounding lands, and mitigate the negative effects of noxious weed populations on infested lands.

*Public nuisance from marijuana establishments*, as defined in Section 6-273 of this Code, means:

- a. Any smell of marijuana detected at the property line.
- b. Any debris left outside the establishment which contains significant amounts of THC and is not properly composted.
- c. Any concentrated chemicals, detergents, fertilizers, pesticides or marijuana products introduced into the sewer system.
- d. Any concentrated chemicals, detergents, fertilizers, pesticides or marijuana products deposited outside the establishment without proper dilution.
- e. Any high intensity light used for growing plants visible to the general public from dusk to dawn.
- f. Any view of marijuana plants from the property line or public right-of-way.
- g. Any other nuisance defined in this Section related to a marijuana establishment.

*Rubbish* means any type of debris, trash, waste or rejected matter.

*Trash* means any worn-out, broken up or used refuse, rubbish, toppings, twigs, leaves of trees or worthless matter or material.

(Ord. 84 §1, 1948; Ord. 195 §1, 1981; Ord. 379 §1, 1994; Ord. 435 §1, 1996; Ord. 720 §2, 2013; Ord. 733 §1, 2014; Ord. 736 §1, 2015)

Sec. 7-2. - Common law nuisances.

Any nuisance which has been declared to be such by state courts or statutes or known as such at common law shall constitute a nuisance in the Town, and any person causing or permitting any such nuisance shall be in violation of this Article.

(Ord. 435 §1, 1996)

Sec. 7-3. - Prohibition of nuisances.

No person being the owner, agent or occupant, or having under his or her control any building, lot or premises or unimproved real estate within the limits of the Town, shall maintain or allow any nuisance to be or remain therein.

(Ord. 435 §1, 1996)

Sec. 7-4. - Ascertaining nuisances.

Whenever the pursuit of any trade, business or manufacture or the maintenance of any substance or condition of things shall, upon investigation, be considered by the Town Administrator dangerous to the health of any of the inhabitants of the Town, the same shall be considered a nuisance and shall be abated.

(Ord. 435 §1, 1996)

Sec. 7-5. - Filing complaint.

In addition to or in lieu of any procedure for abatement, a direct complaint may be filed by any person or police officer against any person who violates any provision of this Chapter.

(Ord. 435 §1, 1996)

Sec. 7-6. - Abatement of nuisances.

- (a) Notice of abatement. The authorized inspector as provided by Section 7-8(a), upon the discovery of any nuisance on public or private property in the Town, shall notify the owner or occupant of such property in writing, requiring the owner or occupant of the property to remove and abate from the property the thing or things therein described as a nuisance within the time specified in the notice.
  - (1) The time for abatement of a nuisance posing an imminent danger of damage or injury to or loss of life, limb, property or health shall not exceed one (1) day.
  - (2) As to other nuisances, the reasonable time for abatement shall not exceed seven (7) days unless it appears from the facts and circumstances that compliance could not reasonably be made within seven (7) days or that a good faith attempt at compliance is being made.

- (3) If the owner or occupant shall fail to comply with the requirements for a period longer than that named in the notice, then the Mayor or the Marshal shall proceed to have the nuisance described in the notice removed or abated from the property described in the notice without delay; and the Mayor or the Town Marshal shall have the authority to call for any necessary assistance. In no event shall the notice described by this Section be required prior to issuance of a summons and complaint.
- (b) Service of notice. The written notice to abate shall be served by an authorized inspector of the Town by:
- (1) Personally delivering a copy of the notice to the owner of the property described in the notice if the owner also resides at the property;
  - (2) Personally delivering a copy of the notice to the nonowner occupant or resident of the property described in the notice and mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner as reflected in the County real estate records; or
  - (3) Mailing a copy of the notice by certified mail, return receipt requested, to the last known address of the owner of the property described in the notice as reflected in the County real estate records if the property is unoccupied and by posting a copy of the notice in a conspicuous place at the unoccupied premises.
- (c) Contents of notice. Any notice issued pursuant to the provisions of this Section to the owner, agent or occupant of property in which a nuisance is discovered shall describe the condition that is a nuisance; state the time in which the condition is to be removed and abated from the property; and contain a statement that if the nuisance is not abated within seven (7) days, an action may be brought in the Municipal Court to abate the nuisance and that the costs of abatement, plus fifteen percent (15%) of such cost for inspection, and other additional administrative costs, may be assessed against the person found by the court to have caused, allowed to be caused or allowed to continue the public nuisance and may become a lien upon any property on which the abatement was performed.

(Ord. 379 §3, 1994)

#### Sec. 7-7. - Action to abate public nuisance.

When a public nuisance has not been voluntarily abated within the time specified in the notice to abate, the following procedure shall apply:

- (1) The Town may bring an action in the Municipal Court to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent, occupant or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, by the Mayor or Town Marshal.
- (2) The action to declare and abate a public nuisance shall be brought by the Town in the name of the people of the Town, by the filing of a complaint, which shall be verified or supported by an affidavit. Summons shall be issued and served as in civil cases, and any employee of the Town who is over the age of eighteen (18) may serve the summons and verified complaint upon the owner, agent, occupant or the person who allowed the nuisance to be caused or to continue (hereafter referred to as the "respondent"). Trial shall be to the Court and the Colorado Municipal Court Rules shall apply.
  - a. A notice of appearance shall be served with the summons and complaint. The appearance date shall be not less than twenty-one (21) days from the date of service of the summons and complaint. The trial shall be held upon the appearance date, unless the Court grants a continuance for good cause shown.

- b. The respondent shall file a response on or before the appearance date set forth in the notice of appearance.
  - c. Upon the date and at the time set for appearance and trial, if the respondent has filed no response and fails to appear and if the Town proves that proper service was made on the respondent at least twenty-one (21) days prior to the appearance date, the Court may grant such orders as are requested by the Town; except that the Court shall order that enforcement by the Town be stayed for ten (10) days and that a copy of the Court's order be mailed to the respondent at his or her last known address. Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against a nonappearing party. For good cause shown, and prior to enforcement, the Court may set aside an entry of default and the judgment entered thereon.
  - d. Any violation of any injunction or order issued by the Municipal Court in an action to abate a public nuisance may be punished as a contempt of court or by a fine not to exceed three hundred dollars (\$300.00). Unless the violation by its nature cannot be corrected, each day's failure to comply with an injunction or order to abate shall constitute a separate violation for which an additional penalty may be imposed.
  - e. The judgment of the Municipal Court may be appealed to the District Court.
- (3) The Town may bring an action in the District Court having jurisdiction to have the nuisance declared as such by the Court and for an order enjoining the public nuisance or authorizing its restraint, removal, termination or abatement by the owner, agent, occupant or the person who caused the nuisance or the person who allowed the nuisance to be caused or to continue, by the Mayor or Town Marshal pursuant to the provisions of this Article and applicable laws and rules of procedure.
- (4) The remedies specified in this Section shall be in addition to all other remedies provided by law.

(Ord. 379 §3, 1994; Ord. 435 §1, 1996)

#### Sec. 7-8. - Inspection of properties.

- (a) Authorized inspector. The Mayor and Town Marshal shall have the power and authority to appoint and authorize any police officer, building inspector, code enforcement officer or other officer of the Town to inspect and examine any public or private property in the Town for the purpose of ascertaining the nature and existence of any nuisance.
- (b) Right of entry generally. Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever an authorized inspector has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a nuisance hereunder, such inspector may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed on him or her; provided, however, that if such building or premises are occupied, such inspector shall first present proper credentials and request entry; and if such building or premises are unoccupied, he or she shall first make a reasonable effort to locate the owner or occupant or other person having charge or control of the building or premises, and upon locating the owner, occupant or other person shall present proper credentials and request entry. If entry is refused, the authorized inspector shall give the owner or occupant, or if the owner or occupant cannot be located after a reasonable effort, he or she shall leave at the building or premises, a written notice of intention to inspect not

sooner than twenty-four (24) hours after the time specified in the notice. The notice given to the owner or occupant or left on the premises shall state that the property owner has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by a Municipal Judge of the Town, or by a judge of any other court having jurisdiction. The requirements of this Section shall not apply to public places, including privately owned vacant land, as defined in Section 10-1, which may be inspected by an authorized inspector at any time without notice.

- (c) Search warrants. After the expiration of the twenty-four-hour period from the giving or leaving of such notice, the authorized inspector may appear before the Municipal Judge, and upon a showing of probable cause by written affidavit shall obtain a search warrant entitling him or her to enter the building or upon the premises. Upon presentation of the search warrant and proper credentials, or possession of same in the case of an unoccupied building or premises, the authorized inspector may enter into the building or upon the premises using such reasonable force as may be necessary to gain entry.
- (d) Probable cause for issuance of search warrant. For purposes of this Section, a determination of "probable cause" will be based upon reasonableness, and if a valid public interest and reasonable suspicion of violation justifies the intrusion contemplated, then there is probable cause to issue a search warrant. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to act. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by an authorized inspector, acting pursuant to this Section.
- (e) Right of entry; emergencies. Whenever an emergency situation exists in relation to the enforcement of any of the provisions of this Article, an authorized inspector upon a presentation of proper credentials or identification, in the case of an occupied building or premises, or possession of the credentials in the case of an unoccupied building or premises, may enter into any building or upon any premises within the jurisdiction of the Town.
  - (1) In the emergency situation, such person may use such reasonable force as may be necessary to gain entry into the building or upon the premises.
  - (2) For purposes of this Subsection, an emergency situation includes any situation where there is imminent danger of loss of, or injury or damage to, life, limb or property. It is unlawful for any owner or occupant of the building or premises to deny entry to any authorized inspector or to resist reasonable force used by the authorized official acting pursuant to this Section.
- (f) Search warrants; jurisdiction of the Municipal Court. Any Municipal Judge shall have power to issue search warrants upon a showing of probable cause as provided in Subsections (c) and (d) of this Section.

(Ord. 379 §3, 1994; Ord. 435 §1, 1996)

#### Sec. 7-9. - Assessment and collection of costs of abatement.

- (a) A person found by the Court to have caused a public nuisance or allowed the nuisance to be caused or to continue shall be liable for the costs specified in Section 7-7. Such costs may be collected by the Town in a civil action or assessed and filed as a lien against any property on which the abatement was performed as specified in this Section.
- (b)

If the costs of abatement have not been otherwise collected, the Mayor shall prepare a statement enumerating the actual costs of abatement and collection plus fifteen percent (15%) of the abatement costs for inspection and other additional administrative costs. The costs enumerated in this statement shall be a first and prior lien upon the property relating back to the date upon which the abatement was performed. A copy of this statement shall be deposited in the United States mail or personally hand-delivered to the owner. The owner may request a hearing before the Town Treasurer to contest the amount of the costs. Such request must be made in writing and be filed with the Town Treasurer within thirty (30) days of the date of mailing or service of the first statement to the owner. The owner shall be given at least two (2) weeks' written notice of the date, time and place of any hearing scheduled before the Town Treasurer. The decision of the Town Treasurer shall be final. If the statement remains unpaid, the amount shall be certified by the Town Treasurer to the County Treasurer. The County Treasurer, upon receipt of the certified statement, is hereby authorized to place the amount upon the tax list for the current year and to collect that amount in the same manner as taxes are collected with a ten-percent penalty thereon.

(Ord. 379 §3, 1994)

#### Sec. 7-10. - Cumulative remedies.

No remedy provided herein shall be exclusive, but the same shall be cumulative, and the taking of any action hereunder, including charge or conviction or violation of this Chapter in the Municipal Court of the Town, shall not preclude or prevent the taking of other action hereunder to abate or enjoin any nuisance found to exist.

(Ord. 435 §1, 1996)

#### Sec. 7-11. - Concurrent remedies.

Whenever a nuisance exists, no remedy provided for herein shall be exclusive of any other charge or action, and when applicable the abatement provisions of this Chapter shall serve as and constitute a concurrent remedy over and above any charge or conviction of any municipal offense or any other provision of law. Any application of this Chapter that is in the nature of a civil action shall not prevent the commencement or application of any other charges brought under the municipal ordinances or any other provision of law.

(Ord. 435 §1, 1996)

#### Sec. 7-12. - Acts which constitute violation of chapter.

- (a) It is unlawful and a violation of this Chapter for any person:
  - (1) To create, operate, maintain or conduct any nuisance as defined in this Chapter.
  - (2) To interfere with or prevent, or attempt to interfere with or prevent, the abatement of any nuisance by the Mayor or the Town Marshal pursuant to the provisions of this Chapter.
- (b) Any person who makes or causes any nuisance to exist shall be deemed the author of the nuisance. Moreover, any person who has possession or control of any private ground or premises, whether he or she is owner of the property or not, where any nuisance exists or is found, shall be deemed the author of the nuisance. Each and every day during which any nuisance continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense.

Sec. 7-13. - Violations and penalties.

Any person who shall violate any of the provisions of this Article shall be subject to the provisions of Section 1-72 of this Code.

(Ord. 435 §1, 1996)

Secs. 7-14—7-30. - Reserved.

## ARTICLE II - Nuisances

Sec. 7-31. - Accumulation to constitute nuisances.

Whenever there shall be in or upon any lot or piece of ground within the limits of the Town any damaged merchandise, litter, trash, rubbish, garbage, wrecked car, inoperable cars or other wrecked vehicles or an accumulation of junk vehicles or junk of any type upon any private or public property, except in areas specifically zoned by the Zoning Ordinance of the Town for said purposes or otherwise designated by the Town for such purposes, the existence of any such material or items shall constitute a nuisance and shall be in violation of this Article.

(Ord. 435 §1, 1996)

Sec. 7-32. - Discharge of nauseous liquids.

No person shall, himself or herself or by another in the Town, discharge out of or from or permit to flow from any house or place any foul or nauseous liquid or substance of any kind whatever into or upon any adjacent ground or lot or into any street, alley or public place.

(Ord. 435 §1, 1996)

Sec. 7-33. - Use of property for dumping.

It is unlawful for any person to use any land, premises, receptacle, container, vehicle, trailer or other real or personal property within the Town for the dumping or disposal of any garbage, trash, litter, rubbish, offal, filth, excrement, discarded building materials or combustible materials of any kind without first having made application for and receiving a permit to do so. The application therefor shall be filed with the Town Administrator or the Town Clerk and shall state the location of the land, premises or property, the manner in which the dumping or disposal is to be accomplished and the means and methods by which the applicant proposes to secure the same against the danger of disease, fire and other menaces to the public health and to provide for the suppression of rodents, mosquitoes and other insects. Upon such investigation and a finding that the proposed dumping will not cause any danger to the public health, the Town Administrator or Town Clerk shall issue such a permit upon the payment of a fee as set forth in Section 4-151, with the approval of the Board of Trustees.

## Sec. 7-34. - Public peace and safety.

The following are declared to be public nuisances affecting public peace and safety:

- (1) All trees, hedges, billboards or other obstructions which prevent persons driving vehicles approaching an intersection of public highways from having a clear view of traffic approaching such intersection from cross streets for one hundred (100) feet along such cross streets measured from the property line, when one hundred (100) feet from such intersection, measured from the property line.
- (2) All limbs of trees which project over a public sidewalk or street and which are less than eight (8) feet above the surface of such public sidewalk and nine (9) feet above the surface of such street.
- (3) All wires over streets, alleys or public grounds which are strung less than fifteen (15) feet above the surface of the ground.
- (4) All buildings, walls and other structures which have been erected or damaged by fire, decay or otherwise, and which are so situated as to endanger the safety of the public.
- (5) Dense smoke, noxious fumes, gas, soot or cinders in such quantities as to render the occupancy of property uncomfortable to a person of ordinary sensibilities.
- (6) All loud or unusual noises and annoying vibrations which offend the peace and quiet of persons of ordinary sensibilities.
- (7) All buildings and all alterations to buildings made or erected within the fire limits as established by ordinance in violation of the ordinance concerning manner and materials of construction.
- (8) Obstructions and excavations affecting the ordinary use by the public of streets, alleys and sidewalks, or public grounds except under such conditions as are provided by ordinance.
- (9) Any use of the public streets or sidewalks which causes large crowds of people to gather, obstructing traffic and the free use of the streets or sidewalks without having first obtained a permit for assembly as prescribed by Town ordinance.
- (10) All hanging signs, awnings and other similar structures over the streets or sidewalks so situated or constructed as to endanger public safety.
- (11) The allowing of rainwater, ice or snow to fall from any building or structure upon any street or sidewalk or to flow across any sidewalk.
- (12) All barbed wire fences which are located within three (3) feet of any public way.
- (13) All dangerous, unguarded machinery in any public place, or so situated or operated on private property, as to attract the public.
- (14) The collection, storage or keeping of junk, as defined herein which is kept in such a manner as to essentially interfere with the health, safety and welfare of the public. For purposes of this subsection, junk is hereby defined as: scrap brass, scrap copper, scrap iron, scrap lead, scrap tin, scrap zinc and all other scrap metals and the alloys, and bones, rags, used cloth, used rope, used rubber, used tinfoil, used bottles, old or used machinery of any type, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes or crates (fabricated of any material), used pipe or pipe fittings, used conduit or conduit fittings, used automobiles

in nonoperative condition, used tires and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, which are kept in such manner as to essentially interfere with the comfortable enjoyment of life or property by others.

- (15) Cisterns, wells, excavations used for the storage of water, and mine openings, any of which exceed five (5) feet in depth, unless the same are adequately covered or otherwise secured to prevent entry.
- (16) Keeping of bodies. All places at which the owner or occupant keeps, stores or permits to be kept or stored the whole or any part of the person, body or carcass of a human being or animal or other biological species which is not alive upon any property. Provided, however, that bodies or carcasses of human beings for which a death certificate has been issued may be buried within a cemetery authorized by the Town or stored in a research facility specifically authorized by the Town, or their properly cremated ashes may be stored in any residence of the Town, and dead animal bodies or carcasses may be stored or buried in a manner specifically allowed by state law.

(Ord. 84 §4, 1948; Ord. 195 §§6—12, 1981; Ord. 379 §2, 1994; Ord. 435 §1, 1996)

Sec. 7-35. - Additional nuisances enumerated.

- (a) 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 building 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.
- (b) Streets, streams and water supply. No person shall throw or deposit, or cause or permit to be thrown or deposited, any offal composed of animal or vegetable substances, or both, any dead animal, excrement, garbage or other offensive matter whatever upon any street, avenue, alley, sidewalk or public or private grounds. No person shall, in the Town, throw or deposit or cause or permit to be thrown or deposited anything specified in any foregoing part of this Section or any other substance that would tend to have a polluting effect into the water of any stream, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near any such place as to be liable to pollute the water.
- (c) Sewer inlet. No person shall, in the Town, deposit in or throw into any sewer (sanitary or storm), sewer inlet or privy vault that shall have a sewer connection any article whatever that might cause such sewer, sewer inlet or privy vault to become nauseous to others or injurious to public health.
- (d) Stagnant ponds. The permitting of stagnant water on any lot or piece of ground within the Town limits which is not designated as a federal wetland is hereby declared to be a nuisance, and every owner or occupant of a lot or piece of ground within the Town is hereby required to drain or fill up said lot or piece of ground whenever the same is necessary so as to prevent stagnant water or other nuisance accumulating thereon, and it shall be unlawful for any such owner or occupant to permit or maintain any such nuisance.
- (e) Stale matter. No person shall keep, collect or use, or cause to be kept, collected or used, in the Town any stale, putrid or stinking fat or grease or other stale matter, other than normal weekly trash accumulation.
- (f) Transporting of garbage; manure. Every cart or vehicle used to transport manure, garbage, swill or offal in any street in the Town shall be fitted with a substantial tight box thereon so that no portion of such filth will be scattered or thrown into such street.

- (g) Dead animal; removal. When any animal shall die in the Town, it shall be the duty of the owner or keeper thereof to remove and properly dispose of the body of such animal forthwith. If such body shall not forthwith be removed, the same shall be deemed a nuisance, and such owner or keeper will be the author of the nuisance.
- (h) Unused appliances. No person shall keep any unused refrigerator, washer, dryer, freezer or other appliance within any accessible yard or lot, carport or residential garage within the Town limits without first removing the door of the same.
- (i) Removal of inoperable vehicles. It is unlawful for any person, partnership, corporation or other agent, either as owner, lessee, tenant or occupant of any lot or land within the Town to park, store or deposit or permit to be parked, stored or deposited thereon two (2) or more inoperable vehicles at the same time. Any more than one (1) inoperable vehicle must be enclosed in a garage or other building. The provisions of this subsection shall not apply to any person who is conducting a licensed automotive business enterprise in compliance with existing zoning regulations.
- (j) Vacant residential dwellings. All broken windows in each vacant dwelling shall be replaced by the owner or agent within seventy-two (72) hours after notice is given by the Town Administrator or his or her appointed deputies.
- (k) Noise in public places. The use of music, noisemakers or loudspeakers on, or broadcasting to, the streets, sidewalks, parks or other public places of the Town for the sale or vending of products, advertising or other commercial purposes is hereby declared to be a nuisance and is prohibited by the terms of this Chapter. For purposes of this Section, broadcasting to the streets, sidewalks, parks or other public places of the Town shall include any noise for the sale or vending of products, advertising or other commercial purposes broadcast from a private property that exceeds sixty (60) decibels when measured on the public place.
- (l) Barking, yelping, howling or mewing by canine or feline. The keeping or harboring of any canine or feline which by loud, frequent or habitual barking, yelping, howling or mewing shall cause a serious annoyance to the neighborhood or to persons passing to and fro upon the streets or sidewalks is hereby declared a nuisance and is prohibited.
- (m) Noise. Any conviction for violation of the noise provisions contained in Chapter 10 of this Code that occur three (3) or more convictions from the same location within a one-year period on different dates is hereby declared a nuisance and is prohibited by the terms of this Chapter.

(Ord. 84 §2, 1948; Ord. 435 §1, 1996; Ord. 504 §2, 1999; Ord. 733 §2, 2014)

Sec. 7-36. - Trees infected with mountain pine beetle or other infectious insects or diseases.

- (a) Purpose. The spread of the mountain pine beetle and other infectious insects and diseases poses an immediate threat to trees located within the Town; trees so infected are hereby declared to be a public nuisance. In order to contain and prevent the spread of these infectious insects and diseases, and to protect the health, safety and welfare of the inhabitants of the Town, this public nuisance is to be abated by the owner of the land on which such infected trees are found, or, if not so abated, are to be abated or destroyed by the Town at the cost of said land owner.
- (b) Infected or diseased trees declared nuisances. The following are hereby declared to be public nuisances:
  - (1)

All species and varieties of live trees infected with the insect known as the "mountain pine beetle" (*Dendroctonus ponderosae*), or any other insect or disease declared to be a nuisance by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.; and

- (2) All species and varieties of trees that are dead or substantially dead, and all dead wood to which the bark is still attached, which because of their condition, may serve as a breeding place for the "mountain pine beetle" (*Dendroctonus ponderosae*), or any other insect or disease declared to be a nuisance by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.
- (c) Abatement of nuisance by owner. It shall be unlawful for any owner of any lot or parcel of land in the Town to permit or maintain on such lot or parcel any dead wood or dead or live tree which is a public nuisance as defined herein. It shall be the duty of the owner of such to remove, burn or otherwise abate or eradicate such nuisance, and to prevent the spread thereof, as may be appropriate, under the supervision or at the direction of the Director of Public Works, the Zoning Administrator or their respective designee as provided in Section 7-6(a)(2). Such abatement may not occur by spraying. Such abatement or eradication may be done by the owner or by a commercial tree removal service.
- (d) Enforcing officer. The Director of Public Works, the Zoning Administrator or their respective designee shall be the authorized persons, as set forth in Section 7-8, to perform the duties set forth in this Section and shall enforce the provisions of this Section. The Director of Public Works or the Zoning Administrator, or their respective designee, may have such assistance as the Board of Trustees shall provide.
- (e) Inspections. The Director of Public Works, the Zoning Administrator or their respective designee is authorized and empowered to enter upon any lot or parcel of land in the Town at any reasonable hour, pursuant to the provisions specified in Section 7-8, for the purpose of inspecting any tree or dead wood situated thereon, and may remove specimens from such trees or wood as is required for the purpose of laboratory analysis, as prescribed by the Commissioner of Agriculture pursuant to Section 35-9-118, C.R.S.; such analysis shall be for the purpose of determining whether such tree or wood may serve as a breeding place for the mountain pine beetle or other infectious insect or disease. It shall be unlawful for any person to take any action to prevent the Director of Public Works, the Zoning Administrator or their respective designee from performing his or her duties or the exercise of any authority as provided in this Section.
- (f) Notice of violation. If any live or dead tree or wood is determined by the Town to be a public nuisance as provided herein, the Town shall notify the owner of the property of such condition pursuant to Section 7-6.
- (g) Failure to abate. If any person upon whose property such notice is posted fails, neglects or refuses to remove and destroy, or otherwise abate or eradicate, such nuisance as required by the notice prescribed in this Section, the Director of Public Works, the Zoning Administrator or their respective designee may enter the property, pursuant to an administrative warrant issued by the Municipal Judge, and proceed to remove and destroy, or cause to be removed and destroyed or otherwise abated or eradicated, such nuisance as set forth in Section 7-7.
- (h) Assessment and collection of costs of abatement. Costs incurred by the Town to perform such abatement shall be assessed against the property owner and collected pursuant to Section 7-9.
- (i) Violations and penalties. In addition to any other penalties or fines provided by this Section, any person violating any of the provisions of this Section by failing, neglecting or refusing to comply with the provisions of any notice herein provided, or who shall resist or obstruct the carrying out of the provisions of this Section shall be subject to

such penalties as provided in Section 1-72 of this Code and all other remedies provided by law.

(Ord. 502 §1, 1999; Amended Ord. 502 §1, 1999)

Sec. 7-37. - Public nuisance from marijuana establishments.

The Town has a zero impact, zero tolerance policy regarding public nuisance from the operations of marijuana establishments as defined in Section 7-1 of this Chapter.

- (1) The following are declared to be public nuisances from marijuana establishments affecting public peace and safety:
  - a. Any smell of marijuana detected at the property line. Minimum ventilation requirements are to use: one hundred fifty (150) cubic feet per minute (CFM) of carbon filtration per one thousand (1,000) watts of light. This ventilation must be maintained and in proper working condition.
  - b. Any debris left outside the establishment which contains THC and is not properly composted in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.
  - c. Any concentrated chemicals, fertilizers or marijuana products entering into the sewer system. All such chemicals, fertilizers or marijuana products must be disposed of in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.
  - d. Any concentrated chemicals, fertilizers or marijuana products deposited outside the establishment without proper dilution. All such chemicals, fertilizers or marijuana products must be disposed of in compliance with all applicable state and local statutes, regulations, ordinance or other requirements.
  - e. Any high intensity light used for growing plants visible to the general public from dusk to dawn.
  - f. Any view of marijuana plants from the property line or public right-of-way.
- (2) Policy and procedures of public nuisance from marijuana establishments shall follow the policy and procedures for other public nuisances with respect to complaint, abatement, action to abate, inspection, assessment and collection of costs of abatement, remedies, acts which constitute a violation and penalties in Section 7-5 through 7-13 of this Chapter, inclusive.

(Ord. 720 §2, 2013)

Secs. 7-38—7-50. - Reserved.

**ARTICLE III - Garbage and Refuse**

Sec. 7-51. - 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.

Sec. 7-52. - 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.

(Ord. 435 §1, 1996)

Sec. 7-53. - 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 a ten-percent penalty to defray the cost of collection, as provided by state law.

(Ord. 435 §1, 1996)

Sec. 7-54. - 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.

(Ord. 435 §1, 1996)

Sec. 7-55. - 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 Town Administrator. Such removal shall be handled by the establishments responsible therefor.

(Ord. 435 §1, 1996)

Secs. 7-56—7-70. - Reserved.

#### ARTICLE IV - Weeds and Brush

Sec. 7-71. - Designation of Undesirable Plant Management Advisory Commission.

The Board of Trustees is appointed to act as the Undesirable Plant Management Advisory Commission for the Town and shall have the duties and responsibilities as provided by state statute. (Ord. 435 §1, 1996)

**Editor's note—** Section 3.5-5.5-101, C.R.S., establishes the requirements for undesirable plant management in the State.

Sec. 7-72. - Declaration of nuisance.

Any weeds or brush found growing in any lot or tract of land in the Town is hereby declared to be a nuisance, and it shall be unlawful to permit any such weeds or brush to grow or remain in any such place.

(Ord. 435 §1, 1996)

Sec. 7-73. - Duty of property owner to cut, eradicate, contain or suppress.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to cut to the ground all brush when said brush grows to a height of twelve (12) inches or more.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to eradicate all Colorado Noxious Weed List A species.

It shall be the duty of each and every person owning, occupying or possessing any lots, tracts or parcels of land within the Town to eradicate, contain or suppress Colorado Noxious Weed List B and List C species in accordance with the adopted Nederland Noxious Weed Management Plan.

(Ord. 435 §1, 1996; Ord. 736 §2, 2015)

**Editor's note—** Section 2 of Ord. 736, adopted Jan. 20, 2015, changed the title of § 7-73 from "Duty of property owner to cut" to read as herein set out.

Sec. 7-74. - Disposal of portions of noxious weeds.

All reproductive portions of noxious weeds cut in accordance with Section 7-73 hereof shall, immediately upon being cut, be placed in sealed plastic bags and disposed in a solid waste landfill which covers refuse daily with six inches of soil or alternative material. Alternatively, noxious weeds can be composted in sealed compostable bags at a commercial facility that

accepts noxious weeds and monitors and assures temperatures attain greater than one hundred thirty-one (131) degrees Fahrenheit for fifteen (15) days.

(Ord. 435 §1, 1996; Ord. 736 §3, 2015)

**Editor's note—** Section 3 of Ord. 736, adopted Jan. 20, 2015, changed the title of § 7-74 from "Removal from Town" to read as herein set out.

Secs. 7-75—7-90. - Reserved.

## ARTICLE V - Animals

### Sec. 7-91. - Definitions.

The following definitions shall apply to the interpretation and enforcement of this Article, unless the context otherwise requires:

*Animal* shall be defined as pet animal below.

*Animal Control Division* means that section of the Town Marshal's office that is engaged in animal control and is vested with the power and authority to enforce this Article. This term shall also include the department's duly authorized officers, employees and agents. This term shall be used interchangeably with the terms Animal Control Officer and Town Marshal's office, each being the equivalent of the other for purposes of this Article.

*Animal Control Officer* means any person authorized by the Board of Trustees or the Town Marshal's office to engage in animal control in the Town including, but not limited to, law enforcement officers.

*Bodily injury* means physical pain, illness or any impairment of physical condition.

*Current*, as used in connection with a rabies inoculation, means that the vaccine is in compliance with County Health Department Regulation 5 and/or Town ordinances.

*Guard dog* means a trained dog which is kept for the protection of property, and restrained by cage, fence or other adequate means from contact with the general public or with any person who enters the premises with the actual or implied permission of the owner or occupant. This is provided that the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog.

*Injure* means to do harm, hurt, damage, impair or wound.

*Keeper* means a person who has custodial or supervisory authority or control over an animal.

*Leash control* means firmly attached to a secured tether or a leash no longer than six (6) feet which is being held and controlled by a person.

*Owner* includes all owners where ownership of an animal is shared; all owners shall be jointly and severally liable. The owners may be liable even if the animal was in possession of a keeper at the time of the offense.

*Pet animal* is defined for the purposes of this Article as any dog, cat, bird, rabbit, guinea pig, hamster, mouse, snake, iguana, turtle, chicken hen or any other species of domestic animal.

*Premises* means the area of land surrounding the residence of the owner of the animal which is owned and is occupied or under the control of the owner of the animal, or any other confined area or locality like a room, shop, vehicle or building.

*Running at large* means an animal which is off of or away from the premises of its owner or keeper and not under leash control as more specifically set forth in Section 7-95 of this Article. An animal that is not under leash control but is on private property with the permission of the owner or keeper of the property shall not be considered to be at large and is under control of the owner or keeper.

*Vicious animal* means any animal which at any place within the Town injures or causes bodily injury to any person or animal as defined in this Section, or which repeatedly charges against a fence in an attempt to attack or charges to the end of its lead or leash in an attempt to attack, or otherwise demonstrates vicious propensities; provided, however, that no animal shall be deemed vicious solely by reason of having attacked or bitten:

- a. A person who attacked such animal or who engaged in conduct reasonably calculated to provoke such animal to attack or bite such person or another person;
- b. Any person engaged in attacking or molesting another person;
- c. Any person engaged in the unlawful entry into or upon the fenced or enclosed portion of a premises upon which such animal is kept, or into or upon any automobile or other vehicle parked or stored in, upon or on the street adjacent to such premises;
- d. Any animal engaged in the unauthorized entry into or upon the fenced or enclosed portion of the premises upon which the accused animal is kept; or
- e. Any person engaged in the unlawful or unauthorized entry into any automobile or other vehicle in which such animal is kept or confined.

(Ord. 324 §1, 1991; Ord. 435 §1, 1996; Ord. 694 §1, 2011)

Sec. 7-92. - Rabies inoculation required.

- (a) The owner of each dog and cat in the Town shall have such animal inoculated against rabies at three (3) months of age, one (1) year later and every three (3) years thereafter pursuant to Regulation 5 of the County Health Department regulations or Town ordinances, as periodically amended.
- (b) Inoculation required.
  - (1) It is unlawful for any person to own, keep, harbor or possess any dog or cat over the age of three (3) months which has not been inoculated against rabies.
  - (2) All requirements concerning the inoculation of dogs as set forth in this Code shall apply to cats, excepting the requirement of issuance and of wearing the metal tag. The inoculation certificate shall be maintained by the cat owner and shall be presented upon demand of the Animal Control Officer.
- (c) Upon vaccination of a dog or cat, a licensed veterinarian shall execute and furnish to the owner a certificate of rabies inoculation which shall include the following:
  - (1) The name, address and telephone numbers (home and business) of the owner of the vaccinated animal.

- (2) The name and address of the veterinarian administering the vaccination.
- (3) The breed, age, color, name, sex and status as to spayed or neutered of the vaccinated animal.
- (4) Date of vaccination and expiration thereof.
- (5) Type of vaccine used, lot number and manufacturer.
- (6) The rabies vaccination tag number.

The veterinarian shall also furnish to the owner a rabies tag which shall be firmly affixed to the collar or harness of the dog.

- (d) Any dog or cat that is brought into the Town from another county or state must have been inoculated against rabies at least thirty (30) days but not more than thirty-six (36) months prior to importation into the Town; however, if the vaccine used does not meet the requirements of Regulation 5 pertaining to thirty-six-month vaccines, the maximum acceptable inoculation period shall be twelve (12) months. The tag denoting vaccination shall be firmly affixed at all times to the collar or harness of the dog, and subject to the requirements set forth in this paragraph, shall be evidence of compliance with Regulation 5 and this Article. Any legally acceptable certificate of vaccination issued by a legally authorized person to the owner of the dog in any municipality, county or state shall be exchanged for a current Town rabies inoculation tag for dogs if the imported dog remains in the Town more than thirty (30) days.
- (e) Any animal that has bitten a person so as to cause any abrasion and/or break of the skin and has no verification of a valid rabies shot shall be impounded or confined at the owner's or keeper's expense in either the County Humane Society or any private veterinary hospital for observation for at least ten (10) days in order to determine whether the animal has rabies. The Town Marshal's office shall give oral notice of such impoundment to the owner, if known. If the owner is not known, the Town Marshal's office shall cause a notice of the impoundment of the animal to be published or advertised in a newspaper of general circulation. If no owner appears to claim the animal within five (5) days after receipt of the oral notice or within seven (7) days after publication of the written notice and at least after the ten-day rabies impoundment period, if necessary, the animal will be put up for adoption or humanely disposed of in accordance with local policy. Before an animal can be released from the impoundment facility, it must either be inoculated for rabies or have proof of a valid rabies inoculation, if applicable.

(Ord. 324 §2, 1991; Ord. 435 §1, 1996)

Sec. 7-93. - Tags required.

- (a) A rabies inoculation tag shall be issued by the veterinarian who administered the vaccination to the dog or cat, or upon proof of a current rabies inoculation by the Town Marshal's office or the County Humane Society. Each rabies inoculation tag shall be inscribed with the words "Town of Nederland," the year for which the tag is issued and the tag number. Except as provided under Subsection (b) below, every dog must wear a collar or harness to which the rabies tag shall be firmly attached. Each rabies tag shall be worn only by the dog for which it was issued. Rabies tags for dogs which are brought into the Town from another county or state are governed under Section 7-92(d) above.
- (b) Town tags and registration are required every calendar year. Dogs are required to wear these tags at all times. Cats will not be required to wear tags; however, the owner must have possession of the tag. Tags of dogs participating in sanctioned dog shows or matches, or of dogs aiding law enforcement officers or of dogs within

fenced grounds, with permission of the owner, need not be attached to the collar or harness but must be in the possession of the owner.

(Ord. 324 §3, 1991)

Sec. 7-94. - Barking dogs or other disturbances.

- (a) It is unlawful for any person owning or keeping pet animals to fail to prevent such animal from disturbing the peace of any other person by loud, persistent and habitual barking, howling, yelping or making any other loud, persistent and habitual noise, whether the animal is on or off the owner's premises.
- (b) It is a defense to this charge if provocation to the animal results in noise. For the purposes of this Article, provocation shall be defined as actions or deeds which will likely result in noise or which are made with the intent to cause the animal to make noises.
- (c) In the event the Animal Control Division determines that a violation of this Section has occurred, the Animal Control Officer shall give the violator a written warning of the violation pursuant to Subsection (d) below. The violator shall be entitled to a period of three (3) days after the date on which the written warning is given in order to correct the violation. If the violation persists or reoccurs after this three-day period, the violator shall be subject to enforcement action under Sections 7-103 and 7-104 of this Article. A person shall not be entitled to more than one (1) warning in any calendar year. In case of a subsequent violation occurring in a calendar year, the Animal Control Officer may issue a penalty assessment without prior warning.
- (d) The warning process to be employed by the Animal Control Officer shall be as follows:
  - (1) The Animal Control Officer will give such warning after either of the following circumstances: a phoned-in complaint which the Animal Control Officer investigates or two (2) phoned-in complaints from different households which are not investigated.
  - (2) All complainants must clearly identify themselves and the dog complained of, the length of time and approximate hour of disturbances.
  - (3) Such warning is sufficient if it identifies Subsection (a) above, it states that a complaint has been received and that the person's animal is disturbing the peace of another individual, and it is identified as coming from the Animal Control Officer.
  - (4) A warning is given under this Section if it is personally served on the owner of the animal, posted on the owner's premises, or placed in the United States mail with postage prepaid, and addressed to the owner of the animal at the address contained in the rabies inoculation records or at an address based on the best information available.
  - (5) The Animal Control Officer shall keep records of all warnings given and such records shall be *prima facie* evidence that such warnings were given.
  - (6) No person shall be convicted at trial of violating this Section unless one (1) or more witnesses testifies to the loud, persistent or habitual nature of the noise. An Animal Control Officer may be relied upon as a witness in meeting this requirement.

(Ord. 324 §4, 1991; Ord. 435 §1, 1996)

Sec. 7-95. - Animals running at large; restraint and control.

- (a) It is unlawful for any owner or keeper of any animal to fail to prevent the animal from running at large within the Town limits. Every owner or keeper of any animal of any age shall keep such animal exclusively upon his or her own premises. However, an animal may be off such premises if: it is under the control of a competent person and restrained by a substantial chain or leash not exceeding six (6) feet in length or if it is within a vehicle or is similarly physically confined and inaccessible to any passers-by. An animal is presumed to be at large if injury, damage or trespass has occurred, even if said animal is under leash control at the time of injury, damage or trespass.
- (b) It is unlawful for an animal to attack any domestic animal or fowl or any species of wildlife. The owner or keeper of the animal at the time of the attack shall be responsible for any violation of this Subsection.
- (c) Any animal control officer apprehending an animal at large may impound the animal, return the animal to the owner and/or issue a citation. Said officer shall have the right to enter upon private property when it is necessary to apprehend any animal that has been running at large. Such entrance upon private property shall be in reasonable pursuit of said animal, and shall not include entry into a domicile or enclosure which confines an animal unless it is at the invitation of the owner.
- (d) The Animal Control Officer shall issue a citation to the owner of any animal running at large except for the following conditions:
  - (1) The animal is wearing a leash that was obviously frayed or broken, unless the leash was known to be inadequate or appeared to be unreasonably inadequate; or
  - (2) The animal confinement has been obviously and temporarily damaged due to weather conditions or other acts of God.
- (e) Repeat offenses of an animal at large within a twelve-month period, for any reason, shall be cause for citation by the terms of this Article.
- (f) Paragraphs (d)(1) and (2) above shall constitute affirmative defenses to a violation of this Section.
- (g) Upon a conviction of guilt or a plea of guilty or nolo contendere to a violation of this Section, in addition to any other penalties imposed by the Municipal Court, the Municipal Judge shall impose a mandatory minimum fine of two hundred fifty dollars (\$250.00) unless the defendant can demonstrate to the satisfaction of the Municipal Court that the animal running at large has been spayed or neutered prior to the imposition of sentence. Upon motion of the defendant, the Court may continue sentencing to give the defendant time to have the animal in question neutered.

(Ord. 324 §5, 1991; Ord. 508 §1, 1999)

**Sec. 7-96. - All pet animals restrained.**

It is unlawful for any person who owns, harbors or keeps within the corporate limits of the Town any animal that may be otherwise legally kept to fail to keep the same securely enclosed in a pen or building, or to permit the same to run at large or to go upon public property or the premises of another unless in a manner specifically authorized in this Article.

(Ord. 324 §6, 1991)

**Sec. 7-97. - Vicious animal.**

- (a) It is unlawful for any person to harbor or keep a vicious animal within the Town. Any vicious animal shall be deemed a public nuisance, and may be seized by any law enforcement officer and upon appropriate complaint and order of the Municipal Court or any court of competent jurisdiction and may be humanely destroyed or otherwise disposed of, as the Court may determine in the abatement of the nuisance and the protection of the public safety. It shall be an affirmative defense to prosecution under this Section:
- (1) If the animal is a dog, the dog is under the control of a law enforcement agency or is a trained guard dog, which is kept for the protection of property, and restrained by cage, fence or other adequate means from contact with the general public or with any person who enters the premises with the actual or implied permission of the owner or occupant, provided that the premises are posted in a manner sufficient to give reasonable notice to the public and visitors of the presence of the guard dog. Nothing in this Section shall be construed to prevent the immediate killing of a vicious animal if, under the circumstances, such action is required to protect the public safety.
- (2) The animal is provoked by a person or attack (actual or threatened) by a domestic or wild animal if the actions of any person or animal provoke the animal to such an extent that an animal of normal temperament would react viciously.
- (b) It is unlawful for the owner or keeper of a vicious animal to fail to prevent said animal from going off the premises of the owner. In the case of a dog, the dog may leave the premises if it is under leash control and properly muzzled so as to prevent it from injuring any person or property.
- (c) It is unlawful for the owner or keeper of a vicious animal to allow such animal to attack any domestic animal or fowl or any species of wildlife.

(Ord. 324 §7, 1991)

Sec. 7-98. - Care and keeping of animals.

- (a) Cruelty to animals. A person commits cruelty to animals if, except as authorized by law, he or she overdrives, overloads, overworks, tortures, torments, deprives of necessary subsistence, unnecessarily or cruelly beats, needlessly mutilates, needlessly kills, abandons, carries in or upon any vehicle in a cruel manner or otherwise mistreats or neglects any animal, or causes or procures such acts to be done, or having the charge and custody of any animal, fails to provide it with proper food, drink or protection from the weather.
- (b) Harassment of animals. It is unlawful to knowingly tease, tantalize or provoke any animal in a manner which causes fear or anger.
- (c) Prohibited keeping of animals.
- (1) It is unlawful for any person to keep, harbor, care for or possess any animal within the Town limits, which is not a pet animal as defined herein for the purpose of being kept as a household pet; except that skunks, monkeys and other subhuman primates shall not be defined as pet animals for the purposes of this Article except as otherwise provided for by this Code. In addition, birds of prey in the possession of handlers licensed by the State or federal government are excepted from this Section.
- (2) Nothing in this Article shall be construed to permit the keeping of an animal, the keeping of which is otherwise prohibited or restricted by the laws and regulations of the State or the United States.

Sec. 7-99. - Offensive premises.

- (a) The accumulation of animal feces compromises public health and constitutes a threat to public safety and welfare. It is unlawful for the owner or keeper of an animal to allow animal feces to accumulate so as to be a health hazard or so that odor is noticeable on adjoining property.
- (b) Any premises upon which any animal is kept shall be maintained in a sanitary condition and shall comply with all sanitary regulations adopted by the Town.
- (c) It shall be unlawful for any person who possesses, harbors or is in charge of a dog not to immediately remove excrement deposited by the dog upon a common thoroughfare, street, sidewalk, trail, play area, park or upon any private property when permission of the owner or tenant of the property has not been obtained, and such is hereby deemed to be a public nuisance and prohibited.
  - (1) It shall be unlawful for any person to place dog excrement in a storm sewer, ditch or water way, but it may be placed in trash containers if contained in a closed, plastic bag or other closed and airtight nonporous container.
  - (2) Any other provision of this Article notwithstanding, the penalty for violating the provisions of this Subsection shall be a fine of up to one hundred dollars (\$100.00) for a first offense and up to two hundred dollars (\$200.00) for a second or subsequent offense within three (3) years of a previous offense. The Municipal Court, in its discretion, may impose community service cleaning up dog excrement in public areas within the Town as a condition of deferred judgment and sentence, deferred prosecution and/or probation.

(Ord. 324 §9, 1991; Ord. 620 §1, 2006)

Sec. 7-100. - Confinement of female animals in heat.

It is unlawful for the owner of a female dog or cat in the pre-estrus or estrus state to fail to confine such dog or cat either in a building, secure enclosure or kennel so as to prevent it from attracting by scent or coming into contact with male dogs or cats and creating a nuisance, except for planned breeding.

(Ord. 324 §10, 1991; Ord. 435 §1, 1996)

Sec. 7-101. - Seizure and impoundment.

- (a) It shall be the duty of the Animal Control Division, whenever possible, to apprehend any animal found running at large, any animal which is not vaccinated and/or is not wearing a current rabies inoculation tag, any vicious animal not properly confined, or any animal being kept or maintained contrary to the provisions of this Article.
- (b) When any animal has been apprehended by the Animal Control Division, the Animal Control Division may take any appropriate action including: returning the animal to its owner, impounding the animal and/or issuing a citation. If the animal is impounded, the Animal Control Division shall give notice of such impoundment to the owner, if known. If the owner is not known, the Animal Control Division shall take all reasonable steps to establish the identity of the owner.
- (c)

An animal impounded by the Animal Control Division shall be held for recovery by the owner for a maximum of five (5) days. During this five-day period the owner may recover possession of such animal upon payment of the costs of impoundment, including those costs incurred by the Animal Control Division, and upon verification that the animal is wearing a valid rabies inoculation tag. If no owner appears within five (5) days, the animal will be put up for adoption or humanely disposed of in accordance with local policy. The impoundment period for animals that have bitten a person so as to cause an abrasion and/or break of the skin and have no verification of a valid rabies shot is set forth in Section 7-92(e) above.

(Ord. 324 §11, 1991)

Sec. 7-102. - Commercial and noncommercial kennel licenses.

- (a) It is unlawful to own or harbor more than three (3) of any one (1) species or no more than five (5) of any combination of species.
- (b) Any person who owns or harbors more animals than allowed pursuant to Subsection (a) above, but less than eight (8) animals for noncommercial purposes, not for breeding, sale nor for board at any one (1) household must make application to the Town Clerk for a noncommercial kennel license. Every application must be accompanied by the written consent to such noncommercial kennel by at least seventy-five percent (75%) of all persons in occupancy of premises within five hundred (500) feet of the premises upon which said kennel is to be maintained. Every application must be accompanied by a license fee as set forth in Section 4-151. Noncommercial kennel licenses are nontransferable. A noncommercial kennel license does not preclude the requirement for individual dog licenses. This license may be revoked should the owner be found negligent or in repeated violation of this Article.
- (c) Any person who owns or harbors more than one (1) animal for commercial purposes of breeding, for sale or for board, or any person who owns or harbors more than seven (7) dogs for any purpose, must make application to the Board of Trustees for a commercial kennel license. Every application must be accompanied by a petition of one hundred (100) signatures of Town residents including seventy-five percent (75%) of all persons in occupancy of premises within five hundred (500) feet consenting to such a kennel. Fees as set forth in Section 4-151 for each dog maintained will be required for each license granted. A commercial kennel must be maintained to the satisfaction of the County Health Department and the County Humane Society and be open to inspection by these agencies and by the licensing authority at all times. A commercial kennel must have distemper and rabies vaccination certificates for all dogs and cats maintained, as required herein, but will not be required to purchase Town licenses for individual dogs. Commercial kennels are nontransferable, and cannot be relocated. These licenses will expire on December 31 of the application year, and may be revoked by the Board of Trustees for cause, including, but not limited to, the failure to meet the above requirements.

(Ord. 324 §12, 1991; Ord. 435 §1, 1996)

Sec. 7-103. - Enforcement.

The Animal Control Division may issue citations enforcing the animal control ordinance without regard to certification requirements as authorized by Section 30-15-105, C.R.S.

(Ord. 324 §13, 1991)

Sec. 7-104. - Penalties for violations not involving bodily injury to persons.

- (a) Any violation of this Article, the punishment for which is not otherwise specifically provided for herein, not involving bodily injury to any person, shall be punishable by a fine as set forth in Section 1-72 of this Code.
- (b) Except as provided in Section 7-94 of this Article, whenever the Town Marshal's office has personal knowledge of any violation set forth in this Article, he or she may issue a citation or summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.
- (c) An Animal Control Officer, as defined in Paragraph 7-91(2) of this Article, may use the penalty assessment procedure defined under Section 16-2-201(1), C.R.S., for those violations listed in this Article. Said statute and this Article permit an Animal Control Officer to give a person arrested for a class 2 petty offense a penalty assessment notice and release him or her upon its terms or take him or her before a county court judge. The penalty assessment notice shall be a summons and complaint and shall contain the identification of the offender, the specification of the offense, the applicable fine and the amount of pending fines on the owner's prior offenses.
- (d) When an Animal Control Officer uses the penalty assessment procedures, the Officer shall use the Schedule of Fines set by the Municipal Judge then in effect.
- (e) All boarding or impoundment fees are in addition to fines.
- (f) The penalty assessment procedure and fine schedule shall not be used in violations involving bodily injury to any person or animal.

(Ord. 324 §14, 1991; Ord. 435 §1, 1996)

#### Sec. 7-105. - Penalties for violations involving bodily injury to persons.

- (a) Whenever the Animal Control Division has probable cause to believe that any violation of this Article involving bodily injury has been committed, the Animal Control Division may issue a citation to the violator, stating the nature of the violation with sufficient particularity to give notice of said charge to the violator.
- (b) Any violation of this Article involving bodily injury to any person shall be punishable as set forth in Section 1-72 of this Code. In addition to any other penalty, the Municipal Court may order the destruction of any animal found to be vicious.

(Ord. 324 §15, 1991; Ord. 435 §1, 1996)

#### Sec. 7-106. - Applicability of control provisions.

The control provisions of this Article shall apply to all animals in the entire incorporated area of the Town except for those dogs working livestock, locating or retrieving wild game in season for licensed hunters, dogs assisting a law enforcement officer, dogs housed in kennels, dogs being trained in training facilities, dogs at veterinarian offices and hospitals or dogs being trained for any of the above pursuits.

(Ord. 324 §16, 1991)

#### Sec. 7-107. - Liability clause.

The Board of Trustees, the Town Marshal's office, the Animal Control Division or any of its assistants or employees, or any other person authorized to enforce the provisions of this Article shall not be held responsible for any accident or subsequent disease that may occur to the animal in connection with the administration of this Article.

(Ord. 324 §18, 1991)

Sec. 7-108. - Continuation of certain nonconforming actions.

- (a) The owners of animals covered by Section 7-102 shall have five (5) years from the effective date of the ordinance codified herein to come into compliance with the provisions of this Section, provided that within sixty (60) days of the effective date of the ordinance codified herein, such owners register with the Town Marshal's office the total number and species of animals then in possession of the owner. Under no circumstances will said owner be allowed to increase the number of or replace lost or dead animals until compliance has been reached.
- (b) All other provisions of this Article shall be effective as against all persons unless otherwise excepted.

(Ord. 324 §21, 1991; Ord. 435 §1, 1996)

Secs. 7-109—7-120. - Reserved.

ARTICLE VI - Horses and Llamas

Sec. 7-121. - Scope.

- (a) This Article has been established for the purpose of setting forth minimum regulations and requirements necessary for keeping horses and llamas in the Town. These requirements have been set forth in order to protect the health, safety, welfare and convenience of all residents in the area, as well as to accommodate those whose lifestyles include raising and keeping of horses and llamas, who prefer living within the Town while retaining rural amenities.
- (b) While the keeping of horses and llamas is permitted according to these regulations, the sanitary conditions under which the animals are kept shall be enforced by the County Health Department as well as the Town. The basic sanitary conditions set forth herein will be enforced by the Town. With all requirements met, no violations should occur. However, if a nuisance complaint continues, the County Health Department could be the agency to enforce regulations. Other specific conditions regarding the keeping of horses and llamas, shelter or sanitation, as may be specified by the Planning Commission or Board of Trustees, shall be complied with.
- (c) Any person keeping, maintaining, housing or possessing horses and llamas in compliance with the requirements of this Article as set forth on May 6, 1986, and in compliance with all other relevant ordinances and local laws of the Town, as of the effective date of the ordinance codified herein, shall be exempt from the requirements as set forth in Subsection 7-122(b) below. All others shall be brought into compliance within one (1) year. Horse facilities being maintained on parcels not herein zoned conforming status or on any other nonconforming parcels prior to the effective date of the ordinance codified herein shall be removed from said parcels within one (1) year from this date.

Sec. 7-122. - Permit required.

- (a) Horses and llamas shall be permitted for noncommercial use only. Permits for private home stables may be issued to owners of property for their personal use only, provided that all minimum requirements herein set forth are met.
- (b) No person shall keep or maintain a horse within the Town limits unless such person has a valid permit to do so. Application for a permit shall be made to the Town Clerk and shall contain an adequate description of the real property upon which horses and llamas are to be kept and maintained. Following application, the Building Inspector shall cause the premises to be inspected, and authorize the issuance of a permit if the premises meets the conditions. The Town Clerk shall issue all permits upon the payment of a fee as set forth in Section 4-151 of this Code. A permit shall continue unless revoked as herein provided. Permits shall not be transferable.
- (c) The premises upon which horses and llamas are kept shall be maintained in a sanitary condition and shall comply with all regulations adopted by the Town. The premises shall at all reasonable hours be subject to inspection by certain representatives of the Town. It is unlawful for any person to refuse such inspection. The owner of horses and llamas shall be able to produce, upon demand, a valid permit for each horse. The owner of horses and llamas shall be able to produce, upon demand, a proof of compliance with all applicable county, state and federal laws and regulations as to the testing, inoculation and vaccination of horses and llamas.
- (d) The Building Inspector and/or Town Marshal may recommend the revocation of any permit upon the grounds that the permittee is violating or has violated any of the provisions of this Article. Such recommendation shall be filed with the Town Clerk, who shall cause a written notice to be mailed to the permittee notifying him or her that a hearing on the Building Inspector's recommendation will be held not less than ten (10) days from the date of mailing such notice. Such notice shall specify the time and place of the hearing. If, upon such hearing, the Board of Trustees finds that the permittee has violated any of the provisions of this Article, the Board of Trustees may herewith revoke his or her permit and the permittee shall be allowed forty-eight (48) hours within which to remove all horses and llamas and ten (10) days to remove any offensive or prohibited materials.
- (e) It is unlawful to ride, lead or allow any horse or llama on any sidewalk. It is unlawful to allow any waste deposits from such animal on public property. The owner and the person in possession of the animal shall be responsible for removing all waste deposits of the animal.
- (f) Upon denial of a permit under the provisions of this Article, the Town Clerk shall cause a written notice of such denial to be mailed to the applicant notifying the applicant thereof. An applicant desiring to appeal such denial shall, within ten (10) days of the receipt of the notice of denial, file with the Town Clerk a written request for hearing. The Town Clerk shall give notice of the hearing to the applicant in the manner provided in Subsection (d) above for hearing upon revocation. The Board of Trustees shall, following such hearing, direct that the permit should be either issued or denied.

(Ord. 270 §2, 1986; Ord. 435 §1, 1996)

Sec. 7-123. - Minimum requirements.

- (a) Sanitation and feeding.
  - (1)

The premises where horses and llamas are to be kept shall be maintained in a clean, neat and sanitary condition at all times in order to ensure the public health, safety, comfort, convenience and general welfare.

- (2) A fresh water supply shall be provided and fresh water shall be provided daily. All watering troughs shall be maintained so as to prevent the breeding of mosquitoes.
  - (3) Feeding shall require adequate containers or feeding troughs of size, kind and number to eliminate scatter and unsanitary conditions.
  - (4) Said premises shall be maintained in accordance with all applicable ordinances, rules, laws and regulations pertaining to the care of animal habitation, manure removal, fly-producing conditions, dust or odor-producing conditions, noise and water pollution as set forth by the County Health Department and the Town. Any such premises which are not at all times kept and maintained, covered, closed, protected, cleaned, drained and disinfected as to prevent any and all offensive noxious gases and odors arising therefrom, or which are allowed or suffered to become a breeding place for flies and insects or rodents, or to become offensive or noxious to the residents in the immediate neighborhood, are hereby declared to be nuisances and subject to summary abatement.
- (b) Minimum area and fencing requirements.
- (1) The minimum property area required is one-half ( $\frac{1}{2}$ ) acre. Any such property classified shall not keep or maintain any more than one (1) horse per first one-half ( $\frac{1}{2}$ ) acre, and shall not keep or maintain any more than one (1) horse per each additional one-half ( $\frac{1}{2}$ ) acre of lot area. All areas devoted to, and utilized for, the keeping and maintenance of horses and llamas shall be subject to the minimum requirements as forth in this Article.
  - (2) Location of corral or confinement area must meet the following setback requirements:
    - a. Distance from any well, one hundred (100) feet.
    - b. Distance from other residence or any other structure used for human habitation, fifty (50) feet.
    - c. Distance from any property line, five (5) feet.
  - (3) Fences shall be provided for confinement area and shall be maintained not less than three (3) feet in height, which fence shall be constructed at least five (5) feet from the outside boundary line of the property described in the application for a permit.
  - (4) In conjunction with a fenced corral or confinement area, an adequate wind break shall be provided, allowing protection from the prevailing winds.
  - (5) The construction of feeding facilities and the construction, drainage, flooring, ventilation and fly screening of all sheds or other shelters shall be governed by any regulations adopted by the Board of Trustees, as found in sections of the International Building Code, related to Agricultural Buildings.
  - (6) All stalls, sheds, stables and fences shall be continuously maintained with preservatives, fasteners and other materials so as to maintain appearance and prevent deterioration and animal escape.
  - (7) The owners of adjoining properties may by mutual agreement request that the Board of Trustees waive the requirement of Paragraph (2) above until such time as the mutual agreement is terminated, at which time the original requirement shall again be in effect.

An equine or llama may be tied or tethered in any front, side or back yard under the following conditions:

- (1) The animal's owner has the permission of the property owner for tethering use.
- (2) The animal shall be removed immediately if the situation causes distress to either the property owner or any neighbor.
- (3) The animal shall not be left tethered or tied on said property when there is no longer adequate grazing.
- (4) The animal's owner shall be responsible for removal of all manure.
- (5) The animal shall be kept off all roadways and public rights-of-way.

(Ord. 270 §4, 1986)

Secs. 7-125—7-140. - Reserved.

## ARTICLE VII - Waste Minimization

Sec. 7-141. - Short title.

This Article shall be known and may be cited as the "Waste Minimization Ordinance."

(Ord. 737 §1, 2015)

Sec. 7-142. - Purpose.

It is the purpose of this Article to protect the public health and safety and to implement the Town's Sustainability Action Plan, the 2013 Comprehensive Plan, the Boulder County Zero Waste Plan, and the objectives set forth in the Nederland 2020 Vision Statement.

(Ord. 737 §1, 2015)

Sec. 7-143. - Finding.

The Board finds as follows:

- (1) The Town, through its policies, programs, and laws, supports efforts to reduce the amount of waste that must be land-filled and pursues "zero waste" as a long term goal by emphasizing waste prevention efforts;
- (2) That the use of single-use disposable bags has severe impacts on the environment on a local and global scale, including greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation;
- (3) Despite recycling and voluntary solutions to control pollution from disposable carryout bags, many disposable single-use bags ultimately are disposed of in landfills, litter the environment, block storm drains and endanger wildlife;
- (4)

Approximately two billion (2,000,000,000) single use plastic bags are used annually in Colorado but less than five percent (5%) are recycled; and

- (5) It has been determined that single-use paper bags are not a sustainable alternative to single-use plastic bags due to their production requiring more resources and causing greater waste and emissions than that of plastic bags.
- (6) The Town's taxpayers bear the costs associated with the effects of disposable bags on the solid waste stream, drainage, litter and wildlife.
- (7) Studies document that charging a mandatory fee on disposable bags can dramatically reduce the use of these bags.
- (8) The Town of Nederland believes that residents and visitors should use reusable bags and that a fee on the distribution of disposable bags is appropriate to dissuade the use of disposable bags and fund the Town's efforts to educate residents, businesses, and visitors about the impact of disposable bags on the regional environmental health and to fund the use of reusable bags, Town cleanup events, and infrastructure and programs that reduce waste in the community.

(Ord. 737 §1, 2015)

#### Sec. 7-144. - Intent.

The disposable bag fee is necessary to address the environmental problems associated with disposable bags and to relieve taxpayers of the costs imposed upon the Town associated with the use of disposable bags. The Board intends that the requirements of this chapter will assist in offsetting the costs associated with using disposable bags to pay for the mitigation, educational, replacement, and administrative efforts of the Town.

(Ord. 737 §1, 2015)

#### Sec. 7-145. - Authority.

The Town of Nederland hereby finds, determines and declares that it has the power to adopt this Article pursuant to:

- (1) The Town's general police powers under CRS 31-15-401, to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease;
- (2) The Town's authority under CRS 31-15-501, to regulate the conduct of businesses and to prohibit business practices that are offensive or unwholesome, such as those that have an irreparable and deleterious effect on the environment.

(Ord. 737 §1, 2015)

#### Sec. 7-146. - Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

*Customer* means any person who makes a retail purchase from a retail store.

*Disposable bag* means, except as provided in Section 7-147, any bag, other than a reusable bag, that is provided to a customer by a retailer at the point of sale for the purpose of transporting goods.

*Disposable bag fee* means the Town fee imposed by this Chapter that is required to be paid by each consumer making a purchase from a retail store for each disposable bag used during the purchase, and imposed for the purpose of mitigating the impacts of disposable bags.

*Waste minimization public outreach plan* means a program to be put in place by the Town to raise awareness and educate both residents and visitors on waste minimization and the disposable bag fee. The program shall at a minimum include: the development of informational signage for all retail stores; informational sessions and communications with retail stores to explain the disposable bag fee and the retail store's obligations; and the production of a "Nederland Reusable Bag" and distribution of such bags to lodging companies and retail stores.

*Financial Services Manager* means the Financial Services Manager of the Town, or such person's designee.

*Remitted percent* means the percent of each disposable bag fee that is remitted by retail stores to the Town.

*Retail store* means any public commercial business engaged in the sale of personal consumer goods, household items, or groceries to customers who use or consume such items. "Retail store" does not include temporary vendors at farmer's markets or other temporary events.

*Retained percent* means the percent of each disposable bag fee that is retained by retail stores.

*Reusable bag* means any bag meeting the following criteria:

- (1) A bag that is at least 2.25 millimeters thick.
- (2) Is made from a material that can be cleaned and disinfected regularly;
- (3) Has a minimum lifetime of seventy-five (75) uses; and
- (4) Has the capability of carrying a minimum of eighteen (18) pounds.

*Waste minimization* means coordinated efforts to divert waste away from landfills and towards alternative means of disposal such as recycling and compost.

(Ord. 737 §1, 2015)

## Sec. 7-147. - Exemptions.

The disposable bag fee imposed by this Chapter does not apply to:

- (1) A bag brought into a retail store by a customer and used to transport goods from the retail store.
- (2) A bag provided to a customer at no charge if the customer provides evidence that he or she is a participant in a federal or state food assistance program.
- (3) Bags used by consumers inside retail stores to:
  - a. Package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items like nails, nuts, and screws;
  - b. Contain or wrap frozen foods, meat, or fish;
  - c. Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and
  - d. Contain unwrapped prepared foods or bakery goods;
- (4)

A non-handled bag used to protect purchased items from damaging or contaminating other purchased items when placed in a disposable bag or a reusable bag.

- (5) Bags used for loose small retail items, including, but not limited to, jewelry, buttons, beads, ribbon, herbs and spices, medical marijuana or adult-use marijuana if sold by the holder of a permit issued pursuant to applicable law, and similar items.
- (6) Bags provided by pharmacists to contain prescription drugs.
- (7) Newspaper bags, door-hanger bags, laundry-dry cleaning and garment bags, and bags sold in packages containing multiple bags for uses such as food storage, garbage, pet waste, or yard waste.

(Ord. 737 §1, 2015)

Sec. 7-148. - Disposable bag fee requirements.

- (a) For each disposable bag (paper or plastic) provided to a customer, retail stores shall collect from customers, and customers shall pay, at the time of purchase, a disposable bag fee of ten cents (\$0.10).
- (b) Retail stores shall record the number of disposable bags provided and the total amount of disposable bag fees charged on the customer transaction receipt.
- (c) A retail store shall not refund to the customer any part of the disposable bag fee, either directly or indirectly, nor shall the retail store advertise or state to customers that any part of the disposable bag fee will be refunded to the customer.
- (d) A retail store shall not exempt any customer from any part of the disposable bag fee for any reason except as stated in Section 7-147.

(Ord. 737 §1, 2015)

Sec. 7-149. - Retention, remittance, and transfer of the disposable bag fee.

- (a) A retail store may retain fifty percent (50%) of each disposable bag fee.
- (b) The retained percent may only be used by the retail store to:
  - (1) Provide educational information about the disposable bag fee to customers;
  - (2) Provide the signage required by Section 7-150, "Required Signage;"
  - (3) Train staff in the implementation and administration of the fee;
  - (4) Improve or alter infrastructure to allow for the implementation, collection, administration of the fee;
  - (5) Collect, account for, and remit the fee to the Town;
  - (6) Develop and display informational signage to inform consumers about the fee;
  - (7) Encourage the use of reusable bags or promote recycling of plastic bags; and
  - (8) Improve infrastructure to increase plastic bag recycling.
- (c) The retained percent shall not be classified as revenue for the purposes of calculating sales tax.
- (d) The amount of the disposable bag fee collected by a retail store in excess of the retained percent shall be paid to the Town and shall be used only as set forth in Subsection (g) to mitigate the effects of disposable bags in Nederland.

- (e) A retail store shall pay and the Town shall collect all disposable bag fees. The Town shall provide the necessary forms for retail stores to file with the Town in order to demonstrate compliance with the provisions of this Article.
- (f) The disposable bag fee shall be administered by the Financial Services Manager. The Financial Services Manager is authorized to adopt administrative rules pursuant to Section 2-176 of this Code to implement this Chapter, prescribe forms and provide methods of payment and collection, and otherwise implement requirements of this Chapter.
- (g) Funds from the remitted percent of the disposable bag fee paid to the Town shall be used only for the expenditures that are intended to mitigate the effects of disposable bags and support waste minimization at Nederland businesses and public places, including without limitation the following:
  - (1) Administrative costs associated with developing and implementing the disposable bag fee.
  - (2) Activities of the Town to:
    - a. Provide reusable bags to residents and visitors;
    - b. Educate residents, businesses, and visitors about the impact of disposable bags on the Town's environmental health, the importance of reducing the number of disposable bags entering the waste stream, and the impacts of disposable bags on wildlife and the environment;
    - c. Fund programs and infrastructure that allow the Nederland community to reduce waste;
    - d. Purchase and install equipment designed to minimize bag pollution, including, recycling containers, and waste receptacles;
    - e. Fund community cleanup events and other activities that reduce litter;
    - f. Maintain a public website that educates residents on the progress of waste minimization efforts in the community; and
    - g. Fund the administration of the disposable bag fee program.
- (h) No disposable bag fees collected in accordance with this Chapter shall be used only for general municipal or governmental purposes or spending.
- (i) Disposable bag fees collected in accordance with this Chapter shall be continually available for the uses and purposes set forth in Subsection (g) of this section without regard to fiscal year limitation. No disposable bag fee funds shall be used for any purpose not authorized in this Chapter.

(Ord. 737 §1, 2015)

#### Sec. 7-150. - Required signage.

Every retail store required to collect the disposable bag fee shall display a sign in a location outside or inside of the store, viewable by customers, alerting customers to the Town of Nederland's Disposable Bag Fee.

(Ord. 737 §1, 2015)

#### Sec. 7-151. - Requirements for disposable paper bags.

No food store shall provide any paper bag that is not a recycled paper bag. "Recycled paper bag" means a paper bag that is one hundred percent (100%) recyclable and contains at least forty percent (40%) post-consumer recycled content.

Sec. 7-152. - Audits and violations.

- (a) Each retail store shall maintain accurate and complete records of the disposable bag fees collected, the number of disposable bags provided to customers, the form and recipients of any notice required pursuant to this Chapter, and any underlying records, including any books, accounts, invoices, or other records necessary to verify the accuracy and completeness of such records. It shall be the duty of each retail store to keep and preserve all such documents and records, including any electronic information, for a period of three (3) years from the end of the calendar year of such records.
- (b) If requested, each retail store shall make its records available for audit by the Financial Services Manager during regular business hours for the Town to verify compliance with the provisions of this Chapter. All such information shall be treated as confidential commercial documents.
- (c) If any person fails, neglects, or refuses to collect or pay the disposable bag fee, or underpays the disposable bag fee, the Financial Services Manager shall make an estimate of the fees due, based on available information, and shall add thereto penalties, interest, and any additions to the fees. The Financial Services Manager shall serve upon the delinquent retail store personally, by electronic mail or by First Class Mail directed to the last address of the retail store on file with the Town, written notice of such estimated fees, penalties, and interest, constituting a notice of final determination, assessment, and demand for payment, (also referred to as "notice of final determination") due and payable within twenty (20) calendar days after the date of the notice. The retail store may request a hearing on the assessment as provided in Section 7-153 of this Chapter.
- (d) If payment of any amount of the disposable bag fee due to the Town is not received on or before the applicable due date, penalty and interest charges shall be added to the amount due in the amount of:
  - (1) A penalty of ten percent (10%) of total due;
  - (2) Interest charge of one percent (1%) of total penalty per month.

(Ord. 737 §1, 2015)

Sec. 7-153. - Hearings.

- (a) A retail store may request a hearing on any proposed fee imposed under this Chapter after receiving a notice of final determination, by filing a written request for hearing within twenty (20) calendar days of the date of mailing of the notice of final determination. The request for hearing shall set forth the reasons for and amount of changes in the notice of final determination that the retail store seeks and such other information as the Financial Services Manager may prescribe.
- (b) The Town Administrator shall conduct the hearing under the procedures prescribed by Article IX of Chapter 2, except that the Town Administrator shall notify the retail store in writing of the time and place of the hearing at least ten (10) days before it is scheduled, unless the retail store agrees to a shorter time. The hearing shall be held within sixty (60) days of the date of receipt of the request for a hearing, unless the retail store agrees to a later date.

(Ord. 737 §1, 2015)

- (a) It is unlawful for any person to violate any provision of this Chapter.
- (b) The first or second violation of this Chapter within two (2) years, based on the date of the violation, shall be an infraction. Every person found liable for such a violation shall be punished as provided in Article IX of Chapter [2]; provided, however, the maximum penalty for each such violation shall be a fine of five hundred dollars (\$500.00).
- (c) A third and each subsequent violation of this Chapter within two (2) years, based on the date of violation, shall be a civil infraction. Any person convicted of such a violation shall be punished as provided in Section 1-72.

(Ord. 737 §1, 2015; Ord. 803 §7, 2019)

## CHAPTER 8 - Vehicles and Traffic

### ARTICLE I - Model Traffic Code

#### *Footnotes:*

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***Editor's note—*** Ord. 807, § 1, adopted March 17, 2020, repealed Art. I in its entirety and enacted new provisions to read as herein set out. Former Art. I, §§ 8-1—8-4, 8-6—8-8, pertained to similar subject matter and derived from Ord. 186, §§1, 4, 8, adopted in 1980; Ord. 435, §1, adopted in 1996; Ord. 451, §§1, 2, adopted in 1997; Ord. 573, §1, adopted in 2003; and Ord. 717, §§2, 3, adopted in 2013.

#### Sec. 8-1. - Adoption.

There is hereby adopted by reference the revised 2020 edition of the "Model Traffic Code for Colorado" ("Model Traffic Code") promulgated and published as such by the Colorado Department of Transportation, Traffic Engineering and Safety Branch, 2829 W. Howard Place, Denver, Colorado 80204. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town. The purpose of this Ordinance 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.

( Ord. 807 §1, 2020)

#### Sec. 8-2. - Copy on file.

Three (3) copies of the Model Traffic Code are now filed in the office of the Town Clerk and may be inspected during regular business hours.

( Ord. 807 §1, 2020)

#### Sec. 8-3. - Additions, deletions, and amendments.

- (1) Deletions. The Model Traffic Code is adopted as if set out at length save and except for the following Sections, which are declared to be inapplicable to the Town and are therefore expressly deleted:
  - (a) Section 1701. Traffic offenses and infractions classified—penalties—penalty and surcharge schedule—repeal.

- (b) Section 1702. Counties—traffic offenses classified—schedule of fines.
- (2) Modifications. The Model Traffic Code is adopted as if set out at length, provided that the following specified articles, sections, and provisions are modified, and or amended, to read as follows:
- (a) Section 111 of the adopted code is hereby amended to read in its entirety as follows:
- 111. Golf car.**
- (1) A golf car may be operated only on a roadway that has a speed limit equal to or less than thirty-five miles per hour; except that it may be operated to directly cross a roadway that has a speed limit greater than thirty-five miles per hour at an at-grade crossing to continue traveling along a roadway with a speed limit equal to or less than thirty-five miles per hour.
- (2) It is unlawful to operate a golf car on a state highway.
- (3) It is unlawful to operate a golf car in excess of the designated maximum lawful speed limit of the portion of the roadway upon which the golf car is traveling or in excess of twenty-five miles per hour on any portion of roadway for which the designated maximum lawful speed limit is greater than twenty-five miles per hour.
- (3) Any golf car operated on a roadway shall display a triangular slow-moving vehicle emblem on the rear that conforms to the requirements of Section 234 of this Code.
- (4) It is unlawful to operate a golf car on a roadway carrying a greater number of persons or a greater maximum load than is specified or recommended by the manufacturer of such golf car.
- (5) It is unlawful to operate a golf car on a roadway from any position other than a seated position in the designated driver's seat or to permit any passenger of a golf car in motion to ride in any position other than a seated position in a seat designed for passenger transport.
- (6) It is unlawful for any person under the age of sixteen (16) years to operate a golf car on any roadway. It is unlawful for any person to permit, aid or facilitate a person under the age of sixteen (16) years in the operation of a golf car on any roadway.
- (7) It is unlawful for any person who does not possess a valid driver's license to operate a golf car on any roadway.
- (8) It is unlawful to operate a golf car on any public sidewalk, trail, path or other public area upon which motor vehicles are prohibited, except as expressly permitted by the Town as indicated by posted signs.
- (9) For purposes of this Section, "golf car" means a four-wheeled electric vehicle that is designed for the purpose of transporting one or more persons and their golf equipment to play golf. Golf cars may be operated for other purposes as permitted by this Section. Gas-powered golf cars are specifically excluded from this definition and are not permitted to operate on roadways within the Town.
- (b) Section 113 of the adopted code is hereby amended to read in its entirety as follows:
- 113. All-terrain vehicles.**
- (1) It is unlawful to operate an all-terrain vehicle on any roadway or upon any public sidewalk, trail, path or other public area upon which motor vehicles are prohibited, or upon any Town-owned property.
- (2)

For purposes of this Section, "all-terrain vehicle" means and includes any self-propelled vehicle that is designed to travel on wheels or tracks in contact with the ground, designed primarily for use off of the public highways, and generally and commonly used to transport persons for recreational purposes. "All-terrain vehicle" does not include military vehicles, golf cars, vehicles designed and used to carry persons with disabilities, and vehicles designed and used specifically for agricultural, logging, or mining purposes.

(3) An all-terrain vehicle equipped with a snowplow attachment is exempt from the prohibitions set forth in Subsection (1) above.

(c) Subsection 803(5) of the adopted code is amended to read in its entirety as follows:

(5) No pedestrian shall cross at a state highway except at a marked crosswalk.

(d) Pursuant to Subsection 1101(7) of the adopted code, the Town adopts the following maximum lawful speed limits by the addition of Subsection 1101(13) to read in its entirety as follows:

(13) Speed laws applicable. The Board of Trustees has determined that the following *prima facie* speed limits should be applicable on the streets and roadways in the Town, and speed in excess of such limits shall be *prima facie* evidence that such speed is unlawful and a violation of the Article.

(a) Further, upon the basis of engineering and traffic investigations and determinations made by the Colorado Department of Transportation on streets which are state highways and traffic studies performed on Town streets, it is hereby declared that standard signs now erected give notice of the reasonable and true *prima facie* speed limit on those portions of said highways within the corporate limits of said Town. Accordingly, the following reasonable and *prima facie* speed limits for all streets within the Town shall be fifteen (15) miles per hour unless posted otherwise.

(b) Except when a special hazard exists that requires lower speed than is hereinabove set forth, the foregoing speed limits are reasonable and *prima facie* speed limits.

(c) Unless specifically provided to the contrary, all references to 'Town Limit' in Section 1101 shall mean the existing Town limit. It is the intention of the Board of Trustees that the provisions of Section 1101 shall apply to the entire area within the Town, including recently annexed territory and territory which may be annexed in the future upon the effective date of any annexation."

(e) Section 1701 of the adopted code is hereby amended to read in its entirety as follows:

**1701. Traffic offenses and infractions classified - penalties - penalty and surcharge schedule.**

(1) Except as specifically set forth in this Section 1701, it is a traffic infraction for any person to violate any of the provisions of this code. Any designation or classification of a violation in any other section of this code is inapplicable and expressly superseded by this Section 1701. Traffic infractions shall constitute civil matters. The Colorado Rules of Municipal Procedure shall apply to traffic infraction proceedings, except that no warrant for arrest shall be issued for the defendant's failure to appear when the only violation charged would constitute a noncriminal traffic infraction and the defendant's driver's license is issued by the State of Colorado or any other state which participates in the Interstate Nonresident Violator Compact, as codified at C.R.S. § 24-60-2101. Instead, the court may enter a judgment of liability by default against the defendant for failure to appear, assess any penalty and costs established by law and report the

judgment to the appropriate state motor vehicle department which may assess points against the defendant's driver's license and may take appropriate action to ensure that the judgment is satisfied. There is no right to a trial by jury for any noncriminal traffic infraction.

- (2) The following violations constitute criminal traffic offenses:
  - (a) A violation of Section 1101 involving driving twenty-five (25) or more miles in excess of the lawful speed limit.
  - (b) A violation of Section 1101(8)(a) involving driving twenty- five (25) miles or more in excess of the speed limit on any interstate highway.
  - (c) Violations of Sections 1105 (speed contests), 1401 (reckless driving), 1402 (careless driving), 1409 (failure to show compulsory insurance), 1413 (eluding a police officer), 1703 (aiding and abetting a traffic offense) and 1903 (failing to stop for a school bus) of the Model Traffic Code, as amended.
- (3) Notwithstanding any other provision of this code or of the Nederland Municipal Code to the contrary, traffic infractions as provided in this code shall be subject to the following maximum penalty: a fine of \$2,650.00. Court costs as authorized by state and local law shall be added to the fine.
- (4) Notwithstanding any other provision of this code or of the Nederland Municipal Code to the contrary, criminal traffic offenses as provided in this code shall be subject to the following maximum penalties: one hundred eighty (180) days imprisonment or a fine of \$2,650.00 or both; except that any person who, at the time of commission of the offense, was less than eighteen (18) years of age shall be subject to a maximum penalty of a fine of \$2,650.00, Court costs as authorized by state and local law shall be added to any penalty imposed.
- (f) Section 1709 of the adopted code is amended with an amended subsection (1) and by the addition of new subsections (6) and (7) to read in their entirety as follows:
  - (1) Whenever a penalty assessment notice for a traffic infraction is issued the penalty assessment notice which shall be served upon the defendant by the peace officer shall contain the name and address of the defendant, the license number of the vehicle involved, if any, the number of the defendant's driver's license, if any, a citation of the statute alleged to have been violated, a brief description of the traffic infraction, the date and approximate location thereof, the amount of the penalty prescribed for such traffic infraction, the amount of the surcharge thereon pursuant to section 24-4.2-104 (1), C.R.S., the number of points, if any, prescribed for such traffic infraction pursuant to section 42-2-127, C.R.S., and the date the penalty assessment notice is served on the defendant; shall direct the defendant to appear in a specified county court at a specified time and place in the event such penalty and surcharge thereon is not paid; shall be signed by the peace officer; and shall contain a place for the defendant to elect to execute a signed acknowledgment of liability and an agreement to pay the penalty prescribed and surcharge thereon at least seven business days prior to the court date written on the ticket, as well as such other information as may be required by law to constitute such penalty assessment notice to be a summons and complaint, should the prescribed penalty and surcharge thereon not be paid within the time allowed in section 42-4-1701, C.R.S.
  - (6) Payment of a penalty assessment notice by the person to whom the notice is tendered shall constitute an acknowledgment of guilt by such person of his or her violation of the offense stated in such notice.

- (7) Payment of the prescribed fine shall be deemed a complete satisfaction for the violation, and the Town, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof if requested. Checks tendered and accepted and on which payment is received shall be deemed sufficient receipt."

(Ord. 807 §1, 2020)

#### Sec. 8-4. - Application.

This Article shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way, public place or public parking area, including streets and ways not dedicated as such, either within or outside the corporate limits of the Town, the use of 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 concerning reckless driving, careless driving and eluding a police officer shall apply not only to public places and ways but also throughout the Town.

(Ord. 807 §1, 2020)

#### Sec. 8-5. - Interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to conform with the State's uniform system for the regulation of vehicles and traffic. Article and section headings of this Article and the adopted code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section thereof.

(Ord. 807 §1, 2020)

#### Sec. 8-6. - Violation; penalties.

The following penalties, herewith set forth in full, shall apply to this Article:

- (1) It is unlawful for any person to violate any provision of the Model Traffic Code.
- (2) Upon conviction of, or entry of a guilty plea or a plea of nolo contendere to, a violation of the provisions of the Model Traffic Code for which a fine only is established as a penalty for a violation thereof, the violation is deemed to be and shall constitute a civil matter and not a criminal violation. Penalties and surcharges, if any, shall be as set forth by order of the Municipal Court, as required by the Colorado Municipal Court Rules of Procedure, and as set forth in this Section.
- (3) Fines and Court Fees for Traffic Infractions.
  - (a) The Municipal Judge shall have the authority to set fines for traffic infractions. Such fines shall fall within the ranges established by this Section, other applicable Code section, or Resolution of the Board of Trustees. The Municipal Court shall have the ability to waive, in part or in whole, fines based on appropriate conditions of deferrals or other plea agreements.
  - (b) Fine amounts for traffic infractions for which points may be assessed pursuant to Section 42-2-127, C.R.S., shall be based on the original charge and not on the charge as amended and for which judgment is entered as the result of any plea negotiations.

(c) The Board of Trustees will set minimum fine amounts and court fees by Resolution.

(4) Surcharges.

- (a) Surcharges shall be assessed by the Municipal Court as set forth in this Section. Such surcharges shall be cumulatively assessed when applicable and shall be in addition to court costs against any defendant upon conviction of, entry of a guilty plea, or a plea of nolo contendere to a violation of the provisions of the Model Traffic Code.
- (b) The Board of Trustees will set surcharge amounts by Resolution.
- (c) Surcharges assessed and collected under this Section shall be used for law enforcement, victim assistance programs and activities, or court technology.

(Ord. 807 §1, 2020)

Sec. 8-7. - Motor vehicle registration requirements.

- (1) It shall be unlawful for any owner of a motor vehicle to drive or park on a public street or public roadway a motor vehicle which is not registered as required by Section 42-3-103(1), C.R.S.
- (2) It shall be unlawful for an owner to fail to attach to the motor vehicle the number plates assigned with the current registration as required by Section 42-3-202(1)(a), C.R.S.

(Ord. 807 §1, 2020)

Sec. 8-8. - Motor vehicle emission requirements.

It shall be unlawful for any person to operate a motor vehicle registered or required to be registered in the State, or any vehicle otherwise required to display a valid verification of emissions test, nor shall any person allow such a motor vehicle to be parked on public property or on private property available for public use within the Town, without such vehicle displaying a valid verification of emissions test.

(Ord. 807 §1, 2020)

Sec. 8-9. - Use of restricted roadways prohibited.

It is unlawful for any person to operate a motor vehicle on a restricted roadway unless the person has been duly authorized to do so and is using the roadway for its intended purpose. As used in this Section, restricted roadway means any roadway, right-of-way or easement that is not intended for use by the general public and has been posted with signs indicating such restrictions, including but not limited to emergency access ways, utilities easements and other similar ways.

(Ord. 807 §1, 2020)

Secs. 8-10—8-20. - Reserved.

ARTICLE II - Parking Regulations

Sec. 8-21. - Parking prohibited where.

Parking of any motor vehicle is prohibited at any location on any public street, alley or any public way which has less than twenty-six (26) feet of open and maintained width of traveled roadway, alley or other public way at such location, and which has been plowed to at least twenty-six (26) feet in width at such location.

(Ord. 253 §1, 1984; Ord. 565 §1, 2003; Ord. 593 §1, 2004)

#### Sec. 8-22. - Vehicle subject to towing.

Any vehicle found to be in violation of any provisions of this Article shall be subject to immediate towing and the owner of such vehicle and the operator thereof shall be subject to a fine as set forth in this Article.

(Ord. 253 §2, 1984)

#### Sec. 8-23. - Applicability.

This Article shall apply to every street, alley, public sidewalk, public driveway, public park and every other public way or public place within the corporate limits of the Town.

(Ord. 253 §3, 1984)

#### Sec. 8-24. - Intention.

This Article is intended to add to the requirements of the Model Traffic Code for Colorado Municipalities as adopted by the Town and is not intended to repeal, alter, modify, amend or reduce other parking requirements of said Code.

(Ord. 253 §4, 1984)

#### Sec. 8-25. - Penalties.

The following penalties shall be assessed against any person found to have violated any provision of this Article:

- (1) First offense: fifty dollars (\$50.00) and towing and storage charges, if any, incurred by the Town.
- (2) Second offense: one hundred dollars (\$100.00) and towing and storage charges, if any, incurred by the Town.
- (3) Third offense and each subsequent offense: three hundred dollars (\$300.00) and towing and storage charges, if any, incurred by the Town.

The full fine so listed shall be assessed by the Municipal Court, and the Court shall have no discretion to reduce or suspend any portion of such fine.

(Ord. 253 §7, 1984)

#### Sec. 8-26. - "For sale" signs prohibited along public rights-of-way.

It is unlawful for any person to park on or along any public right-of-way within the Town, for longer than a twenty-four-hour period, a motor vehicle displaying "for sale" or similar signs indicating the willingness of the owner to sell the vehicle.

Secs. 8-27—8-40. - Reserved.

### ARTICLE III - Snow Emergency Routes

Sec. 8-41. - No parking or stopping along snow routes.

During any accumulation of snow in excess of six (6) inches, whether such accumulation is because of falling, drifting or blowing snow, it shall be unlawful to park or abandon a vehicle for any period of time along a public right-of-way.

(Ord. 437 §1, 1996)

Sec. 8-42. - Authority to impound vehicle.

A police or code enforcement officer is authorized to remove or cause to be removed a vehicle from any street along a designated snow route if there is an accumulation of snow in excess of six (6) inches and the person in possession of the vehicle is not present or is unwilling or unable to provide for its immediate removal.

(Ord. 437 §2, 1996)

Sec. 8-43. - Notice to vehicle owner.

- (a) Within forty-eight (48) hours of the time that a motor vehicle is impounded pursuant to this Article, the Town shall give notice by first-class mail to the registered owner of such motor vehicle:
  - (1) That the motor vehicle has been removed and impounded;
  - (2) Of the reason therefor;
  - (3) Of the location of the vehicle;
  - (4) That the vehicle owner has a right to contest the validity of the impoundment by requesting a prompt hearing within fifteen (15) days from the date on which such notice is mailed; and
  - (5) That, if the vehicle is not claimed by the owner or the owner's authorized agent and any accrued removal and storage charges are not paid in full within thirty (30) days of the date on which the notice is mailed, the vehicle will be sold.
  - (6) If the vehicle has a reasonable market value of less than two hundred dollars (\$200.00), the notice shall state and shall indicate that the period for payment and reclaiming of the vehicle before sale is fifteen (15) days.
- (b) If the vehicle is not registered in the State, or if the license plate or vehicle identification number is expired, altered or missing, the Town shall send the notice required in this Section as soon as reasonably practicable, but without regard to the forty-eight-hour limit.
- (c) The total amount of fines, late fees and administrative impound fees must also be paid before the vehicle may be reclaimed.
- (d)

If the vehicle was reclaimed from impoundment or a hearing concerning the impoundment was set before the notice required by this Section was sent, no such notice need be given.

(Ord. 437 §3, 1996)

#### Sec. 8-44. - Seizure of vehicle.

Nothing in this Chapter shall be deemed to restrict the authority possessed by any peace officer under other provisions of law to seize any motor vehicle or part thereof if it is or contains evidence or is an instrumentality of a crime. Such provisions include, without limitation, the authority to seize a vehicle when there is probable cause to believe that a vehicle has been involved in a hit-and-run accident or contains stolen parts, or when a search of a vehicle has been authorized by court order. The release of any vehicle so seized shall be governed by the provisions of law under which it was seized.

(Ord. 437 §4, 1996)

#### Sec. 8-45. - Release of vehicle.

A vehicle or parts impounded pursuant to this Section shall be released to its owner upon payment to the Town of an administrative impoundment fee of twenty-five dollars (\$25.00) and payment to the towing carrier of the costs of towing and storage, unless ordered released as a result of a hearing held pursuant to this Article.

(Ord. 437 §5, 1996)

#### Sec. 8-46. - Lien of towing carrier.

A towing carrier that has removed or impounded a vehicle pursuant to this Article has a possessory lien upon such vehicle for all costs of towing and storage unless a hearing officer orders the vehicle released pursuant to this Chapter.

(Ord. 437 §6, 1996)

#### Sec. 8-47. - Hearing.

- (a) The owner of a vehicle impounded by or at the request of the Town pursuant to this Article or a person in possession of a vehicle at the time it was so impounded is entitled to a hearing regarding the impoundment, if such person requests a hearing within fifteen (15) days from the date the notice of impoundment was mailed or within fifteen (15) days of reclaiming the vehicle from impoundment if no notice was mailed and if such person had no hearing prior to the time of the impoundment. The hearing shall be conducted before the Municipal Judge or a hearing officer appointed by the Municipal Judge within one (1) business day of the time of request for the hearing, unless the person requesting the hearing waives the one-day requirement. If a person requests a hearing and secures the release of the vehicle pursuant to this Article, and a summons and complaint or parking ticket has been issued which alleges a violation of this Article which formed the basis of the impoundment, the hearing officer may schedule the hearing provided by this Section to coincide with the trial of the infraction or may continue the hearing to such time. Otherwise, the hearing officer may continue a next-business-day hearing on a completed impoundment at the request of the Town only after determining that probable cause existed for the impoundment. Probable cause may be determined solely from records kept by the Town.

- (b) A person who requests a post-impoundment hearing may obtain the release of the vehicle prior to the hearing by posting a bond in the amount of the towing and storage charges due as of the date of the request plus twenty-five dollars (\$25.00) in administrative costs. If such person fails to appear at the date and time of the scheduled hearing, the hearing request shall be dismissed with prejudice, and the bond amount shall be forfeited to the Town.
- (c) The party requesting the hearing bears the burden of establishing that such person has the right to possession of the vehicle. The Town bears the burden of establishing the validity of the proposed or completed impoundment. The standard of proof is a preponderance of the evidence.
- (d) Failure of any person to request an impoundment hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing and a determination of all issues then existing as supporting the impoundment or immobilization.
- (e) At a hearing following the impoundment of a vehicle, the hearing officer shall determine whether the vehicle was subject to impoundment under this Article. If the hearing officer so finds, the officer shall assess the costs of removal and impoundment, including without limitation any administrative impound fee, against the vehicle. If the hearing officer does not so find, the officer shall order the vehicle released immediately to the person entitled to possession and shall assess the costs of removal and impoundment against the Town.

(Ord. 437 §7, 1996)

#### Sec. 8-48. - Failure to claim vehicle.

If a vehicle that has been impounded is still under impoundment seventy-two (72) hours from the time at which notice prescribed by this Article has been mailed to the registered owner and the owner has not requested a hearing, or obtained the release of the vehicle by paying accumulated removal and impoundment charges, the vehicle shall be deemed abandoned, and the Town shall dispose of such vehicle as provided by law.

(Ord. 437 §8, 1996)

#### Secs. 8-49—8-60. - Reserved.

### ARTICLE IV - Traffic Violations

#### Sec. 8-61. - Safety sensitive zones.

- (a) The following are hereby designated as safety sensitive zones:
  - (1) Highway 119 between mile marker 26 and Big Springs Drive; and
  - (2) Highway 72 between Highway 119 and Jefferson Street.
- (b) Safety sensitive zones shall be indicated by signage with the following language: "SAFETY SENSITIVE ZONE FINES DOUBLED."
- (c) Any fine stated on a penalty assessment issued for a moving traffic violation in the safety sensitive zone shall double the amount of the fine set for such violation.
- (d)

In the event a summons and complaint or penalty assessment for a moving traffic violation in a safety sensitive zone is issued, that violation will be subject to the following enhanced fine structure:

- (1) The fine assessed for a moving violation in the safety sensitive zone shall be imposed at twice the rate of the customary fine for a violation had it not occurred in a safety sensitive zone.
  - (2) The fine assessed for a moving violation in the safety sensitive zone shall be mandatory and may not be subject to a plea bargain; provided, however, that the points assessed against a traffic violator's Colorado driver history may be reduced based on the automatic plea bargain available for penalty assessments or based on the discretion of the municipal prosecutor to offer a plea bargain.
- (e) In no event may the total civil penalty assessed for a traffic offense in a safety sensitive zone exceed four hundred ninety-nine dollars (\$499.00) for a single offense.
  - (f) If the Court finds that a traffic violator is financially unable to pay the enhanced fine imposed for a violation in a safety sensitive zone, the Court may impose a penalty of useful community service to be calculated at a rate of five dollars (\$5.00) per hour, not to exceed a total amount of one hundred (100) hours of community service for a single offense.

(Ord. 457 §1, 1997)

Secs. 8-62—8-80. - Reserved.

## CHAPTER 10 - General Offenses

### ARTICLE I - Offenses and Miscellaneous Provisions

#### Sec. 10-1. - Definitions generally.

The terms used in this Chapter shall be as defined in the Colorado Criminal Code, or if not defined in said code, as used in their ordinary, usual and accepted sense and meaning. In this Chapter, public place shall be taken to include any place commonly or usually open to the general public, or accessible to members of the general public, whether it is privately or publicly owned. By way of illustration, public places include, but are not limited to, public ways, streets, buildings, sidewalks, alleys, parking lots, shopping centers, shopping center malls, places of business usually open to the general public, and automobiles or other vehicles in or upon any such place or places; but shall not include the interior or enclosed yard area of private homes, residences, condominiums or apartments.

(Ord. 435 §1, 1996)

#### Sec. 10-2. - Legislative intent.

It is the intent and purpose of this Chapter not to cover and include those offenses which are felonies under state statute, and this Chapter shall be so construed, notwithstanding any language contained in the Chapter which might otherwise be construed to the contrary.

(Ord. 435 §1, 1996)

Sec. 10-3. - Affirmative defenses.

The affirmative defenses available in Sections 18-1-701 to 18-1-710 and 18-2-101, C.R.S., shall be available as affirmative defenses to prosecutions in the Municipal Court under those provisions covered by this Chapter.

(Ord. 435 §1, 1996)

Sec. 10-4. - Penalty.

Failure to comply with the terms of this Chapter shall constitute a criminal violation. Any person who is found guilty of, or pleads guilty or nolo contendere to the violation of, a criminal violation shall be subject to the criminal penalties set forth in Section 1-72 of this Code.

(Ord. 435 §1, 1996)

Sec. 10-5. - Parental responsibility for acts of minor children.

- (a) It is hereby made the duty of parents, guardians or persons having the charge, custody or control of minor children to actively prevent all minor children lawfully under their direction, control or custody from violating any section of this Chapter.
- (b) Any parent, guardian or person issued a citation under Section 10-142 of this Chapter shall not be issued a citation under this Section for the same offense.

(Ord. 435 §1, 1996)

Sec. 10-6. - Attempts; aiding, abetting or advising.

- (a) It is unlawful for any person to knowingly engage in conduct constituting a substantial step toward the commission of an offense which would constitute a violation of any section of this Chapter. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense.
- (b) It is unlawful for any person to knowingly aid another in a commission of an offense which would constitute a violation of this Chapter. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the person aids, abets or advises the other person in planning or committing the offense, even if the other person is not guilty of committing or attempting the offense.

(Ord. 435 §1, 1996)

Sec. 10-7. - Accessory to crime.

It is unlawful for any person to knowingly hinder, delay or prevent the discovery, detention, apprehension, prosecution, conviction or punishment of another for the commission of a violation of any section of this Chapter by:

- (1) Harboring or concealing the other;
- (2) Warning 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) Providing such person with money, transportation, weapon, disguise or other thing to be used in avoiding discovery or apprehension;
- (4) Using force, intimidation or deception, obstructing anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person; or
- (5) Concealing, destroying or altering any physical evidence that might aid in discovery, detection, apprehension, prosecution, conviction or punishment of such person.

(Ord. 435 §1, 1996)

Secs. 10-8—10-20. - Reserved.

## ARTICLE II - Property

Sec. 10-21. - Trespass.

- (a) It is unlawful to enter or remain on the premises of another without permission of a person with a possessory interest in the property.
- (b) As used in this Section, premises shall mean real property, buildings and other improvements thereon, and the stream banks and beds of any non-navigable freshwater streams flowing through such real property.

(Ord. 118 §1-22, 1971; Ord. 196 §6, 1981; Ord. 435 §1, 1996)

Sec. 10-22. - Interference with use of public property.

- (a) No person without legal privilege shall knowingly obstruct vehicular or pedestrian movement in a public place. For the purpose of this Section:

*Legal privilege* includes, without limitation, awaiting public transportation in areas designated therefor and acting in accordance with a license or permit used by the Town of construction or other work in, over, on or under the public way or place.

*Obstruct* means to interfere with or prevent, whether alone or with others, convenient or reasonable passage for use.

*Public place* means in or upon any public highway, street, alley, walk, parking lot, building, park or other public property, or in or upon those portions of any private property upon which the public has an express or implied license to enter or remain.

- (b) No person shall be deemed to have violated this Section solely because of a gathering of persons for the purpose of hearing such person speak or solely because of being a member of such a gathering. Such person commits a violation by refusing to obey a reasonable request or order by a police officer to move:
  - (1) To prevent obstruction of a public street, alley, sidewalk, public way, place or building, or entrance or doorway into or out of a building open to the public, if compliance with that order at the same time permits the gathering or continue to satisfy its communicative purpose; or
  - (2) To maintain public safety by dispersing those gathered in dangerous proximity to a fire or hazard.

Sec. 10-23. - Parking on private premises.

It is unlawful for any person to park or stand a vehicle, whether or not such vehicle is occupied, unless temporarily for the purpose of and while actually engaged in loading or unloading the vehicle, in a private driveway or on private property without the express or implied consent of the owner or person in lawful control of such driveway or property.

(Ord. 435 §1, 1996)

Sec. 10-24. - Littering.

- (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, a 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 mandatory minimum fine upon the condition that the convicted person gather and remove from specified public property any litter found thereon, or upon the condition that the convicted person pick up litter at the time prescribed by and at 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, deposited, dropped or dumped therefrom.

(Ord. 118 §1-49, 1971; Ord. 196 §14, 1981; Ord. 435 §1, 1996)

Secs. 10-25—10-40. - Reserved.

Sec. 10-41. - Public property generally.

- (a) It is unlawful for any person to intentionally, knowingly, recklessly or negligently destroy public real property or improvements thereto, or movable or personal public property or property which the Town maintains.
- (b) It is unlawful for any unauthorized person to intentionally, knowingly, recklessly, negligently or willfully remove, deface, injure, damage or destroy any street sign or traffic control or warning sign or device erected or placed in or adjacent to any street.
- (c) It is unlawful for any vehicles equipped with treads or lug wheels which are injurious to pavement to be operated or caused to be operated by any person upon public streets; unless the operator of such vehicle first planks and protects such streets from damage. Nothing in this Section shall be construed to prohibit the use of studded snow tires.
- (d) This Section shall not apply when the aggregate value of the property damaged in any one (1) criminal episode is valued at five hundred dollars (\$500.00) or more.

(Ord. 435 §1, 1996; Ord. 500 §1, 1999)

Sec. 10-42. - Criminal mischief.

A person commits the crime of criminal mischief if he or she knowingly damages or defaces the real or personal property of another person.

(Ord. 118 §1-14, 1971; Ord. 196 §4, 1981; Ord. 435 §1, 1996)

Sec. 10-43. - Posters.

It is unlawful for any person to intentionally, knowingly, recklessly or negligently tear down, deface or cover up any lawfully posted advertisement or bill of any person; provided that this Section shall not apply to any person having the lawful right to tear down, deface or cover up any such advertisement or bill.

(Ord. 435 §1, 1996)

Secs. 10-44—10-60. - Reserved.

#### ARTICLE IV - Theft and Related Offenses

Sec. 10-61. - Theft generally.

- (a) It is unlawful for any person knowingly to obtain or exercise possession of or control over anything of value of another without authorization, or by threat or deception, and if such person:
  - (1) Intends to deprive the other person permanently of the use or benefit of the thing of value;
  - (2)

Knowingly uses, conceals or abandons the thing of value in such manner as to deprive the other person permanently of its use or benefit;

- (3) Uses, conceals or abandons the thing of value, intending that such use, concealment or abandonment will deprive the other person permanently of its use and benefit; or
  - (4) Demands any consideration to which he or she is not legally entitled as a condition of restoring the thing of value to the other person.
- (b) This Section shall not apply when the aggregate value of the item taken in any one (1) criminal episode is valued at one thousand dollars (\$1,000.00) or more, nor where the item taken is a motor vehicle, trade secret or credit device.

(Ord. 418 §1, 1996; Ord. 500 §2, 1999; Ord. 638 §1, 2007)

Sec. 10-62. - Bad checks.

- (a) It is unlawful for any person to issue or pass a check as payment for any goods, service or other thing of value, or in exchange for cash, when the person knew that, at the time of the issuance of the check, insufficient funds existed in the account being drawn upon to cover this and all other checks outstanding at the time of issuance.
- (b) It is unlawful for any person to issue or pass a check as payment for any goods, service or other thing of value, or in exchange for cash when that person, having been notified either by the drawee upon which the check was drawn, or by the person or firm to which the check was originally issued, that the check has been twice refused for insufficiency of funds, and fails to make good the check within fourteen (14) days of that notification. It shall constitute a *prima facie* violation of this Subsection if the person to whom the check was originally issued:
  - (1) Obtained at least two (2) forms of nonphoto identification or one (1) form of identification bearing a photograph from the drawer, at the time of acceptance of the check;
  - (2) Obtained an address of the drawer of the check, at the time of acceptance of the check;
  - (3) Presented the check to the drawee for acceptance or refusal for the first time within thirty (30) days of the date of issuance of the check;
  - (4) Upon twice presenting the check to the drawee and having twice received the check returned for insufficiency of funds, the person or firm to whom the check was originally issued shall send a letter notifying the drawer of the refusal of the drawee to accept the check, and requiring restitution within fourteen (14) days. Said letter shall be sent to the address listed in Paragraph (2) above by way of the U.S. Postal Service, certified mail, return receipt requested. Said return receipt, or the letter, envelope or return receipt marked "unclaimed," shall be conclusive proof of compliance with the notice requirements of this Section; and
  - (5) Fifteen (15) days following the date of delivery, or attempted delivery, of said letter of notification, the drawer has failed to respond and make payment in full for the amount owed on the check and all reasonable charges incurred as a result of the return of the check.
- (c) It is unlawful for any person to stop payment or cause payment to be stopped on any check issued or passed as payment for any goods, service or other thing of value, or in exchange for cash, when that person does so with the intent to defraud.
- (d) It is unlawful for any person to open a checking account, negotiable order of withdrawal account or share account

using false identification or an assumed name, for the purpose of and with the intent of committing theft by check.

- (e) Nothing in this Section shall apply where the value of the check exceeds one thousand dollars (\$1,000.00), or where the offender is under accusation or formal criminal filing involving the issuance of two (2) or more checks within any sixty-day period in the State with an aggregate value of one thousand dollars (\$1,000.00) or more, nor shall this Section apply where the offender has been previously convicted under this Section or under any existing or former state statute involving the issuance of bad checks or theft or fraud by check.
- (f) A bank, a savings and loan association, an industrial bank or a credit union shall not be civilly or criminally liable for releasing information relating to the drawer's account to the police officers or officer of the court of the Town, the release of which is for the purpose of investigating or prosecuting a violation of this Section.
- (g) In imposing a penalty for violation of this Section, the Municipal Court is specifically authorized and empowered to require restitution in full to the person or entity to whom any such check described herein was issued as a portion of, and/or in addition to, any other penalty deemed appropriate by the Court.

(Ord. 418 §2, 1996; Ord. 435 §1, 1996; Ord. 500 §3, 1999; Ord. 638 §2, 2007)

#### Sec. 10-63. - Theft of rental property.

- (a) It is unlawful for any person knowingly to obtain or exercise temporary or permanent control over the personal property of another, which is available only for hire, by means of threat or deception, or knowing that such use is without consent of the person providing the personal property.
- (b) It is unlawful for any person having obtained possession for temporary use of the personal property of another which is available only for hire, knowingly fails to reveal the whereabouts of or to return said property to the owner thereof or his or her representatives or to the person from whom he or she received it within seventy-two (72) hours after the time at which he or she agreed to return it.
- (c) This Section shall not apply where the aggregate value of the items taken in any one (1) criminal episode is valued at one thousand dollars (\$1,000.00) or more.

(Ord. 418 §3, 1996; Ord. 435 §1, 1996; Ord. 500 §4, 1999; Ord. 638 §3, 2007)

#### Sec. 10-64. - Joyriding.

It is unlawful for any person knowingly to obtain or exercise control over the motor vehicle of another without authorization or by threat or deception for the purpose of temporarily depriving that person of possession or control of the motor vehicle.

(Ord. 418 §4, 1996)

#### Sec. 10-65. - Shoplifting.

- (a) It is unlawful for any person to knowingly obtain or exercise control over any goods, wares or merchandise having a total value of less than one thousand dollars (\$1,000.00), held for sale by a store or mercantile establishment with the intention of depriving the store permanently of the use or benefit of such goods, wares or merchandise.
- (b) If any person willfully conceals unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment, whether the concealment be on his or her person or otherwise and whether on or off the premises of said store or mercantile establishment, such

concealment constitutes *prima facie* evidence that the person intended to commit the crime of shoplifting.

(Ord. 418 §5, 1996; Ord. 500 §5, 1999; Ord. 638 §4, 2007)

Sec. 10-66. - Price switching.

It is unlawful for any person willfully to alter, remove or switch the indicated price of any unpurchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or other mercantile establishment; provided, however, that this Section shall not apply to goods, wares or merchandise of value of one thousand dollars (\$1,000.00) or more.

(Ord. 418 §6, 1996; Ord. 500 §6, 1999; Ord. 638 §5, 2007)

Sec. 10-67. - Theft by receiving.

It is unlawful for any person knowingly to receive, retain or loan money by pawn or pledge on, or dispose of anything having a value of less than one thousand dollars (\$1,000.00), belonging to another, knowing or believing that said thing of value has been stolen, and when he or she intends to deprive the lawful owner permanently of the use or benefit of the thing of value.

(Ord. 418 §7, 1996; Ord. 500 §7, 1999; Ord. 638 §6, 2007)

Sec. 10-68. - Questioning of person suspected of theft without liability.

If any person conceals upon his or her person or otherwise carries away any unpurchased goods, wares or merchandise held or owned by any store or mercantile establishment, the merchant or any employee thereof or a police officer, acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. Such questioning of a person by a merchant, merchant's employee or the police officer does not render the merchant, merchant's employee or a police officer civilly liable for slander, false arrest, false imprisonment, malicious prosecution or unlawful detention.

(Ord. 418 §8, 1996; Ord. 435 §1, 1996)

Secs. 10-69—10-80. - Reserved.

ARTICLE V - Public Health and Safety

Sec. 10-81. - Abandoned containers.

- (a) It is unlawful for any person to abandon or discard in any public or private place accessible to children any chest, closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk, motor vehicle or other article having a compartment of a capacity of one and one-half (1½) cubic feet or more, which is no longer in use, and which has not had the door removed or the hinges and such portion of the latch mechanism removed so as to prevent latching or locking of the door; or for any owner, lessee or manager knowingly to permit such a chest,

closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk, motor vehicle or self-latching container to remain on premises under his or her control without having the door removed or the hinges and such portion of the latch mechanism removed so as to prevent latching or locking of the door.

- (b) The provisions of this Section shall not apply to any vendor or seller of chests, closets, pieces of furniture, refrigerators, ice boxes, deep-freeze lockers, stoves, ovens, trunks or motor vehicles, who keeps or stores them for sale purposes in a showroom or salesroom ordinarily watched or attended by sales personnel during business hours and locked to prevent entry when not open for business; or if such vendor or seller takes reasonable precaution to effectively secure the door of any such chest, closet, piece of furniture, refrigerator, ice box, deep-freeze locker, stove, oven, trunk or motor vehicle so as to prevent entrance by children small enough to fit therein.

(Ord. 118 §1-28, 1971; Ord. 196 §7, 1981; Ord. 435 §1, 1996)

Sec. 10-82. - Storage of flammable liquids in vehicles.

It is unlawful to store or cause to be stored or parked, except for unloading, any vehicle used for the purpose of storing of flammable liquids, gases, explosives or toxicants, upon any streets, ways or avenues of the Town or any private property, except those areas zoned for such uses.

(Ord. 435 §1, 1996)

Sec. 10-83. - Storage of construction materials.

No person shall keep or store any construction materials unless such materials are covered or secured or in some manner protected so as to prevent such materials from being blown, scattered about or otherwise moved by wind, water or other natural causes.

(Ord. 435 §1, 1996)

Sec. 10-84. - Contamination of water.

It is unlawful for any person to throw or deposit or cause or permit to be thrown or deposited in any stream, storm or sanitary sewer, ditch, pond, well, cistern, trough or other body of water, whether artificially or naturally created, or so near thereto as to be liable to pollute the water thereof, any offal composed of animal or vegetable substance or both, any dead animal, sewage, excrement or garbage, trash or debris, any water, fuel, oil or other petroleum-based product, paint, chemical, whether liquid or solid, scrap construction material or any other materials that may cause the water to become contaminated.

(Ord. 435 §1, 1996)

Sec. 10-85. - Poisonous substances.

- (a) It is unlawful for any person to put out, spread or distribute poison or any poisonous substance or material of any kind or nature whatsoever, for any purpose whatsoever, at any place or places within the Town, except as hereinafter provided in Subsection (b) of this Section.
- (b)

Upon application made in writing and signed by the applicant setting out the reason for such application and the purpose thereof, the Board of Trustees may grant to any person who is the owner, lessee or tenant of real estate in the Town a permit to put out, spread or distribute poison on such real estate of which he or she is the owner, tenant or lessee, for such purposes as may be necessary, including the poisoning of grasshoppers, prairie dogs and other destructive animals, insects, birds and pests, but such purposes shall not be deemed to include any domestic bird, fowl, beast, animal, swine or dog.

- (c) Such permit shall state the name of the person to whom granted, the purpose of the same, the reason given for the necessity of the same, the description of the premises covered by the permit, the kind and nature of the poison to be spread and the manner of spreading and distributing the same, together with the period of the permit in which to do so.
- (d) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by state or federal law.

(Ord. 435 §1, 1996)

Sec. 10-86. - Cruelty to animals.

- (a) It is unlawful for any person to shoot, capture, harass, injure or destroy any wild bird or animal or attempt to shoot, capture, harass, injure or destroy any such wild bird or animal anywhere within the Town.
- (b) No person shall willfully destroy, rob or disturb the nest, nesting place, burrow, eggs or young of any wild bird or animal anywhere within this Town.
- (c) Wild bird includes all undomesticated birds native to North American and undomesticated game birds implanted in North America by governmental agencies and any domestic duck or goose released by any private person or recreational authority upon any recreational area within this Town.
- (d) Wild animal includes any animal native to the State, but does not include rattlesnakes, fish or any species of amphibians, Norway rats or common house mice.
- (e) The provisions of this Section do not apply to the personnel of any police, fire or animal control agency or to the State Division of Wildlife or Department of Health or other state or federal agency, when such persons are acting within the scope of their official duties as employees of such agencies.
- (f) The provisions of this Section are not intended to allow the destruction of any bird or animal protected by state or federal law.

(Ord. 435 §1, 1996)

Sec. 10-87. - Hunting and feeding of wildlife prohibited.

- (a) Hunting prohibited.
  - (1) It shall be unlawful for any person to hunt within the limits of the Town, using a gun, rifle, firearm, bow, crossbow, knife, spear or by any other means.
  - (2) The provisions of this Section shall be in addition to and not in derogation of the provisions of Section 10-163 of this Chapter regulating the use of weapons.
- (b) Feeding of wildlife prohibited.
  - (1)

It shall be unlawful for any person to feed, or cause to be fed, wildlife within the Town limits. For purposes of this Subsection, wildlife shall include but not be limited to deer, elk, moose, bear, fox, coyote, badger, mountain lion and "furbearers," as such term is defined by the regulations of the Colorado Division of Wildlife.

- (2) To the extent feeding is permitted under this Section, such feeding shall be limited to grains, nuts and nut products and shall not include meat products or human garbage.
- (c) Every person convicted of violating this Section shall forfeit to the Town any gun, rifle, firearm, bow, crossbow, knife, spear or other mechanism used, directly or indirectly, in committing such violation.
- (d) Any person convicted of violating this Section shall be fined in a sum not more than three hundred dollars (\$300.00).

(Ord. 604 §1, 2005; Ord. 648 §2, 2008)

Sec. 10-88. - Fire bans.

- (a) The Town Marshal is hereby authorized to declare emergency fire bans on open fires, as necessary from time to time, to protect the health, safety and welfare of the citizens of the Town. For the purposes of this Section, an *open fire* shall be defined as any outdoor fire, including but not limited to campfires, warming fires, bonfires or the prescribed burning of fence rows, fields, wild lands, trash and debris. When a fire ban is declared, the Town Marshal shall cause to be posted, at each location designated by the Board of Trustees for the posting of notices of Board of Trustees meetings, a notice that states as follows:

PUBLIC NOTICE

TOWN OF NEDERLAND OPEN FIRE BAN IN EFFECT PURSUANT TO SECTION 10-88 OF THE NEDERLAND TOWN  
CODE

- (b) At any time during which a notice is posted in accordance with Subsection (a) above, it shall be unlawful to set, maintain or allow the setting or maintenance of an open fire within the Town.
- (c) The following fires shall be exempt from any ban imposed under this Section:
  - (1) Fires contained within liquid-fueled or gas-fueled stoves or chimneys;
  - (2) Fires in fireplaces or stoves within all buildings;
  - (3) Charcoal-fueled fires contained within grills;
  - (4) Town-approved public fireworks displays; and
  - (5) Fires authorized by a Fire Protection District, United States Forest Service or Boulder County pursuant to a properly issued burn permit or equivalent U.S. Forest Service administrative approval.
- (d) When the office of Town Marshal is vacant or when the Town Marshal is unavailable to perform the duties authorized by Subsection (a) hereof, such duties may be performed by the Town Administrator.

(Ord. 708 §1, 2012)

Secs. 10-89—10-100. - Reserved.

Sec. 10-101. - Lewd conduct.

- (a) It is unlawful for any person to perform any of the following in a public place or where the conduct may reasonably be expected to be viewed by members of the public:
  - (1) An act of sexual intercourse;
  - (2) An act of deviate sexual intercourse;
  - (3) A lewd exposure of the body done with the 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.
- (b) It is unlawful for any person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct is likely to cause affront or alarm to the other person.

(Ord. 118 §§1-36, 1-37, 1971; Ord. 196 §10, 1981)

Sec. 10-102. - Obscene conduct.

It is unlawful for any person to:

- (1) Use abusive, indecent, profane or vulgar language in a public place if such language, by its very utterance, tends to incite an immediate breach of the peace.
- (2) Make an offensive gesture or display in a public place, if such gesture or display tends to incite an immediate breach of the peace.

(Ord. 319 §3, 1990)

Sec. 10-103. - Indecent books or demonstrations.

It is unlawful for any person to possess with intent to exhibit, sell, offer for sale, circulate or distribute any obscene or lewd book, picture or other thing whatever of an immoral or scandalous nature, or to exhibit, perform or present any obscene or lewd play, motion picture, lecture, demonstration or other representation. Obscene shall mean that which appeals solely to the prurient interest, and is utterly without redeeming social value, based upon the contemporary community standards of the Town.

(Ord. 118 §1-30, 1971; Ord. 196 §8, 1981)

Secs. 10-104—10-120. - Reserved.

## ARTICLE VII - Public Peace

Sec. 10-121. - Disorderly conduct.

It is unlawful for any person to commit disorderly conduct by intentionally, knowingly or recklessly:

- (1) Making a coarse and obviously offensive utterance, gesture or display in a public place calculated to provoke an immediate breach of the peace;
- (2) Abusing or threatening a person in a public place in an obviously offensive manner calculated to cause an immediate breach of the peace;
- (3) Fighting with another person in a public place, except in an amateur or professional contest of athletic skill;
- (4) Not being a peace officer, displaying a deadly weapon in a public place in a manner calculated to alarm other persons.

(Ord. 319 §2, 1990; Ord. 435 §1, 1996)

Sec. 10-122. - Disrupting lawful assembly.

It is unlawful for any person to disrupt a lawful assembly if, with the intent to prevent or disrupt any lawful meeting, procession or gathering, he or she significantly obstructs or interferes with the meeting, procession or gathering by physical action, verbal utterances or by any other means.

(Ord. 435 §1, 1996)

Sec. 10-123. - Reserved.

**Editor's note—** Ord. 742 §1, adopted Oct. 4, 2016, repealed former § 10-123 which pertained to loitering and derived from Ord. 118 §1-31, adopted in 1971; Ord. 196 §9, adopted in 1981; and Ord. 435 § 1, adopted in 1996.

Sec. 10-124. - Unlawful assembly.

It is unlawful for any two (2) or more persons to assemble together with an intent to commit a criminal offense under any federal or state law or Town ordinance; or, being assembled, mutually to agree to act in concert, or to commit a criminal offense with force or violence against the property of the Town or the person or the property of another, or against the peace and to the terror of others; or being present at such meeting or assembly, and having knowledge of the intent to commit a criminal offense, to fail to endeavor to prevent the commission of or perpetration of such criminal offenses.

(Ord. 319 §1, 1990)

Sec. 10-125. - Unlawful interference; educational institutions.

- (a) It is unlawful for any person on or near the premises or facilities of any educational institution to willfully deny to students, school officials, employees and invitees:
  - (1) Lawful freedom of movement on the premises;
  - (2) Lawful use of the property or facilities of such institution; or
  - (3) The right of lawful ingress and egress to the institution's physical facilities.
- (b) It is unlawful for any person on the premises of any educational institution or at or in any building or other facility being used by any educational institution to willfully impede the staff or faculty of such institution in the lawful performance of their duties or to willfully impede a student of such institution in the lawful pursuit of his or her

education activities through the use of restraint, coercion or intimidation or when force and violence are present or threatened.

- (c) It is unlawful for any person to willfully refuse or fail to leave the property of, or any building or other facility used by, any educational institution if such person is committing, threatens to commit or incites others to commit any act which would disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures or functions of the institution and the Chief Administrative Officer charged with maintaining order on the school premises and in its facilities has requested such person to leave.
- (d) Nothing in this Section shall be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including any labor dispute between an educational institution and its employees, or any contractor or subcontractor of any employee thereof.

(Ord. 435 §1, 1996)

#### Sec. 10-126. - Unlawful interference; public buildings and proceedings.

It is unlawful for any person to so conduct himself or herself at or in any public building owned, operated or controlled by the Town, the State or any of its political subdivisions, as to willfully deny to any public official, public employee or any invitee on such premises, the lawful rights of such official, employee or invitee to enter, use the facilities of or leave any such public building.

(Ord. 435 §1, 1996)

#### Sec. 10-127. - Harassment.

- (a) It is unlawful to harass any person. A person commits harassment if, with the intent to harass, annoy or alarm another person, he or she:
  - (1) Strikes, shoves, kicks or otherwise touches a person or subject 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) Communicates with a person, anonymously or otherwise by oral or written communication or by telephone, in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion or proposal by telephone which is obscene;
  - (5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
  - (6) Makes repeated communications at inconvenient hours that invade the privacy of another and interfere in the use and enjoyment of another's home or private residence or other private property; or
  - (7) Repeatedly insults, taunts, challenges or makes communications in offensively coarse language to another in a manner likely to provoke a violent or disorderly response.
- (b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not the ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

- (c) Any act under Paragraph (a)(5) or (6) 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.

(Ord. 118 §1-42, 1971; Ord. 196 §11, 1981; Ord. 435 §1, 1996; Ord. 510 §1, 1999)

Sec. 10-128. - Harassment by stalking.

- (a) It is unlawful to harass any person by stalking. A person commits harassment by stalking if such person:
- (1) Makes a credible threat to another person and, in connection with such threat, repeatedly follows that person; or
  - (2) Makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person, whether or not a conversation ensues.
- (b) For the purposes of this Section, *credible threat* means a threat that would cause a reasonable person to be in fear for the person's life or safety, and repeatedly means on more than one (1) occasion.
- (c) If a person is convicted of stalking more than once within a seven-year period, there shall be a minimum mandatory sentence of thirty (30) days' imprisonment.

(Ord. 435 §1, 1996)

Sec. 10-129. - Acts prohibited in public.

- (a) It is unlawful for any person to perform any of the following acts in any public place, as defined herein:
- (1) Urination;
  - (2) Defecation.
- (b) As used in this Section the term *public place* means and includes any street, alley, sidewalk, thoroughfare or parking lot; any lobby, corridor, elevator, stairway, recreation room or common room in a hotel, motel, office building, apartment building or condominium; any public or municipal building or premises; any vacant lot, park or public recreation facility; any church, school, library, theater, auditorium or building frequented by members of the public; any business or industrial premises; except that the term public place shall not include that portion of any public place which is designed and commonly used for the acts of human urination and/or defecation.
- (c) Violations of the provisions of this Section shall be punishable as follows:
- (1) If the defendant is eighteen (18) years of age or older at the time of the commission of the offense, by a fine as set forth in Section 1-72 of this Code.
  - (2) If the defendant is less than eighteen (18) years at the time of the commission of the offense, by a fine not to exceed three hundred dollars (\$300.00).

(Ord. 319 §5, 1990; Ord. 435 §1, 1996)

Sec. 10-130. - Fighting by agreement.

- (a) It is unlawful for two (2) or more persons to fight by agreement in a public place except in a sporting event authorized by law.
- (b)

This Section shall not apply to persons who by agreement engage in a fight with deadly weapons, whether public or private.

(Ord. 435 §1, 1996)

Secs. 10-131—10-140. - Reserved.

## ARTICLE VIII - Alcohol and Drugs

Sec. 10-141. - Definitions.

- (a) For purposes of this Article, *fermented malt beverage* has the same meaning as its meaning under the Colorado Beer Code.
- (b) For purposes of this Article, *malt, vinous and spirituous liquor* has the same meaning as its meaning under the Colorado Liquor Code.
- (c) For purposes of this Article, *vehicle* has the same meaning as its meaning under the Model Traffic Code as adopted in Section 8-1 of this Code.
- (d) For the purposes of this Article, the terms *cannabis* shall include all parts of the plant *Cannabis sativa L.*, whether growing or not; the seed thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt derivative, mixture, residue or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from its stalks, oil or cake, or the sterilized seed of such plant, which is incapable of germination.
- (e) The term *cannabis concentrate* means hashish, tetrahydrocannabinols or any alkaloid, salt derivative, preparation, compound or mixture, whether natural or synthesized, or tetrahydrocannabinols.

(Ord. 376 §1, 1994; Ord. 435 §1, 1996)

Sec. 10-142. - Possession and consumption in public.

- (a) No person within the Town limits shall possess an opened container of or consume any malt, vinous or spirituous liquor or fermented malt beverage in public, except upon premises licensed for consumption of the liquor or beverage involved.
- (b) For the purposes of this Section, *opened container* means any container other than an original closed container as sealed or closed for sale to the public by the manufacturer or bottler of the liquor or beverage. If an original container has been unsealed, undone or opened in any manner it is an opened container for the purposes of this Section.
- (c) For the purposes of this Section *in public* means:
  - (1) In or upon any public highway, public street, public alley, public walk, public parking lot, public building, public park, public ball fields, public trails, public open space or other public property or public place, whether in a vehicle or not;
  - (2) In or upon those portions of any private property upon which the public has an express or implied license to enter or remain; or

- (3) In or upon any other private property without the express or implied permission of the owner or person in possession and control of such property or his or her agent.
- (d) It is an affirmative defense to a charge of violating this Section that the premises were licensed by the Town or by the State for the consumption of the liquor or beverage involved, and any judge shall take judicial notice of the official records of such license and dismiss forthwith any charge to which this defense applies. If such dismissal is ex parte, the judge shall notify the Town Attorney, who may petition the court for permission to refile the charge.
- (e) It is a specific defense to a charge of violating this Section that:
  - (1) The owner of the property involved or the owner's agent gave express permission to the accused or to members of the accused's class to perform the acts complained of; or
  - (2) The accused was transporting the liquor or beverage from one (1) place where it could be lawfully consumed directly and without delay to another such place, and the container was at all times during the transportation capped, corked or otherwise reclosed with a firmly affixed waterproof lid. When the liquor or beverage was being transported in a motor vehicle, this defense is only available if the container was in the trunk or was not otherwise immediately accessible to the driver or any passenger.
- (f) No person shall drive or sit in the driver's seat of any motor vehicle, other than one carrying passengers for hire, in which a violation of Subsection (a) above is occurring.

(Ord. 376 §2, 1994)

Sec. 10-143. - Regulations concerning malt, vinous and spirituous liquors.

- (a) No person shall sell, deliver or give away any malt, vinous or spirituous liquor to any person then under the age of twenty-one (21) years or purchase such liquor for such minor.
- (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 malt, vinous or spirituous liquors.
- (c) No person under the age of twenty-one (21) years shall possess, or have under such person's control, or request that any other person purchase for such minor person or sell, serve, give away or offer for sale any malt, vinous or spirituous liquor in any container of any kind, whether opened or unopened. It is a specific defense to a charge of violating this Subsection that the acts complained of were performed by a person eighteen (18) years of age or older in the course of such person's employment in an establishment holding a beer and wine license.
- (d) It is unlawful for any minor under twenty-one (21) years of age to have in his or her possession malt, vinous or spirituous liquors in public places, including but not limited to, public streets, alleys, roads or highways.

(Ord. 376 §§3, 4, 1994; Ord. 435 §1, 1996)

Sec. 10-144. - Possession of cannabis.

- (a) It is unlawful for any person under the age of twenty-one (21) years to possess one (1) ounce or less of cannabis or cannabis concentrate and, upon conviction thereof or plea of guilty or no contest thereto, punishment shall not be by imprisonment, but shall be by a fine of not more than one hundred dollars (\$100.00).
- (b)

It is unlawful for any person under the age of twenty-one (21) years to openly and publicly to display or consume one (1) ounce or less of cannabis concentrate, and upon conviction thereof, or a plea of guilty or no contest thereto, shall be punished by a fine of one hundred dollars (\$100.00), and/or by imprisonment not exceeding fifteen (15) days.

- (c) The provisions of this Section shall not apply to any person who possesses or uses cannabis or cannabis concentrate pursuant to the Dangerous Drugs Therapeutic Research Act.

(Ord. 435 §1, 1996; Ord. 681A §1, 2010)

Sec. 10-145. - Violations.

- (a) It is unlawful for any person to violate any of the provisions stated or adopted in this Article.
- (b) Unless otherwise provided in this Article, any person found guilty of intentionally violating the provisions of this Article shall be guilty of a civil infraction and fined as set forth in Section 1-72 of this Code.

(Ord. 376 §5, 1994; Ord. 435 §1, 1996; Ord. 803 §8, 2019)

Sec. 10-146. - Possession of drug paraphernalia.

- (a) Definitions. As used in this Section, unless the context clearly requires otherwise:

*Controlled substance* means a controlled substance, as that term is defined in Section 18-18-102(5), C.R.S., which term shall include controlled substance analog, as defined in Section 18-18-102(5)(A), C.R.S.

*Drug paraphernalia* means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, possessing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the laws of the State or the Town. *Drug paraphernalia* includes, but is not limited to:

- a. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances under circumstances or in violation of the laws of the State or the Town;
- b. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;
- c. Separation gins or sifters used, intended for use or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;
- d. Blenders, bowls, containers, spoons, used or designed for use in compounding controlled substances;
- e. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;
- f. Containers and other objects used, intended for use or designed for use in storage or concealing controlled substances;
- g. Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body such as:
  - 1.

Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes, meaning pipes made of any substance with bowls large enough to hold water used for filtering the smoke to be inhaled;
3. Carburetor tubes and devices;
4. Smoking and carburetor masks;
5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
6. Miniature cocaine spoons and cocaine vials;
7. Chamber pipes;
8. Carburetor pipes;
9. Electric pipes;
10. Air-driven pipes;
11. Chillums;
12. Bongs; and
13. Ice pipes or chillers.

(b) Drug paraphernalia determination, considerations. In determining whether an object is drug paraphernalia, a court, in its discretion, may consider, in addition to all other relevant factors, the following:

- (1) Statement by an owner or by anyone in control of the object concerning its use.
- (2) The proximity of the object to controlled substances.
- (3) The existence of any residue or controlled substances on the object.
- (4) Direct or circumstantial evidence of the knowledge of an owner, or of anyone in control of the object, or evidence that such person reasonably should know that it will be delivered to persons who would use the object to facilitate a violation of this Section.
- (5) Instructions, oral or written, provided with the object concerning its use.
- (6) Descriptive materials accompanying the object which explain or depict its use.
- (7) National or local advertising concerning its use.
- (8) The manner in which the object is displayed for sale.
- (9) Whether the owner or anyone in control of the object is a supplier of like or related items to the community for legal purposes, such as an authorized distributor or dealer of tobacco products.
- (10) The existence or scope of legal uses for the object in the community.
- (11) Expert testimony concerning its use.

(c) Unlawful acts.

- (1) It is unlawful for any person to possess any drug paraphernalia relating to a controlled substance *other than* cannabis or cannabis concentrate, as those terms are defined by this Code, if such person knows or reasonably should have known that the drug paraphernalia could be used in a manner which would violate the

laws of the State or the Town.

(2) It is unlawful for any person under the age of twenty-one (21) years to possess any drug paraphernalia relating to cannabis or cannabis concentrate, as those terms are defined by this Code, if such person knows or reasonably should have known that the drug paraphernalia could be used in a manner which would violate the laws of the State or the Town.

(d) Penalty. Any person who possesses drug paraphernalia in violation of this Section commits a violation of this Code and, upon conviction thereof shall be punished by a fine of not more than one hundred dollars (\$100.00).

(Ord. 567 §1, 2003; Ord. 681A §2, 2010)

Secs. 10-147—10-160. - Reserved.

## ARTICLE IX - Weapons

Sec. 10-161. - Definitions.

(a) For the purposes of this Article and except as is provided herein, all words shall be defined according to the Colorado Criminal Code.

*Nunchaku* means an instrument consisting of two (2) sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, which is in the design of a weapon used in connection with the practice of a system of self-defense.

*Throwing star* means a disk having sharp radiating points or any disk-shaped bladed object which is handheld and thrown and which is in the design of a weapon used in connection with the practice of a system of self-defense.

(Ord. 435 §1, 1996)

Sec. 10-162. - Carrying concealed weapons.

(a) It is unlawful for any person knowingly to carry a knife or firearm concealed on or about his or her person; provided that this Section shall not apply to persons in their own domiciles or places of business or on property owned by or under their control at the time of the act of carrying; to persons in private automobiles or other private means of conveyance who are carrying a weapon for the lawful protection of their or another's person or property while travelling; to a person who prior to the time of carrying a concealed weapon has been issued a written permit pursuant to Section 18-12-105.1, C.R.S.; to a peace officer, Level I or Ia as defined in Section 18-1-901(3)(I)(I) or (3)(I)(II)(A) or a peace officer, Level II as defined in Section 18-1-901(3)(I)(III) while on duty; or for any other legal purposes.

(b) It is unlawful for any person to knowingly carry, conceal or cause to be concealed in any vehicle or to use any blackjack, multi-fixed blade, stiletto, throwing knife, or brass or metallic knuckles. Nothing in this Section shall apply to any police officers or members of the armed forces of the United States or the Colorado National Guard acting in the lawful discharge of their duties.

Sec. 10-163. - Prohibited use of weapons.

- (a) Except as provided in Subsection (b) of this Section, it is unlawful for any person other than any police officers or a member of the armed forces of the United States or the Colorado National Guard acting in lawful discharge of his or her duties, to discharge or cause to be discharged any firearm within or into the limits of the Town; provided that this Section shall not apply to persons discharging firearms in shooting galleries or at shooting ranges, where such firearms may be discharged so as not to endanger persons or property and the projectile or projectiles from such firearms are prevented from traversing any grounds or space outside the limits of such gallery or range, or to the discharge of a firearm in lawful defense of persons or property.
- (b) The Town Marshal may grant written permission to persons within the Town to permit the discharge of weapons at a certain locality within the Town at a fixed time or times.
- (c) Except as provided in Subsection (b) of this Section, it is unlawful for any parent, guardian or other person having the care and custody of any minor child under the age of eighteen (18) years to allow or permit any such minor to fire or discharge any cannon, anvil, gun, pistol, rifle, shotgun or other firearm of any kind or nature, or to fire, explode or set off any other such device manufactured or contrived for the purpose of throwing or propelling lead, pellets or other hard substances, powered by compressed air, springs or otherwise, or to fire, set off or explode anything containing powder, gasoline or other combustible or explosive material within the Town.
- (d) It is unlawful to knowingly and unlawfully aim a firearm at another person; to recklessly or with criminal negligence discharge a firearm or shoot a bow and arrow; to knowingly 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; to possess a firearm while under the influence of intoxicating liquor or of a controlled substance (possession of a permit issued under Section 18-12-105.1, C.R.S., is no defense); or to carry, conceal or display any dangerous or illegal weapon, when such person is on the premises where alcoholic beverages are sold.
- (e) It is unlawful to knowingly and unlawfully aim, swing or throw a throwing star or nunchaku as defined in this subsection at another person, or knowingly possess a throwing star or nunchaku in a public place except for the purpose of presenting an authorized public demonstration or exhibition or pursuant to instruction in conjunction with an organized school or class. When transporting throwing stars or nunchaku for a public demonstration or exhibition or for a school or class, they shall be transported in a closed, nonaccessible container.

(Ord. 435 §1, 1996)

Sec. 10-164. - Furnishing to certain persons prohibited.

It is unlawful for any person to purchase, sell, loan or furnish any gun, pistol, rifle, shotgun or other firearm in which any explosive substance can be used, to any person under the influence of alcohol or controlled substance, to any person in a condition of agitation and excitability, or to any minor person under the age of eighteen (18) years.

(Ord. 435 §1, 1996)

Sec. 10-165. - Throwing missiles prohibited.

It is unlawful for any person to throw any stone, snowball or any other missile upon or at any vehicle, building, tree or other public or private property, or upon or at any person in any public way or place, or on any enclosed or unenclosed ground.

(Ord. 118 §1-32, 1971)

Sec. 10-166. - Confiscation and disposition.

It shall be the duty of the police officers, upon making any arrest and seizing a weapon carried or used in violation of any section of this Article, to keep and place such weapon in such place of safekeeping as may be directed by the police officers, until the final determination of the prosecution for any offense in the prosecution of which such weapon may be evidence. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, the person so pleading or found guilty shall forfeit to the Town any weapon carried or used in violation of any section of this Article. Upon entry of a final plea of guilty or nolo contendere or judgment of guilt, it shall then be the duty of the Municipal Judge to deliver said weapon forthwith to the police officers who shall make disposition of the weapon.

(Ord. 435 §1, 1996)

Secs. 10-167—10-180. - Reserved.

ARTICLE X - Offenses Against the Person

Sec. 10-181. - Assault.

- (a) It is unlawful for any person intentionally, recklessly or with criminal negligence to cause bodily injury to another person; provided that this Section shall not apply to injury caused by means of a deadly weapon.
- (b) It is unlawful to strike, shove, kick, or otherwise touch the body of another person or subject him or her to physical contact without permission of the person.

(Ord. 118 §1-9, 1971; Ord. 196 §3, 1981; Ord. 435 §1, 1996)

Sec. 10-182. - Menacing.

It is unlawful for any person knowingly to place or attempt to place another person in fear of imminent serious bodily injury by any threat or physical action; provided that if such menacing is with the use of a deadly weapon, this Section shall not apply.

(Ord. 118 §1-8, 1971; Ord. 196 §2, 1981; Ord. 435 §1, 1996)

Sec. 10-183. - Reckless endangerment.

It is unlawful for any person recklessly to engage in conduct which creates substantial risk of serious bodily injury to another person.

Secs. 10-184—10-200. - Reserved.

## ARTICLE XI - Minors

Sec. 10-201. - Harboring prohibited; exceptions.

- (a) It is unlawful for any person knowingly to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor without the consent of the parent, legal guardian or other person having legal custody of such minor.
- (b) It is unlawful for any person to harbor, keep secreted, cohabit with or provide shelter for any unmarried minor when said person knows such minor to be a parole violator or a fugitive from legal process.
- (c) The provisions of this Section shall not apply to persons working in their official capacities as employees or members of the staffs or agencies licensed by the State and financed by the United States to harbor minors, nor shall said provisions apply to such agencies; provided that such agencies shall at all times comply with all applicable laws and order of courts with jurisdiction over the minor.

(Ord. 435 §1, 1996)

Sec. 10-202. - Curfew.

- (a) No person under eighteen (18) years of age shall be or remain on any public street, sidewalk, alley or other public place in the Town after 10:00 p.m. or prior to 5:00 a.m. on Sunday through Thursday of each week or after 12:00 midnight on Friday and Saturday and prior to 5:00 a.m., except as provided in Subsection (b) below.
- (b) In the following exceptional cases, a minor may be or remain in a public place beyond the hours set forth in Subsection (a) above:
  - (1) When accompanied by a parent, legal guardian, person between eighteen (18) and twenty-one (21) years of age with written parental authorization, or person twenty-one (21) years of age or older with parental authorization;
  - (2) For thirty (30) minutes before or after employment hours when commuting directly to and from such employment and when carrying an employer's certification of time and place of employment.
  - (3) When conducting an errand directed by the parent or legal guardian;
  - (4) When returning home from events such as movies, theater or sporting events;
  - (5) Until 12:30 a.m. if the person is on the property or a sidewalk directly adjacent to a building in which such person resides or to buildings immediately adjacent to the building in which such person resides; or
  - (6) When engaged in religious or scholastic activities.
- (c) A police officer who has probable cause to believe that a child is in violation of this Section shall take such child into custody and immediately contact the child's parent or guardian. If, after this contact, there is still probable cause to believe that the child was violating this Section, the child shall be turned over to the custody of the juvenile authorities until a parent or guardian can take custody of the child.

- (d) Any person violating any of the provisions of this Section shall be deemed guilty of a civil infraction and upon conviction thereof shall be fined as provided in Section 1-72 of this Code.
- (e) A police officer who has probable cause to believe that a child is in violation of this Section is hereby authorized to detain and take such child into custody until the parent or guardian of the child shall take him or her into custody; but such officer shall immediately, upon taking custody of the child, contact the child's parent or guardian.
- (f) It is unlawful for any parent, guardian or other person having care or custody of any child under the age of eighteen (18) years to allow or to permit any such child to be in violation of Subsection (a) above. Furthermore, if a child under the age of eighteen (18) years has been twice convicted of violating Subsection (a) above, it shall be presumed that the parent, guardian or other person having the care or custody of said child at the time of the offense allowed or permitted the child to violate Subsection (a) above.

(Ord. 319 §6, 1990; Ord. 435 §1, 1996; Ord. 795 §3, 2019; Ord. 803 §9, 2019)

Sec. 10-203. - Distribution of cigarettes and tobacco products to minors.

- (a) It is unlawful for any person eighteen (18) years of age or older to furnish to any person who is under eighteen (18) years of age, by gift, sale or other means any cigarettes or tobacco products as defined by Section 39-28.5-101(5), C.R.S.
- (b) It is unlawful for any person under the age of eighteen (18) years to attempt to purchase or obtain, either directly or through an intermediary, any cigarette or tobacco products as defined by Section 39-28.5-101(5), C.R.S.
- (c) It is unlawful for any person to sell or offer to sell any smokeless tobacco product as defined by Section 18-13-121 (4)(a) C.R.S., by use of a vending machine or other coin-operated machine.
- (d) It is unlawful for any person to sell or offer to sell any cigarette or tobacco products as defined by Section 39-28.5-101(5) C.R.S., other than a smokeless tobacco product as defined by Section 18-13-121(4)(a), C.R.S., by use of a vending machine or any coin-operated machine, that does not display a warning sign placed in a prominent place on such machine. The warning sign shall have a minimum height of three (3) inches and a width of six (6) inches, and shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN (18) YEARS OF AGE TO PURCHASE CIGARETTES AND  
TOBACCO PRODUCTS AND, UPON CONVICTION, A FIFTY-DOLLAR FINE MAY BE IMPOSED.

- (e) Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (a), (c) or (d) shall be punished by a fine of two hundred dollars (\$200.00). Any person who is convicted of, or pleads guilty or nolo contendere to, a violation of Subsection (b) shall be punished by a fine of fifty dollars (\$50.00).

(Ord. 435 §1, 1996)

Secs. 10-204—10-220. - Reserved.

*Law enforcement officer* or *law enforcement officers*, as used in this Article, means any person defined as a peace officer by Section 18-1-901, C.R.S., who is in uniform or who has displayed his or her credentials to the person whose arrest is attempted.

(Ord. 435 §1, 1996)

Sec. 10-222. - False alarms to agencies of public safety by alarm devices.

- (a) An alarm device is a device which is designed to cause police, fire or another emergency response, investigation and safeguarding of property at the location of an event reported:
  - (1) By a signal transmitted, telephoned, radioed or otherwise relayed to any organization, official or volunteer which deals with emergencies involving danger to life or property, by an alarm device or by any person acting in response to a signal activated by such device; or
  - (2) By an audible or visible signal designed to notify a person within audible or visible range of the signal.
- (b) It is unlawful for any person other than qualified and licensed installers and maintenance persons to install, work on or maintain an alarm device or the components thereof.
- (c) The owner or occupant of property that maintains an alarm device shall designate a person or company to be responsible for the monitoring and maintenance of the alarm device.
- (d) The business license of a designated person or company doing business in the Town for the purpose of installing or maintaining alarm devices may be revoked for cause. Cause for license revocation includes:
  - (1) Failure to notify the Town's communications center of alarm systems that are temporarily out of service.
  - (2) Failure to notify the Town's communications center of a legitimate alarm system activation.
  - (3) Failure to correct problems within an alarm system that prohibit the system from operating properly within ten (10) working days. Extensions may be granted in writing by the Town Administrator or the Town Marshal.
  - (4) Failure to install an alarm system properly or according to code.
  - (5) Failure of the alarm company, installer, maintenance person or company responsible to respond within a reasonable time (usually one [1] hour) to restore an alarm system to proper working order or remove it from service temporarily.
- (e) When the Police Department, or any other Town organization or agency responsible for emergency responses, responds to a signal activated by an alarm device, as defined above, and it appears after proper investigation that a false alarm did occur, then the owner or occupant of the premises to which the response is made, the designated person or company responsible for monitoring, and the person or company responsible for the installation and maintenance of the alarm device, shall each be subject to a false alarm service warning or charge, as set forth below.
  - (1) False alarms during the first thirty (30) days after the installation of a new alarm device shall result in a warning.
  - (2)

After the grace period provided for new devices as set forth in paragraph (1) above, false alarm service charges shall be assessed in the amounts set forth in the Town Fee Schedule, as adopted and amended by resolution of the Town Board of Trustees from time to time. This charge shall be payable to the Town and the Town may maintain an action for said charge and all costs of collection. The notice of assessment of the service charge shall state that the charge may be appealed to the Town Administrator within ten (10) days of the date of the assessment pursuant to this Subsection (e), provided that the charge is first paid to the Town Clerk.

- (3) Upon receipt of a written notice that a service charge is due, the recipient may appeal the assessment of the service charge to the Town Administrator. Such appeal shall be written and shall be filed with the Town Clerk within ten (10) days of the date of the assessment. The appeal shall state:
    - a. The name of the appellant;
    - b. The location of the premises where the false alarm occurred;
    - c. The dates and circumstances of all false alarms occurring on the same premises within the previous twelve (12) months;
    - d. The name of the agency within the Town assessing the service charge; and
    - e. The appellant's grounds for believing that the service charge is not due under this Section.
  - (4) If the service charge is not paid within ten (10) days of the assessment, any appeal shall be denied. If the appeal is upheld by the Town Administrator, the service charge shall be refunded.
  - (5) The Town Administrator shall have no jurisdiction to review an appeal unless it is timely filed and the service charge timely paid.
  - (6) The decision of the Town Administrator to deny or grant the relief requested in an appeal shall be final.
  - (7) For purposes of this subsection (e), Town Administrator means the Town Administrator or his or her designee.
  - (8) All service charges and costs of collecting such charges shall be a debt due and owing the Town, which shall be collected in any manner permitted by state law or local ordinance.
- (f) It is unlawful for a person knowingly to cause a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property.

(Ord. 435 §1, 1996; Ord. 731 § 1, 2014)

Sec. 10-223. - False reports, generally.

- (a) It is unlawful for any person to report the commission of a crime or existence of a fire or other emergency to the Town Marshal or any other agency empowered to deal with an emergency involving risk or injury to persons or property, when such person knows the report to be false.
- (b) It is unlawful for any person to report or cause to be reported to the Town Marshal any information concerning the commission of any offense or other incident which would require police action, when:
  - (1) Such person knows that no such offense or other incident has occurred; or
  - (2) Such person knows the information is false or that he or she has no such information.
- (c) It is unlawful for any person to make telephone calls to the Town Marshal and emergency telephone numbers, including 911, when such person makes the call knowingly and for no legitimate purpose. This Subsection shall apply regardless of whether the person who makes the call speaks or in any way communicates to the Town

employee answering the call.

- (d) This Section does not apply to reports of the existence or placement of a bomb or other explosive in any public or private place or vehicle designed for transportation of persons or property.

(Ord. 435 §1, 1996)

Sec. 10-224. - False information to law enforcement authorities.

- (a) Falsely incriminating another. It is unlawful for a person knowingly to give false information to any law enforcement officer with the purpose of implicating another.
- (b) Fictitious reports. It is unlawful for a person to:
  - (1) Report to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or
  - (2) Pretend to furnish such authorities with information relating to an offense or incident when he or she knows he or she has no information relating to such offense or incident.
- (c) Fictitious names and addresses. It is unlawful for a person to give a false name or address to a law enforcement officer with the intent of concealing or hiding one's own real name and/or address and/or age.

(Ord. 435 §1, 1996)

Sec. 10-225. - Impersonation of Town employees.

- (a) It is unlawful for any person who is not a law enforcement officer to impersonate or represent to others that he or she is a law enforcement officer.
- (b) It is unlawful for any person not a Town officer or Town employee to willfully or fraudulently represent himself or herself to be a Town officer or an employee of the Town.
- (c) It is unlawful for any person to purport to perform the duties of any Town officer or employee if he or she is not an authorized officer or employee of the Town.

(Ord. 435 §1, 1996)

Sec. 10-226. - Resisting or assaulting police officers.

- (a) It is unlawful for any person to resist any law enforcement officer, police officer, any member of the Town Marshal's office or any person duly empowered with police authority while in the discharge or apparent discharge of his or her duty, or in any way to interfere with or hinder him or her in the discharge or apparent discharge of his or her duty.
- (b) It is unlawful for any person to assault in any manner any law enforcement officer, police officer, any member of the Town Marshal's office, or any person duly empowered with police authority, while in the discharge or apparent discharge of his or her duty.

(Ord. 124 §§1, 4, 1973; Ord. 435 §1, 1996)

Sec. 10-227. - Assisting person in custody.

It is unlawful for any person to offer or endeavor to assist any person in the custody of a law enforcement officer, police officer, a member of the Town Marshal's office or a person duly empowered with police authority to escape or to attempt to escape from such custody.

(Ord. 124 §§2, 5, 1973; Ord. 435 §1, 1996)

Sec. 10-228. - Rescuing person in custody.

It is unlawful for any person to rescue or to attempt to rescue any person in the custody of a law enforcement officer, police officer, a member of the Town Marshal's office or a person duly empowered with police authority.

(Ord. 124 §§ 3, 6, 1973; Ord. 435 §1, 1996)

Sec. 10-229. - Disobeying officer.

It is unlawful for any person over the age of eighteen (18) years knowingly to disobey the lawful or reasonable order of law enforcement officers given incident to the discharge of the official duties of such law enforcement officers when coping with an emergency explosion or other disaster.

(Ord. 435 §1, 1996)

Secs. 10-230—10-240. - Reserved.

## ARTICLE XIII - Fireworks

Sec. 10-241. - Applicability of article.

The provisions of this Article apply to the possession, sale or use by any person of any fireworks or pyrotechnic displays, as those terms are defined in Section 10-242, 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;
- (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.

(Ord. 435 §1, 1996)

Sec. 10-242. - 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, skyrockets, rockets, Roman candles, Day-Glo 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.

(Ord. 435 §1, 1996)

Sec. 10-243. - Fireworks prohibited.

- (a) It is unlawful for any person to sell, use or possess fireworks within the Town limits.
- (b) Anyone convicted of violating the provisions of this Section shall be fined up to two thousand six hundred and fifty dollars (\$2,650.00). The minimum penalty for any violation of this Section shall be five hundred dollars (\$500.00).

(Ord. 558 §1, 2002; Ord. 803 §10, 2019)

Secs. 10-244—10-259. - Reserved.

ARTICLE XIV - Noise

Sec. 10-260. - Declaration of policy.

It is hereby declared to be the policy of the Town to prohibit unnecessary, excessive and annoying sounds from all sources subject to its police power. At certain levels sounds are detrimental to the health and welfare of the citizenry and, in the public interest, shall be forbidden.

(Ord. 693 §1, 2011)

Sec. 10-261. - Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

*"A" band level* means the total sound level of all sound as measured with a sound level meter using A-weighting network. The unit is the dB(A).

*Amplified sound* means sound emanating from any musical instrument, loudspeaker, public address system, radio, tape player, disc player, MP3 player, television set or other sound that has been made louder through the use of an electronic amplifier.

*"C" band level* means the total sound level of all sound as measured with a sound level meter using C-weighting network. The unit is the dB(C).

*Decibel* means a sound pressure that is ten (10) times the logarithm to the base ten (10) of the ratio of the pressure of sound to the reference pressure,  $2 \cdot 10^{-5}$  Newton/meter<sup>2</sup>.

*Emergency work* means work made necessary to restore property to a safe condition following a public calamity or work required to protect the health, safety or welfare of persons or property, or work by private or public utilities when restoring utility service.

*Impulse sound* means a sound of short duration, usually less than one (1) second, with an abrupt onset and rapid decay.

*Motor vehicles* means any self-propelled vehicle operated within the Town, including but not limited to licensed or unlicensed vehicles, automobiles, minibikes, golf carts, go-carts and motorcycles.

*Noise* means any excessive or unusually loud sound or any sound that is shrill, impulsive or continuous or that creates vibrations or is emitted at levels which unreasonably annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of others within the Town, except when it is made in compliance with a permit issued pursuant to this Article.

*Sound level* means, in decibels (dB), the sound measured with the A-weighting, C-weighting and fast response and slow response by a sound level meter.

*Sound level meter* means an instrument including a microphone, an amplifier, an output meter and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for Sound Level Meters S1.4-1971 or the most recent revision thereof.

(Ord. 693 §1, 2011)

Sec. 10-262. - Animals.

It is unlawful for any person to use, keep, have in his or her possession or harbor any animals which, by frequent or habitual howling, barking, meowing, squawking or otherwise, shall cause annoyance or disturbance to persons in the neighborhood.

(Ord. 693 §1, 2011)

Sec. 10-263. - Sirens, whistles, gongs and red lights.

It is unlawful for any person to carry or use upon a vehicle, other than Police Department vehicles, vehicles authorized by the Nederland Fire Protection District or emergency vehicles for public use, any gong, siren, whistle or red light similar to that used on ambulances or vehicles of the Police Department.

(Ord. 693 §1, 2011)

Sec. 10-264. - Violation established.

It is unlawful to violate any of the provisions of this Article. Any person violating this Article shall be subject to enforcement action pursuant to the provisions of this Article and other applicable provisions of this Code.

(Ord. 693 §1, 2011)

Sec. 10-265. - Unnecessary, excessive or offensive sound.

- (a) Notwithstanding any other provision of this Article, and in addition thereto, it shall be unlawful for any person without justification to make, continue, cause to be made or continued or assist another to make, any unreasonable and/or excessive noise in a public place or near a private residence which, under all of the circumstances presented, causes a person of ordinary sensitivities annoyance and irritation.
- (b) For the purposes of this Section, a determination as to whether noise is unreasonable and/or excessive shall be based upon all attendant circumstances, including but not limited to the following:
  - (1) The volume of the sound;
  - (2) The intensity of the sound;
  - (3) Whether the nature of the sound is usual or unusual;
  - (4) Whether the origin of the sound is natural or unnatural;
  - (5) The volume and intensity of the background sound, if any;
  - (6) The proximity of the sound to residential sleeping facilities;
  - (7) The nature and zoning of the area within which the sound emanates;
  - (8) The density of the inhabitation of the area within which the sound emanates;
  - (9) The time of the day or night that the sound occurs;
  - (10) The day of the week that the sound occurs;
  - (11) The time of the year that the sound occurs (e.g., warm weather, when windows are open; during the school year for small children);

- (12) The duration of the sound;
- (13) Whether the sound is recurrent, intermittent or constant;
- (14) Whether the sound is produced by a commercial or noncommercial activity;
- (15) Whether it is a pure tone sound; or
- (16) Whether it is an impulse sound.

(Ord. 693 §1, 2011)

Sec. 10-266. - Exemptions.

The following uses and activities shall be exempt from sound level regulations:

- (1) Lawn maintenance equipment when it is functioning in accord with manufacturer's specifications and with all mufflers and sound-reducing equipment in use and in proper operating condition;
- (2) Nonamplified sounds resulting from the activities such as those planned by school, governmental or community groups;
- (3) Sounds of safety signals, warning devices and emergency pressure relief valves;
- (4) Sounds resulting from any authorized emergency vehicle when responding to an emergency call or acting in the time of an emergency;
- (5) Sounds resulting from emergency work as defined in Section 10-261 of this Article;
- (6) Sounds of church chimes;
- (7) Utility plant equipment during normal operation;
- (8) Sounds made on property belonging to, or leased or managed by, a federal, state or county governmental body, and was made by an activity of the governmental body or by others pursuant to a contract, lease or permit granted by such governmental body;
- (9) Sounds made within the terms and conditions of the noise variance permit granted by the Town Administrator or a designated representative per Section 10-275 of this Article.
- (10) Sounds generated by property owners employing wildfire or beetle kill mitigation techniques, including the use of chainsaws for these purposes.

(Ord. 693 §1, 2011)

Sec. 10-267. - Amplified sound, special events, music festivals.

- (a) No person shall cause or allow to be made any amplified sound that exceeds seventy-two (72) decibels, absent a noise variance permit issued by the Town.
- (b) No person shall cause or allow to be made any amplified sound that exceeds, as measured thirty-five (35) feet from the sound source if the source is on public property or from the property line if the source is on private property, one hundred five (105) decibels, even when in possession of a noise variance permit issued by the Town.
- (c) For the purpose of enforcement of the provisions of this Article, sound level shall be measured on the A-weighted and C-weighted scale with a sound level meter satisfying at least the applicable requirement for Type 1 sound-level meters as defined in American National Standards 1.4-1971 or the most recent revisions thereof. The meter

shall be set for slow response speed, except that for impulse sounds or rapidly varying sound levels, fast response speed may be used. Prior to measurement, the meter shall be verified, and adjusted to &pm; 0.3 decibel by means of an acoustical calibrator. The meter shall be calibrated and certified at least once every other calendar year.

(Ord. 693 §1, 2011)

Sec. 10-268. - Special sound sources.

- (a) Except as otherwise provided herein, shall be unlawful for any person to operate any machinery, equipment, pump, fan or similar mechanical device in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitiveness residing in the area.
- (b) It shall be unlawful for any person to use music, soundmakers or loudspeakers on, or broadcasting to, the streets, sidewalks, parks or other public places of the Town for the sale or vending of products, advertising or other commercial purposes. For the purposes of this Section, *broadcasting to the streets, sidewalks, parks or other public places of the Town* shall include any sound for the sale or vending of products, advertising or other commercial purposes broadcast from a private property that exceeds sixty-five (65) decibels when measured on the public place.

(Ord. 693 §1, 2011)

Sec. 10-269. - Construction of buildings and projects.

- (a) General provisions. It shall be unlawful for any person to operate equipment or perform any outside construction or repair work on buildings, structures or projects, or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, chainsaw or any other construction-type device from a private property that exceeds eighty-five (85) decibels, except within the time periods specified herein, or unless prior written authorization has been obtained from the Town Administrator or a duly authorized representative.
- (b) Start and stop times. Construction or repair work shall not begin prior to 7:00 a.m. and must stop by 7:00 p.m. each day.
- (c) Written authorization. Construction and repair work may be conducted at different times and at higher sound levels than otherwise permitted herein if prior written authorization is obtained from the Town Administrator or an authorized representative. No written authorization shall be required to perform emergency work as defined in Section 10-261 of this Article. The Town Administrator or his or her representative may prescribe such conditions, working times, types of construction equipment to be used and permissible sound emissions as she or he deems necessary to protect the public interest. In granting such written authorization, the Town Administrator or an authorized representative shall consider if:
  - (1) Construction sound in the vicinity of the proposed work site would be less objectionable at night than during the daytime because of different population levels or different neighboring activities;
  - (2) Obstruction and interference with traffic, particularly on streets of major importance, would be less objectionable at night than during the daytime;
  - (3) The kind of work to be performed emits sounds at such a low level as to not cause significant disturbance in the vicinity of the work site;
  - (4)

The neighborhood of the proposed work site is primarily residential in character wherein sleep could be disturbed;

- (5) Great economic hardship would occur if the work was spread over a longer time;
  - (6) The work will abate or prevent hazard to life or property; or
  - (7) The proposed early morning or night work is in the general public interest.
- (d) Revocation of written authorization; appeal. The Town Administrator or an authorized representative may revoke any written authorization granted hereunder upon complaints based upon substantial evidence that the construction activity causes significant disturbance in the vicinity of the work site. Any person aggrieved by the granting of written authorization, the revocation of written authorization, or the refusal to grant written authorization by the Town Administrator or an authorized representative may appeal the decision to the Board of Trustees who shall hear such appeal no later than thirty (30) days from the appeal date.
- (e) Stop orders. Whenever any work on a construction project is in violation of the provisions of this Section, the Town Administrator or an authorized representative may order the construction project stopped by notice in writing served upon any persons responsible for the project or, if such person cannot be located, upon any person performing work on the responsible party's behalf at the work site. Work at the site shall cease immediately after the service of such notice and may not recommence until authorized by the Town Administrator. The Town Administrator may require the implementation of measures designed to ensure no further violations of this Section as a condition of lifting any stop work order.

(Ord. 693 §1, 2011)

Sec. 10-270. - Abatement remedy.

This Article shall not be construed to conflict with the right of the Town or any person to maintain an action in equity to abate a sound nuisance under the laws of the State. In addition to, or in lieu of, filing a civil citation or criminal complaint, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provision of this Article, which operation or maintenance causes discomfort or annoyance to reasonable persons of normal sensitivity or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed and is declared to be a nuisance and shall be subject to abatement as set forth in Chapter 7, Article I of this Code.

(Ord. 693 §1, 2011)

Sec. 10-271. - Separate violation.

Each offense or violation of this Article constitutes a separate and distinct violation. Each contact made by a code enforcement official or a representative of the Town to the offending party under the provisions of this Article shall constitute a separate offense subject to separate citation pursuant to the provisions of this Article. Code enforcement officers shall issue only one (1) warning per event or noise source per day. Code enforcement officers are permitted to issue consecutive citations for a single event every five (5) minutes after the initial contact if the offending party does not rectify the noise violation in accordance with the code enforcement officer's direction.

(Ord. 693 §1, 2011)

Sec. 10-272. - Commencement of action, citation, contents.

An action under this Article shall be commenced by delivering a citation to the occupant of the property where the violation has occurred, the owner of record of such property, or any other person responsible for the violation.

(Ord. 693 §1, 2011)

Sec. 10-273. - Civil fines and penalties imposed.

- (a) The civil fine/penalty for violating any provision of this Article shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation.
- (b) In addition to the amount of the fine imposed under Subsection (a) above, there is imposed a default penalty in the amount of fifty dollars (\$50.00) should the defendant fail to appear and answer for a violation of this Article within the time period stated on the citation, or fails to appear at the time and place set by the Court for a matter arising under this Article.
- (c) The Court may enforce collection of delinquent fines, fees, reinspection fees and penalties as may be provided by law. In addition, any judgment for a civil sanction imposed pursuant to this Code shall constitute a lien against the real property of the owner of the property where the violation occurred. The lien may be perfected by recording a copy of the judgment under seal of the Town of Nederland with the Boulder County Clerk and Recorder. Any judgment for civil sanction pursuant to this Code may be collected as any other civil judgment.

(Ord. 693 §1, 2011)

Sec. 10-274. - Habitual offender.

Three (3) or more violations of this Article shall be grounds for revocation of any special event permit, special use review permit or liquor license, after a notice and hearing.

(Ord. 693 §1, 2011)

Sec. 10-275. - Noise variance permit; application; grounds for issuance.

- (a) Application for a noise variance permit shall be made on forms provided by the Town and available at the Town Hall.
- (b) If the noise variance permit is for an ongoing activity, the Town Administrator shall consider the following factors when evaluating an application:
  - (1) Additional time is necessary for the applicant to alter or modify the activity or operation to comply with this section; or
  - (2) Compliance will cause an undue hardship, and
  - (3) The activity, operation or sound source will be of temporary duration, and even with the application of the best available control technology, the activity, operation or sound source cannot be done in a manner that would comply with this Section. In either case, the Town Administrator must also find that no reasonable alternative is

available to the applicant. If the Town Administrator grants a noise variance permit, he or she shall prescribe such reasonable conditions or requirements as are necessary to minimize adverse effects upon the community or the surrounding neighborhood.

- (c) The Town Administrator shall consider the following factors when evaluating an application:
  - (1) The type of sound;
  - (2) The proposed location of the event;
  - (3) The proposed time of day, day of the week, and time of the year; and
  - (4) The applicant's history of noise permits and any resident complaints generated by those events and the applicant's willingness to work with Town officials to mitigate future resident complaints.
- (d) The Town Administrator or an authorized representative may revoke any permit issued hereunder upon complaints based upon substantial evidence that the sound authorized by the permit causes significant disturbance in the vicinity of the noise source. Any person aggrieved by the granting or denial of a permit application or by the revocation of a permit may appeal the decision to the Board of Trustees who shall hear such appeal no later than thirty (30) days from the appeal date.

(Ord. 693 §1, 2011)

Secs. 10-276—10-290. - Reserved.

## CHAPTER 11 - Streets, Sidewalks and Public Places

### ARTICLE I - Sidewalks, Curbs and Gutters

Sec. 11-1. - Removal of snow and ice.

- (a) It is unlawful for any owner, or the agent or the tenant of such owner, of any lot, block or parcel of land within the Town to allow any snow, sleet, ice, dirt, debris or any other obstruction to accumulate or to remain upon any sidewalk adjoining such lot, block or parcel of land within the Town, longer than twelve (12) hours from the time of the last accretion of such snow, sleet, ice, dirt, debris or other obstruction.
- (b) It is unlawful for any person to deposit or cause any snow or ice to be deposited on or against any fire hydrant or traffic signal control device or appurtenance; or to deposit or cause to be deposited accumulations of snow or ice upon or adjacent to any sidewalk, street, roadway or loading and unloading area of a public transportation system or any designated emergency access lane, such as may retard or in any way interfere with the safe and orderly flow of pedestrian or vehicular traffic by obstructing the view of such traffic on intersection streets or drives or by any other means, or in any way obstruct or impede street or roadway drainage.
- (c) Violation of this Section shall be subject to penalty as provided in Section 1-72.

(Ord. 435 §1, 1996)

Secs. 11-2—11-20. - Reserved.

#### Sec. 11-21. - New driveways.

Culverts are required under all new driveways with access to public streets, roads or rights-of-ways. The property owner will bear all expenses for materials and labor to install said culverts on new driveways. The type of construction shall be approved by the Public Works Department, as part of the building permit application process. All materials shall meet the minimum standards as prescribed herein.

(Ord. 201 §1, 1981; Ord. 725 §4, 2013)

#### Sec. 11-22. - Existing driveways.

Owners of driveways in existence prior to the passage of the ordinance codified herein may install a culvert under any driveway that has access onto a public street, road or right-of-way. The property owner shall pay the cost for materials. Materials may be purchased through the Town at Town cost plus twenty percent (20%). Culverts may be installed by the Public Works Department, or by a contractor authorized by the Public Works Director, at the property owner's expense. Culverts shall meet the standards prescribed herein.

(Ord. 201 §2, 1981; Ord. 753 §1, 2017)

#### Sec. 11-23. - Culvert standards.

All culverts installed in the Town shall at minimum meet the following specifications:

- (1) Size: minimum eighteen (18) inches diameter; twenty-foot length or length sufficient to go under complete driveway with a minimum of six (6) inches showing at each end.
- (2) Type: CMP culvert, aluminum culvert or concrete drain pipe.
- (3) Grade: culverts being installed must have at least one-quarter ( $\frac{1}{4}$ ) inch of fall per ten (10) feet.

(Ord. 201 §3, 1981)

#### Sec. 11-24. - Maintenance.

Maintenance of all culverts on public rights-of-ways shall be, upon being installed according to Town specifications, maintained by the Public Works Department.

(Ord. 201 §4, 1981; Ord. 725 §5, 2013)

#### Sec. 11-25. - Compliance.

All required culverts under driveways shall be installed as required prior to a certificate of occupancy being issued. Violation of the terms of this Article when made a condition of a building permit shall constitute a violation of the building permit.

Sec. 11-26. - Penalty.

Any person found guilty of violating any provision of this Article and upon conviction thereof shall be punished by a fine as set forth in Section 1-72 of this Code.

(Ord. 201 §6, 1981; Ord. 435 §1, 1996)

Secs. 11-27—11-40. - Reserved.

### ARTICLE III - Excavations

Sec. 11-41. - Excavation defined.

Excavation shall mean any operation in which earth is moved or removed by means of any tools, equipment or explosives and includes auguring, backfilling, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling. Earth shall include natural or man-made materials not limited to dirt, rocks, boulders, concrete, asphalt and sand. Excavation shall not include planting of trees or gardens that requires relocation of less than fifty (50) cubic yards of earth.

(Ord. 465 §1, 1997)

Sec. 11-42. - Excavation permit.

It shall be unlawful for any person, firm or corporation to commence excavation without first having obtained an excavation permit; provided, however, that in a residential zoning district of the Town (HDR, MDR, MR, LDR), no excavation permit shall be required for an excavation that (1) is on private property and does not affect directly or indirectly the right-of-way for adjoining property; (2) is of a quantity of earth of less than fifty (50) cubic yards; and (3) is not in the floodplain or wetlands.

(Ord. 465 §1, 1997)

Sec. 11-43. - Fees required.

At the time of filing an application for an excavation permit, a nonrefundable filing fee as set forth in the Town's fee schedule shall be paid to the Town.

(Ord. 465 §1, 1997; Ord. 665 §2, 2008)

Sec. 11-44. - Application for and issuance of permit.

- (a) Application for an excavation permit shall be made to the Town on forms provided by the Town. Such application shall require the following information:
  - (1) The name, address and telephone number of the landowner, developer and permittee.
  - (2) A plan showing the location and description of the proposed excavation and construction to be performed in relation to the boundaries and other improvements on the property.

- (3) The approximate size of any excavation to be made and the purpose for such excavation.
  - (4) The location of any street, public utility and any adjacent properties that will be affected by the excavation. If the excavation affects a street, utility or an adjacent property, a copy of an agreement between the Town, or the utility company, or the property owner and the applicant which authorizes the applicant to undertake the excavation.
  - (5) Location of any structure or natural feature on the site, such as stream channels, trees, rock outcroppings or wetlands on the site of the excavation and within fifty (50) feet of the excavation site boundary.
  - (6) Elevations, dimensions, location, extent and the slope of all proposed grading, including building and driveway grades.
  - (7) The approximate time which will be required to complete all work, including backfilling any excavation and removal of all materials, equipment and debris from the site, and removal of all obstructions from the property.
  - (8) A schedule of the duration of the proposed excavation.
  - (9) The plan for, and estimated total cost of, backfilling, compaction and resurfacing of any excavation and removal of all materials, equipment and debris from the site, and removal of all obstructions from the property.
  - (10) A copy of the site plan approved by a certified engineer.
  - (11) Environmental and geotechnical investigation reports prepared by a licensed geologist or engineer, if requested by the Town due to unstable geological conditions or slopes greater than six percent (6%).
  - (12) Erosion and revegetation plans for restoration of the excavation site to its natural condition which shall include, but not be limited to, a landscape plan consistent with the provisions set forth in the design standards.
  - (13) Transportation plan should warrant for safety and flow of traffic.
  - (14) Such further information as may be required by the Town to efficiently administer and enforce the provisions of this Article.
- (b) The excavation permit shall consist of the site plan and any other information or conditions that may be attached thereto and made part of the permit by the Town. The conditions stated in both the site plan and the excavation permit shall be conditions of the excavation permit. The conditions of the excavation permit shall include all of the plans and information submitted with the application.
- (c) The Town shall deny any application for a permit for any of the following reasons:
- (1) The application is incomplete and the deficiencies therein are not remedied after reasonable notice to the applicant.
  - (2) The work, for which the application for the permit is to be issued, is improper or in violation of Town ordinances, rules or regulations.
  - (3) The applicant is in default, without good cause of the provisions or conditions of any previous permit or plan approved by the Town.
  - (4) The applicant has failed to obtain insurance or has failed to post the required letter of credit.
  - (5) The applicant has failed to pay the required permit fees.
  - (6) The applicant's contractor and/or engineer is operating without a current valid license or permit.
  - (7) The permittee has failed to obtain approval of a site plan.

- (8) The environmental and geotechnical investigation reveals that environmental action levels on heavy metals are exceeded, or other environmental, geotechnical or inactive mine hazards are indicated; provided, however, that if the applicant takes action to remedy the hazards, and submits a report establishing that such hazards have been remedied to the satisfaction of the Town, a permit may be issued.
- (9) There is not adequate assurance that the applicant has provided protection to adjacent properties or rights-of-way for the effects of the proposed excavation on the adjacent properties. Such protection may include assurance of subjacent support and indemnification for any damages resulting from the excavation to adjacent properties.

(Ord. 465 §1, 1997)

Sec. 11-45. - Term of permit.

The excavation permit shall expire one (1) month after the estimated date of completion as indicated by the applicant on the permit, or within one hundred eighty days (180) days of issuance of the permit, whichever is earlier. The Town may, for good cause shown, grant an extension of up to ninety (90) days. An additional permit and fees shall be required in the event the permit has expired and the work is not substantially completed as determined by the Town.

(Ord. 465 §1, 1997)

Sec. 11-46. - Security required.

- (a) To ensure rehabilitation of the site and repair of any damages caused on- or off-site by the excavating, there shall be required, at the time the original permit is issued for any work within or affecting public property or the right-of-way, a letter of credit acceptable to the Town naming the Town as the protected party. Such security shall be at least ten percent (10%) of the total cost of the excavation or one thousand dollars (\$1,000.00), whichever is greater. Such security shall not be released until two (2) years after final inspection and approval has been completed by the appropriate officer.
- (b) A contractor performing more than one (1) excavation project in the Town for which security is required by this Section may consolidate the security posted pursuant to this Article so that the total posted equals the highest amount required to be posted for all of the projects requiring security if all of the following conditions are met by the contractor:
  - (1) The contractor has not had a permit revoked or security drawn upon by the Town in the past five (5) years;
  - (2) The security posted is amended to provide that it may be drawn upon for any of the projects for which the contractor is then responsible; and
  - (3) The contractor agrees that within five (5) days of the Town drawing on all or any part of the security posted pursuant to this Article, the contractor will post additional security equal to the amount due for each of the projects for which the contractor is then responsible.

(Ord. 465 §1, 1997; Ord. 473 §1, 1998; Ord. 484 §1, 1998)

Sec. 11-47. - Revocation of permit.

- (a) The Town may revoke the permit granted by this Article if the applicant is found to have violated any of the provisions listed in Subsection 11-44(c) above, or in any of the following circumstances:
  - (1) The permittee violates any of the provisions of the ordinances of the Town or any other applicable federal, state or local laws governing the activities permitted by the permit;
  - (2) The permittee obtains a permit by fraud or misrepresentation;
  - (3) Revocation is necessary to maintain the public health, safety and welfare; or
  - (4) The permittee fails to maintain the required insurance, bond, letter of credit or other guarantees of performance during the course of the construction and of the warranty period specified by the Town.
- (b) The Town shall advise the permittee in writing of the grounds for revocation of the permit, and the permittee may be allowed to appeal such revocation to the Board of Trustees.

(Ord. 465 §1, 1997)

#### Sec. 11-48. - Permittee responsibility.

- (a) The applicant for the permit provided herein shall be responsible for all work performed under the permit whether or not the applicant, the applicant's employees or subcontractor performs the work.
- (b) The Town shall be notified five (5) working days prior to the initiation of any excavation.
- (c) The Town shall be notified within forty-eight (48) hours after the completion of excavation.
- (d) Upon completion of excavation, the applicant will request final inspection.
- (e) The Town shall have, at any time, the right of access to the construction site to inspect all materials and workmanship and to inspect the installation to determine compliance with the permit, the general conditions of this Article, specifications adopted by the Town and all other ordinances or resolutions adopted by the Town. The Town shall have the right to stop work if items or situations are unacceptable or in the event access to the site for inspection is denied.
- (f) No person shall excavate an area larger or at a location different than that specified in the application or on the permit. However, if it becomes necessary to excavate a larger area than originally requested, the permittee shall notify the Town immediately and within twenty-four (24) hours shall file a supplementary application for the additional excavation.
- (g) The permittee shall comply with all applicable Town, federal, state and local laws, rules and regulations.

(Ord. 465 §1, 1997)

#### Sec. 11-49. - Corrective measures.

The Town, upon discovery of any defect in the work or for the permittee failing to complete the excavation including backfilling and removal of debris for which an excavation permit is issued, may:

- (1) In the event of an emergency, order a private contractor to do everything necessary to complete such work to acceptable standards, particularly where hazards exist due to the failure of the permittee to restore or maintain the site in accordance with the provisions and conditions of this permit.

- (2) In the event of a nonemergency, give notice to the permittee and his or her sureties in writing of the nature and location of such defects, including notice of a reasonable time, not less than twenty-one (21) calendar days, within which such defects are to be repaired. Such period of time may be extended by the Town upon application, for cause shown.
- (3) In the event of failure of the permittee to perform the required work within the period provided by such notice, a private contractor on order of the Town shall make such repairs as may be necessary.
- (4) The Town shall recover any and all costs of work performed by its personnel or by a private contractor, including the cost of labor, equipment, materials and administrative costs at the expense of the permittee by applying any deposit, bond, letter of credit or other security in its possession to payment thereof, and shall recover any remaining unpaid balance of such costs from the permittee.

(Ord. 465 §1, 1997)

#### Sec. 11-50. - Protection of adjoining property.

- (a) The permittee shall at all times, and at his or her own expense, preserve and protect from injury any adjoining property by providing proper foundations and by taking other measures suitable for the purpose of preventing damage to any adjoining property.
- (b) When for the protection of adjacent property it is necessary to enter upon such property for the purpose of taking appropriate protective measures, the permittee shall obtain written permission from the owner of such property to enter thereupon.
- (c) The permittee shall, at his or her own expense, shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of his or her excavation work, and the permittee shall be responsible for all damage to public or private property or highways resulting from his or her failure to properly protect and carry out the work.
- (d) Whenever it may be necessary for the permittee to trench through any lawn area, such area shall be reseeded or the sod shall be carefully cut, rolled and replaced after the excavation has been backfilled as required in this Article.
- (e) All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began.

(Ord. 465 §1, 1997)

#### Sec. 11-51. - Certificate of insurance.

Every permittee, before commencing operations, shall be insured to the extent of two hundred thousand dollars (\$200,000.00) per person, five hundred thousand dollars (\$500,000.00) per occurrence, against liability arising from production, activities or operations incidental thereto conducted or carried under or by virtue of any law, resolution or condition imposed by this Chapter; and such insurance shall be kept in full force and effect during the period of such operation, including site rehabilitation. A certificate indicating protection by such insurance shall be filed with the application for the permit. Such insurance shall not be released until final inspection and approval has been completed by the Town. The insurance policy shall contain a clause that if the policy is changed or canceled, the Town is entitled to written notice ten (10) days prior to any change or cancellation.

Sec. 11-52. - Inspections.

- (a) The Town shall make such inspections as are necessary for the enforcement of this Article.
- (b) The Town shall have the authority to enforce such regulations as may be reasonably necessary to enforce and carry out the intent of this Article.

(Ord. 465 §1, 1997)

Sec. 11-53. - Burying of construction and organic materials.

Regardless of whether an excavation permit is required for work being done, no person shall bury or allow to be buried construction materials or organic materials resulting from the excavation or the clearing of land or similar activities within the Town limits. All such materials shall be removed from the site and properly disposed of by the person performing such work.

(Ord. 532 §1, 2000)

Sec. 11-54. - Violation and penalties.

- (a) Any person violating any provision of this Article shall be charged with a civil infraction and shall be subject to a fine not to exceed three hundred dollars (\$300.00). Each day during which a violation exists shall constitute, and shall be punishable as, a separate offense.
- (b) In addition, the Town is authorized to enforce this Article by injunction, including both the enjoining of contemplated actions or inactions in violation of this Article, including excavation or fill activities undertaken without or in violation of the terms of a permit; and mandatory injunction to require the removal of excavation or fill accomplished without or in violation of the terms of such a permit. In any such injunction action, the municipality shall be awarded its costs of suit, and any costs incurred in the removal of fill and/or restoration of areas where fill or excavation activities have been undertaken in violation of the provisions of this Article. In addition, the Town shall be entitled to recover its attorney fees incurred in bringing any action to compel compliance with the provisions of this Article or to compel compliance with any plan approved hereunder.

(Ord. 465 §1, 1997; Ord. 803 §11, 2019)

Secs. 11-55—11-60. - Reserved.

**ARTICLE IV - Limited Use Public Road Standards and Private Driveway Standards**

Sec. 11-61. - Purpose.

This Article is to set forth the standards required for construction of streets and driveways within the Town. Streets and driveways are classified by the average daily trips (ADT) anticipated on the street or driveway and the terrain of the anticipated street or driveway. The use of "street" for purpose of this Chapter shall include driveways.

## Sec. 11-62. - Average daily trip standards.

The street classification required is determined by the ADT as listed below. A traffic analysis may be required to make this projection. \* As a general guideline, each housing unit is anticipated to generate ten (10) ADT.

<b>Street Classification</b>	<b>ADT</b>
Arterial	*
Major Collector	*
Residential Collector	*
Local Access	151—
Two Lane Public Street	51—150
Limited Use Public Road	21—50
Private Driveway	10—20

## Sec. 11-63. - Design speeds.

Design speed is selected to correlate design of those physical elements of a road that influence vehicle operation. The choice of a design speed is influenced primarily by the terrain classification, functional classification and economics. The design speed is generally slightly higher than the eventual posted speed. Acceptable ranges of minimum design speeds are as follows:

<b>Terrain Classification</b>		<b>Mountains</b>			
<b>Functional Classification</b>	<b>Flat or Rolling</b>	<b>Design Speed</b>	<b>Posted Speed</b>	<b>Design Speed</b>	<b>Posted Speed</b>
Arterial	60	45—55	50	30—40	

Major Collector	50	35–45	40	30
Residential Collector	35	30	30	25
Local Access	25	20–25	20	20
Limited Use Public Road	<u>15</u>	—	<u>15</u>	—
Private Driveway	<u>15</u>	—	<u>15</u>	—

(Ord. 458 §1, 2000)

Sec. 11-64. - Sight distance.

- (a) Horizontal alignment must provide at least minimum stopping sight distance for the design speed at all points. This includes visibility at intersections as well as around curves and roadside appurtenances. The minimum stopping sight distance is the distance required by the driver of a vehicle traveling at a given speed to bring the vehicle to a stop after an object on the road becomes visible. Stopping sight distance is measured from the driver's eye which is assumed to be three and one-half (3.5) feet above the roadway surface, to an object six (6) inches high on the road. The required stopping distance for a given design is as follows:

<b><i>Design Speed (mph)</i></b>	<b><i>Stopping Sight Distance (ft.)</i></b>
<u>15</u>	100
20	150
25	175
30	200
35	250
40	300
50	450
60	650

- (b) In some cases passing sight distance may be required on residential collectors, major collectors or arterials. Passing sight distance is given in the Colorado Department of Transportation Roadway Design Manual.
- (c) Where an object off the pavement such as a bridge pier, cut slope or natural growth restricts sight distance, the minimum radius curvature is determined by the stopping sight distance. Offset clearance to achieve stopping sight distance on horizontal curves is shown in Figure 4-2 of the *State Highway Access Code*. It is assumed that the driver's eye and the object are centered in the inside lane, and the line of sight is assumed to intercept the obstruction at the mid-point of the sight line and two and one-half (2.5) feet above the inside lane. The offset distance (m) is measured from the centerline of the road to the obstruction.

(Ord. 458 §1, 2000)

**Sec. 11-65. - Vertical alignment.**

- (a) General consideration. The centerline profile is a reference line by which the elevation or grades of the pavement and other features of the roadway are established. It is controlled mainly by topography structure clearances, horizontal alignment safety, sight distance, design speed, construction costs and the performance of heavy vehicles on a grade. The centerline profile should be positioned with relation to the cross section as follows:
  - (1) It should coincide with the road centerline on two-lane and multi-lane undivided roads.
  - (2) On multi-lane divided roads, the grade lines should be placed at the edge of the travel lane nearest the median.
- (b) Maximum grades. Maximum sustained grades for new roads are related to design speed as follows:

<b>Design Speed (mph)</b>	<b>Maximum Sustained Grades (%)</b>	
	<b>Flat and Rolling Terrain</b>	<b>Mountainous Terrain</b>
15	6	12
20	6	10
25	6	9
30	6	9
40	6	8
50	5	6
60	4	N/A

The maximum design grade should be used infrequently rather than as a value to be used in most cases. At the other extreme, for short grades less than five hundred (500) feet, the maximum gradient may be increased by one percent (1%). In flat or rolling terrain, all grades shall flatten to four percent (4%) for at least one hundred (100) feet approaching intersections and for at least fifty (50) feet entering and leaving turnarounds or cul-de-sacs. In mountainous terrain, all grades shall flatten to six percent (6%) or less for at least fifty (50) feet approaching intersections and entering switchbacks on cul-de-sacs.

(c) Vertical curves.

- (1) Properly designed vertical curves should provide adequate stopping and passing sight distance, headlight sight distance, comfortable driving, good drainage and pleasing appearance.
  - (2) Vertical curves shall be parabolic. Figure 4-3 of the *State Highway Access Code* gives the mathematical relations for computing a vertical curve, either at crests or sags. Design controls for vertical curves are given in Table 4-5. The minimum length vertical curve shall be four hundred (400) feet for design speeds above thirty (30) mph and two hundred (200) feet for design speeds of thirty (30) mph and lower. Unequal tangent vertical curves are permitted in special circumstances as approved by the Town.
- (d) Sight distance. Minimum lengths of crest vertical curves are controlled by stopping sight distance requirements as shown in Figure 4-4 of the *State Highway Access Code*.
- (e) Superelevation.
- (1) One (1) of the most important factors to consider in highway safety is the centrifugal force generated when a vehicle transverses a curve. Centrifugal force increases as the velocity of the vehicle and/or degree of curvature increases. The standard superelevation rates shown on Tables 4-1 and 4-4 of the *State Highway Access Code* are such as to hold the side function factor within tolerable limits for those operating speeds expected for the range for curve radius given.
  - (2) For undivided roads, the axis of rotation for superelevation is usually the centerline. Where curves are preceded by long relatively level tangents, however, the plane of superelevation may be rotated about the edge of pavement to improve perception of the curve. Drainage pockets caused the axis of rotation from the centerline to the inside edge of pavements.
  - (3) A superelevation transition is variable in length depending upon the amount of superelevation. With respect to the beginning and end of the curve, two-thirds (?) of the transition is in the tangent approach and one-third (?) within the curve. This results in two-thirds (?) of the full superelevation at the beginning and at the end of the curve. Where spiral curves are permitted, the transitions are to be designed using the Colorado Department of Transportation Roadway Design Manual.
  - (4) After a superelevation transition is computed, profiles of the pavement edge should be platted and irregularities removed by introducing smooth curves. For wide pavements, it is often advantageous to plot intermediate profiles.
  - (5) On curved roadways, a pronounced sag may develop on the low side of the superelevation. This is corrected by adjusting the grades on two (2) edges of pavement throughout the curve.

(Ord. 458 §1, 2000)

Street and shoulder width as functions of functional classifications and traffic volumes are given in Table 4-6 of the *State Highway Access Code*. The shoulder widths given in Table 4-6 do not apply where curb and gutter sections, speed change lanes or climbing lanes are used; for curb and gutter sections, the shoulder width given is for parking or bike lanes.

(Ord. 458 §1, 2000)

Sec. 11-67. - Cut and fill slopes.

- (a) All slopes should be designed for functional effectiveness, ease of maintenance and pleasing appearance and shall be revegetated with low growing, erosion-resistant grasses. The revegetation seeding plan shall be approved by the Town.
- (b) Cut and fill slopes shall be as shown on the typical cross section shown in Standard Drawings 1 and 5 of the *State Highway Access Code*. Flatter slopes shall be required in unstable soils. Cut slopes steeper than the standard may be considered in special situations such as in solid material but require prior approval by the Town.
- (c) The top of all cut slopes shall be rounded with a minimum of a ten-foot radius where the material is other than solid rock and shall be revegetated. The backslopes at the ends of all cuts, except rock, shall be flattened. The ditch at the lower end of a cut shall be widened gradually to discharge side ditch drainage away from the base of adjacent fill slopes in order to avoid erosion and improve appearance.
- (d) In areas where right-of-way width is fairly constant, a pleasing appearance can be obtained by keeping the catch points for a given cut a fixed distance from the centerline. This constant distance catch point will:
  - (1) Provide a smooth transition from cut to fill.
  - (2) Allow smooth rounding at ends of cuts and fills.
  - (3) Permit the flattest possible slopes within the right-of-way limitations, thus encouraging better revegetation and erosion control.
- (e) The necessity for benches, their width and vertical spacing shall be established only after an adequate materials investigation of the site. Since greater traffic benefits are realized from widening a cut than from benching the slope, benches should be used sparingly and only where they are justified by sound engineering principles.
- (f) When benches are allowed, for ease of maintenance, a twelve-foot bench width is satisfactory. Benches should be sloped to form a valley of at least one (1) foot deep with the low point a minimum of four (4) feet from the top of the upper slope. Access for maintenance equipment should be provided to the lowest bench and, if feasible, to the higher benches.

(Ord. 458 §1, 2000)

Sec. 11-68. - Limited use public road standards.

Limited use public roads are those used primarily for direct access to properties abutting the right-of-way. Limited use public roads are limited to ADTs between 21—50. Under no circumstances will limited use public roads serve as access to more than five (5) living units or ADTs in excess of fifty (50), whichever the Town determines is less.

(Ord. 458 §1, 2000)

Sec. 11-69. - Requirements for a limited use public road.

- (a) The building owner must own the road in fee simple and dedicate the road to the Town.
- (b) Limited use public roads will be established by a recorded plat dedication.
- (c) If the applicant is unable to comply with the conditions and requirements set forth herein, the applicant must petition the Town for a variance: Site and grading plan report regarding necessity for variance approved by a certified engineer. A variance will not be approved by the Town if the applicant cannot establish to the Town's satisfaction that the variance will not adversely impact life safety concerns and if the applicant has not made adequate provisions for off-street parking year-round.
- (d) The roadway dedicated to the Town must have a minimum thirty-foot width.
- (e) Any access points to the public maintained system must be constructed in accordance with access permits issued by the appropriate public agency.
- (f) If a limited use public road is proposed, the applicant must comply with and satisfy all excavation conditions and requirements as written in Article III of this Chapter.

(Ord. 458 §1, 2000)

Sec. 11-70. - Private driveway standards.

The building owner must have the legal right to cross other private lands or a permit to cross public lands for vehicle access. That portion of the private driveway that has a traffic volume with the permitted use of that which would be generated by a single-family dwelling unit or ten (10) ADT, but less than thirty (30) ADT, must be constructed to minimum standards, as follows:

- (1) Twelve-foot-wide travel way.
- (2) Eight-foot-wide, sixty-foot-long turn out areas located no further apart than four hundred (400) feet where visibility is less than four hundred (400) feet.
- (3) Twelve percent (12%) maximum sustained grade. The grade may be increased to one percent (1%) for maximum of one hundred (100) feet.
- (4) Forty-foot radius centerline.
- (5) Stable cut and fill slopes no steeper than 1:1.
- (6) Roadside drainage ditches.
- (7) Lines and grades as approved by the Town.
- (8) Minimum twenty-foot easement width.
- (9) Other road and drainage facilities and appurtenances as deemed necessary by the Town.
- (10) A minimum of four (4) inches of aggregate base course Class 6 ( $\frac{3}{4}$ ") must be constructed on the surface.
- (11) Any traffic control devices necessary such as stop signs, private road, dead end.
- (12) Cross section flatten to six percent (6%) or less, fifty (50) feet before and after approaching intersections, entries and switchbacks.
- (13)

Grade shall flatten to six percent (6%) or less, fifty (50) feet before and after approaching intersections, entries and switchbacks.

- (14) Switchbacks will have a minimum forty-foot turn radius.
- (15) Emergency turnout will be required on driveways steeper than ten percent (10%) and for each one-hundred-foot length of a driveway.
- (16) Improvements must maintain historical drainage flows certified by an engineer.
- (17) Maintenance of driveway improvements must be in good repair at all times. If at such time said improvements adversely impact public rights-of-way or restrict the ability to access for life safety issues, the Town at its discretion may require improvements necessary to provide adequate access, or the Town will execute improvements at the property owner's expense.
- (18) The lot owner must sign a maintenance waiver acknowledging that the Town does not maintain the driveway, which document will be recorded with the County Clerk and Recorder.
- (19) If the driveway proposed by applicant requires the relocation of greater than fifty (50) cubic yards of earth, the applicant must comply with and satisfy all excavation conditions and requirements of Article III of this Chapter. If the applicant is unable to comply with the conditions and requirements set forth herein, the applicant must petition the Town for a variance: Site and grading plan report regarding necessity for variance approved by a certified engineer. A variance will not be approved by the Town if the applicant cannot establish to the Town's satisfaction that the variance will not adversely impact life safety concerns and if the applicant has not made adequate provision for off-street parking year-round.

(Ord. 458 §1, 2000)

Secs. 11-71—11-80. - Reserved.

## ARTICLE V - Public Places

### Sec. 11-81. - Definitions.

The following words as used in this Article shall have the following meanings:

*Accessory use* means a subordinate use of a building, other structure or tract of land which is:

- a. Clearly incidental to the use of the principal building, other structure or use of land;
- b. Customary in connection with the principal building, other structure or use of land; or
- c. Ordinarily located on the same lot with the principal building, other structure or use of land.

*Campfire* means an open fire with open flames, sparks or smoke for the purpose of heating, lighting, cooking or recreation.

*Camping* means housekeeping, living, residing, sleeping or dwelling, either out of doors, in a car, tent, van, bus, travel trailer, tent trailer, pickup camper, pickup coach, boat, utility trailer or vehicle, truck, horse trailer or similar mobile structure.

*Custodian of a campfire* means the person utilizing any aspect of a campfire, feeding or fueling the fire, tending the fire, or otherwise maintaining same.

(Ord. 231 §1, 1982)

Sec. 11-82. - Penalty.

Any person convicted of committing an act declared to be unlawful under this Article shall be punished as set forth in Section 1-72 of this Code.

(Ord. 231 §4, 1982; Ord. 435 §1, 1996; Ord. 659 §2, 2008)

Sec. 11-83. - Unlawful acts.

The following acts are hereby declared to be unlawful:

- (1) To engage in camping on the public streets, rights-of-way, alleys, sidewalks, parks or open spaces within the Town, unless otherwise approved by the Board of Trustees on a case-by-case basis, based on a finding that the approved activity will not negatively affect the health, safety or welfare of the Town's citizens.
- (2) To engage in camping on any private property within the Town other than in a campground or mobile home park or as an accessory use to a principal use on a lot with the prior approval of the lot owner.
- (3) To build a campfire or to be the custodian of a campfire anywhere within the Town except as an accessory use to a principal use on a lot.

(Ord. 231 §2, 1982; Ord. 647 §1, 2008; Ord. 659 §2, 2008)

Sec. 11-84. - Regulations for Nathan Lazarus Skate Park.

- (a) It shall be unlawful for any person to use the skate park for any purpose other than skateboarding, inline skating or instruction therein.
- (b) The skate park is open daily from dawn to dusk. It shall be unlawful for any person, other than authorized personnel, to enter or remain in the skate park after dusk and before dawn or when a sign indicates that the skate park has been closed for maintenance.
- (c) It shall be unlawful for any person, without the express written permission of the Town, to temporarily or permanently modify existing skate park facilities in any way, including but not limited to the temporary use of makeshift items in the skate park.
- (d) It shall be unlawful for any person to bring upon, have or possess any of the following in the skate park without the express written permission of the Town:
  - (1) Tobacco, alcohol or illegal drugs;
  - (2) Bicycles, scooters/Razors and motorized devices;
  - (3) Glass containers;
  - (4) Stickers, cans of spray paint, spray paint nozzles, broad-tipped marker pens, paint pens, glass-cutting tools or glass-etching tools or instruments;
  - (5)

Food and beverages of any kind, except for water;

- (6) Animals; and
  - (7) Equipment for the playing of amplified music.
- (e) It shall be unlawful for any child under the age of ten (10) to be in the skate park unless supervised by an adult at all times.

(Ord. 659 §1, 2008)

Secs. 11-85—11-99. - Reserved.

## ARTICLE VI - Park Regulations

Sec. 11-100. - Applicability.

Unless otherwise provided, this Article VI applies to all parks, parkways, recreation areas, open spaces, and trails belonging to the Town or within possession and control of the Town, whether located within or without the corporate boundaries (hereinafter referred to as Town of Nederland Parks and Open Spaces). The Town Administrator or designee is referred to as Authorized Official in this Article VI.

(Ord. 827 §1, 2022)

Sec. 11-101. - General regulations.

No person shall:

- (1) Remain in Town of Nederland Parks and Open Spaces between 10:00 p.m. to 5:00 a.m.
- (2) Deposit, leave, dump or cause to be deposited, left or dumped any trash, refuse, garbage or rubble in Town of Nederland Parks and Open Spaces, other than within those containers specifically designated for the deposit of such materials.
- (3) Deposit, leave, dump or cause to be deposited, left or dumped any trash, refuse, garbage or rubble in any designated container in Town of Nederland Parks and Open Spaces unless such material originated from lawful activity in such area.
- (4) Wash dishes, empty waste liquids or in any other manner pollute the water of any fountain, pond, lake, stream or ditch in Town of Nederland Parks and Open Spaces.
- (5) Urinate or defecate in Town of Nederland Parks and Open Spaces unless using a receptacle that has been provided for that purpose that stores or disposes of the waste in a sanitary manner.
- (6) Display or offer for sale any article or thing, erect a stand, or use a car or other vehicle for the sale or display of any article or thing, within Town of Nederland Parks and Open Spaces unless authorized to do so by the Authorized Official.
- (7) Fill, destroy, damage, redirect or otherwise tamper with culverts, drainage ditches, waterways or dams within Town of Nederland Parks and Open Spaces unless authorized to do so by the Town.
- (8)

Climb on any building or other structure not specifically intended for climbing on, such as playground equipment, and belonging to the town or under the possession and control of the Town without having first obtained authorization from the Authorized Official.

- (9) Enter any property belonging to the Town or under the possession and control of the Town that is fenced or otherwise designed to exclude intruders or is posted with signs that forbid entry without having first obtained authorization from the Authorized Official.
- (10) Swim, dive, ice skate, walk on ice, use any floatation device not designed for fishing, in or on any lake, pond, or stream within any Town of Nederland Parks and Open Space area, unless the area is specifically posted to allow for such activity.
- (11) Ride a bicycle or unicycle within any Town of Nederland Parks and Open Space area except on trails where such use is designated, including day-of-use and directional designations. Unless otherwise stated, the definition of bicycle shall include all exclusively human-powered wheeled vehicles . Gas and electric assisted bicycles are prohibited within any Town of Nederland Parks and Open Space area except where such use is specifically designated.
- (12) Post signs, advertisements and flyers or placement of brochures on Town of Nederland Parks and Open Space areas or on vehicles within parking facilities without permission from an Authorized Official.
- (13) Carry-in or possess any glass bottle or other glass container within any Town of Nederland Parks and Open Space area, except prescription medication or used for food preparation in the concession areas of permitted events. Further exceptions are pennitted only by obtaining written permission from Authorized Officials or the Board.
- (14) Fail to yield to other trail users in the manner defined herein or as otherwise posted at trailheads. The appropriate order for yielding the trail right-of-way is as follows: All users yield to equestrians, bicyclists yield to pedestrians, and bicyclists headed downhill yield to bicyclists headed uphill. Yielding the right-of-way requires slowing down to a safe speed, being prepared to stop, establishing communication, and passing safely.
- (15) Sell, serve, dispense or consume any alcoholic beverage in the Town of Nederland Parks or Open Space areas, except during an event authorized by appropriate permits, including the liquor licensing permit.
- (16) Take, seize, injure, mutilate or cut any tree, plant, shrub, bloom or flower growing in any Town of Nederland Parks and Open Spaces, or remove any wood, turf, grass, soil, rock, sand or gravel, without having first obtained authorization from the Authorized Official.
- (17) Remove, move, destroy, mutilate, collect, or deface any natural or man-made object within any Town of Nederland Parks and Open Space area, including, but not limited to trees, down timber or branches, shrubbery, plants, flowers, rocks, fences, signs, kiosks, restrooms, tables, benches, cultural resources, and trash containers. Town staff authorized to perform work in any Town of Nederland Park is exempt from this paragraph.
- (18) Install or replace rock bolts, plant vegetation of any type or any other type of landscape material or establish or construct trails or other facilities for public or private use without the written permission the Authorized Official.

(Ord. 827 §1, 2022)

- (a) The Town Administrator may adopt additional rules for the management, operation and control of Town of Nederland Parks and Open Spaces, and for the use and occupancy, management, control, operation, care, repair and maintenance of all structures and facilities thereon and all land on which they are located and operated. The Town Administrator may adopt rules, including without limitation, for:
  - (1) Preservation of property, vegetation, wildlife, signs, markers, buildings or other structures, and any object of scientific or historic value or interest;
  - (2) Restriction on or limitation of the use of any area or trail according to time, type and manner of activities;
  - (3) Prohibition of conduct that may reasonably be expected to interfere substantially with the use and enjoyment of parks, parkways, recreation areas, open spaces and trails by the general public or that constitutes a nuisance;
  - (4) Maintenance of reasonable and necessary sanitation, health and safety;
  - (5) Place, time and manner of camping and picnicking, if allowed;
  - (6) Place, time and manner of operating boats and vehicles, if allowed;
  - (7) Control and limitation of fires and designation of places where fires are permitted; and
  - (8) Other requirements that are reasonable and necessary for the preservation and management of parks, parkways, recreation areas, open spaces and trails.
- (b) The Town shall post on a sign the Town Administrator regulations. No person shall violate any rule issued by the Town Administrator under this Section.
- (c) The Town Administrator is required to inform the Board of Trustees of the additional rules and regulations at the next regular meeting of the Board of Trustees, at which time the Board of Trustees may amend or deny any of the administrative rules and regulations promulgated by the Town Administrator.

(Ord. 827 §1, 2022)

#### Sec. 11-103. - Protection of wildlife regulations.

No person other than persons authorized by the Authorized Official shall:

- (1) Feed, hunt, pursue, trap, harass, disturb, or kill any wildlife in any Town of Nederland Parks and Open Spaces.
- (2) Allow a domestic animal to feed, hunt, pursue, trap, harass, disturb, or kill any wildlife within any Town of Nederland Parks and Open Spaces.
- (3) Relocate or release any animal within Town of Nederland Parks and Open Spaces.

(Ord. 827 §1, 2022)

#### Sec. 11-104. - Fishing regulations.

- (a) No person shall:
  - (1) Fish without complying with the Colorado Fishing Statutes set forth in Article 6 of Title 33, C.R.S., and with the regulations promulgated thereunder, as may be amended from time to time.
  - (2) Ice fish unless the area is specifically posted to allow ice fishing.

(3) Fish with seines, cast nets, and/or live traps. Town employees and contractors, acting within the scope of employment or contract, are exempt from this regulation.

(b) The following regulations are applicable to the Chipeta Park Kids Fishing Pond:

(1) No person over twelve (12) years old is permitted to fish.

(2) Persons twelve (12) years old and younger are limited to catching four (4) fish per day.

(Ord. 827 §1, 2022)

Sec. 11-105. - Creek use regulations.

In the North Beaver Creek and the Middle Boulder Creek, no person shall:

(1) Perform significant digging on the stream bank or the stream bed.

(2) Engage in gold panning on the stream bank or the stream bed.

(3) Damage or widen the strembank.

(Ord. 827 §1, 2022)

Sec. 11-106. - Weapons prohibited.

No person shall knowingly possess in, or discharge on or into, any Town of Nederland Parks and Open Spaces firearms (concealed or otherwise), projectile weapons, or explosives of any kind including but not limited to hand guns, rifles, shotguns, fireworks, BB guns, pellet guns, rockets, air guns, paint ball guns, blow guns, crossbows, longbows, and slingshots, except as expressly permitted by Section 18-12-214, C.R.S. Peace Officers on official duty are excepted.

(Ord. 827 §1, 2022)

Sec. 11-107. - Domestic animals/livestock regulations.

No person shall:

(1) Allow a dog or other domestic animal, including horses, within a Town of Nederland Parks and Open Spaces without being on a leash, cord, rope, or chain and under physical control of a person except in designated and posted off-leash areas. Any owner/keeper accompanying a dog in an off- leash area must have the ability to restrain his or her dog when requested by Town staff.

(2) Allow his or her domestic animals within a Town of Nederland Parks and Open Spaces to engage in disorderly conduct or any activity which interferes with the health, safety, or welfare of users or other animals.

(3) Leave on any park property, except in designated trash receptacles, or in any waters within park property, the fecal matter of any animal that one owns, possesses or keeps.

(4) Allow a domestic animal or livestock to damage vegetation or structure in Town of Nederland Parks and Open Space.

(5) Provide to livestock while on Town of Nederland Parks and Open Spaces feed that contains weeds and weed seeds. Livestock grazing is allowed only by lease or written pennission from an Authorized Official or the Board.

- (6) Confine any animal in a motor vehicle in such a manner that places it in a life- or health-threatening situation by exposure to a prolonged period of extreme heat or cold without proper ventilation or other protection from such heat or cold.

(Ord. 827 §1, 2022)

Sec. 11-108. - Fire regulations.

Persons in Nederland Parks and Open Spaces shall comply with Nederland Municipal Code Section 10-88 regarding fire bans. In addition to the fire ban provided in Section 10-88, no person shall start, maintain, or cause to be started or maintained any fire in any Nederland Parks and Open Spaces. Charcoal fires may be built only in established picnic and camping areas and only in personal grills or stoves. All charcoal fires must be built in a safe manner and attended at all times. All charcoal fires must be properly extinguished. The Town Administrator or the Town Marshal is authorized to prohibit charcoal fires in Nederland Parks and Open Spaces.

(Ord. 827 §1, 2022)

Sec. 11-109. - Vehicle regulations.

- (a) No person other than persons authorized by an Authorized Official shall:
  - (1) Operate a motor vehicle, including a car, truck, motorcycle, minibike, electric scooter, low-powered scooter, snowmobile, four-wheel drive or other recreational vehicle within any Town of Nederland Parks and Open Space area, unless the area is specifically designated and posted to permit the operation of such vehicle in that area.
  - (2) Park a motor vehicle in a manner contrary to posted signs or designated markings.
  - (3) Park a motor vehicle in the Town of Nederland Parks and Open Spaces between the 10:00 p.m. and 5:00 a.m.
- (b) Individuals with mobility disabilities are permitted to use wheelchairs and/or manually-powered mobility aids on any trail open to pedestrian use so long as they are used in a manner that is safe for the user. Individuals with mobility disabilities may use other power-driven mobility devices ("OPDMDs") consistent with Town policy on the use of such devices.

(Ord. 827 §1, 2022)

Sec. 11-110. - Violations.

Any violation of this Article or the rules and regulations adopted pursuant to this Article shall be a municipal code infraction and subject to the general penalty provision set forth in Section 1-72 of this Code.

(Ord. 827 §1, 2022)

CHAPTER 13 - Municipal Utilities

ARTICLE I - Rate Reduction Program

Sec. 13-1. - Definitions.

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

*Applicant* means a low-income senior resident or disabled resident of the Town who has submitted an application to participate in the utility rate reduction program.

*Disabled individual* means any person who has a physical impairment from a physiological or neurological condition or a disability attributable to mental retardation, cerebral palsy or epilepsy which prevents the exercise of normal physical function.

*Household* means two (2) or more persons related by blood or marriage living together under one (1) roof. Any person who pays property taxes on a home or dwelling unit shall not be considered to be a part of any household other than that person's own dwelling unit.

*Income* means total income, including but not limited to salaries, wages, tips, employee compensation, interest, dividends, business or farm income, rents, royalties, social security benefits, public and private pension payments, annuities, support money, cash, public assistance and relief, veterans' benefits (except service-connected disability payments), workers' compensation and unemployment compensation benefits.

*Low-income* means having an income that is below one hundred eighty-five percent (185%) of the federal poverty guidelines established each year by the United States Department of Health and Human Services and published in the Federal Register.

*Owned* means possessed of the legal incidents of ownership irrespective of whether the applicant's name appears on the record for the property.

*Senior resident* means a resident of the Town who is sixty-two (62) years of age or older by July 1 of the year in which the application was submitted.

(Ord. 369, 1994; Ord. 682 §1, 2010)

Sec. 13-2. - Purpose.

There is hereby enacted a water and wastewater utility rate reduction program to provide relief from Town utility bills for qualified low-income senior and/or disabled residents of the Town. It is the purpose of this program to reduce amounts representing a portion of utility bills charged by the Town to qualified low-income senior and/or disabled residents. This program is intended to apply to qualified owners of property who reside on the property or resident tenants of the property who are responsible for the utility bills for the property.

(Ord. 369, 1994; Ord. 682 §1, 2010)

Sec. 13-3. - Requirements for qualification.

In order to be entitled to a utility rate reduction under this program, the applicant must meet all of the following applicable requirements:

- (1) The applicant or spouse, if living together, must be a senior resident or be a disabled individual resident as defined in this Article. No more than one (1) application shall be submitted or acted upon in connection with any single property in the Town.
- (2) The applicant must be a resident of the Town as of July 1 of the year in which the application is submitted.
- (3) All utility bills for the property occupied by the applicant must be paid current.
- (4) The property occupied by the applicant must receive water, wastewater or both services from the Town.
- (5) Any applying household shall have a combined annual income which shall not exceed, for its size, one hundred eighty-five percent (185%) of the federal poverty guidelines established each year by the United States Department of Health and Human Services and published in the Federal Register.
- (6) Any applying household or member thereof shall be in full compliance with all provisions of this Article and shall not be in default upon the terms of any obligation, contract or other agreement with the Town.

(Ord. 369, 1994; Ord. 385 §1, 1994; Ord. 653 §1, 2008; Ord. 682 §1, 2010)

#### Sec. 13-4. - Application for utility reduction.

Utility rate reductions under this program shall be made to persons qualified for such reductions upon written application made to the Town on forms to be provided by the Town. Such applications shall be made between August 1 and December 31, inclusive, of each year for which a reduction is to be made, with the exception of the 1994 calendar benefit year, which shall be made between January 1 and May 30, 1994.

(Ord. 369, 1994; Ord. 435 §1, 1996)

#### Sec. 13-5. - Amount of utility rate reduction.

The amount of utility rate reduction hereunder shall be the waiver of base fees for water and wastewater for a residential single unit. An applicant shall be entitled to a rate reduction only for those utility services received and shall pay for metered water and/or sewer usage at the current rates.

(Ord. 369, 1994)

#### Sec. 13-6. - Rules and regulations.

The Town, with the approval of the Town Administrator, shall have the power to formulate and promulgate rules and regulations for the administration of this utility rate reduction program not inconsistent with this Article.

(Ord. 369, 1994; Ord. 435 §1, 1996)

#### Secs. 13-7—13-20. - Reserved.

### ARTICLE II - Sewer System

#### Sec. 13-21. - Construction standards.

Construction of all sewer collection lines, service lateral lines and appurtenances shall be done in accordance with Article IV of this Chapter.

(Ord. 346 §1, 1992; Ord. 435 §1, 1996)

Sec. 13-22. - Development costs.

- (a) Any person desiring to connect to the Town sewer system to service his or her private property, such connection requiring an extension of the Town sewer system, shall pay the entire cost of extension of the Town sewer service to his or her property. Ownership of all sewer main lines so extended along with any other improvements made to the sewer main collection system shall be transferred to the Town upon construction acceptance.
- (b) Any and all engineering fees incurred by the Town associated with any sewer project shall be reimbursed by the owner/applicant to the Town.
- (c) In the event the applicant has installed a sewer main extension that may serve other users or if the Town has determined that oversizing of a line is necessary, the Town may, at its discretion, enter into an agreement with the applicant to enable the applicant to recover a portion of the cost overage of such installation as future connections are made.
- (d) All measuring or mechanical appliances or devices that are attached to or used in connection with the Town's sewer system shall meet all standards and requirements established by the Town. In those instances where the Town Administrator deems it more efficient to do so, he or she may require individuals or entities seeking to connect to or use the Town's sewer system to purchase measuring or mechanical appliances or devices from the Town. In those instances where the Town provides measuring or mechanical appliances or devices to those seeking to connect to or use the Town's sewer system, the Town shall charge twenty percent (20%) in addition to the cost of such appliances or devices to compensate the Town for the time and expenses involved in acquiring and providing such appliances or devices.

(Ord. 346 §2, 1992; Ord. 564 §1, 2002)

Sec. 13-23. - Sewer connection required.

All structures that are required to have sewer service and are on lots located within two hundred (200) feet of an operational sewer collection main of the Town shall be required to connect to and to use the Town's sewer system within three (3) years of written notification by the Town. Upon written application by the property owner and an inspection by a certified engineer paid for by the homeowner, the Board of Trustees may grant variances to this requirement based upon the following criteria:

- (1) Grade or site characteristics which makes a practical sewer connection difficult or impossible. Mechanical pumping of sewage may be required.
- (2) Any private septic system that, following an inspection by a Town-approved engineer, is found to be in good working order, may continue to be used for a period of time designated by the Board of Trustees or until the home is sold. However, if during the term of the variance, such septic system needs to be revitalized, expanded or improved in any manner other than regular maintenance or pumping or if, as a result of

inspection or otherwise, the septic system is determined to have failed, then the private septic user shall be required to connect to the municipal sewer system as soon as possible, but in any event within six (6) months of the date notification of such failure is mailed to the property owner and/or user.

- (3) No existing private septic system may be used or modified to serve additional users or for additional purposes.
- (4) If there is no existing utility easement in place at or before the date connection is required, the Board of Trustees may waive the requirement of connection until such easement is in place, if it finds unusual or extreme hardship or expense would be suffered or incurred by the property owner in obtaining a satisfactory easement, provided that such hardship or expense was not created or caused by such property owner or their predecessors in interest.
- (5) Any variance granted by the Board of Trustees pursuant to the provisions of this Section shall be subject to such terms and conditions as the Board of Trustees deems appropriate, including but not limited to the length of time such variance shall remain in effect or whether annual testing or other review of a septic system by the Town or its designee will be required.

(Ord. 346 §3, 1992; Ord. 435 §1, 1996; Ord. 618 §1, 2006; Ord. 629 §1, 2007)

Sec. 13-24. - Sewer service application.

- (a) An application shall be initiated to the Town requesting a sewer tap into the Town sewer system. The fee for obtaining sewer service shall include a plant investment fee (P.I.F.) and a mechanical connection fee (connection fee), as required in Section 13-28 below.
- (b) All fees shall be paid in full before a building permit will be issued. Once sewer service connection is approved, a work order shall be issued to the Public Works Department authorizing a sewer tap. A record of all such permits shall be maintained by the Town. As a minimum, each application shall contain:
  - (1) The name of the person for whose benefit such permit is to be granted;
  - (2) Identification of the property and property owner for which such permit is to be granted;
  - (3) The size of the tap;
  - (4) The estimated point at which such tapping is to be done;
  - (5) The location on the structure to which the sewer is to be connected;
  - (6) The contemplated types of effluent;
  - (7) The location of sewer cleanouts; and
  - (8) The use of the property to which the property is to be put, residential, multifamily residential, commercial or industrial, and a description of any commercial or industrial use.
- (c) No person shall uncover, make any connections with an opening into, use, alter, disturb or tamper with any public sewer line or appurtenances thereof, without first obtaining a written permit from the Town. All construction or excavation activity occurring in a public right-of-way must be approved by the Public Works Department and a right-of-way permit must be issued by the Town.
- (d) All costs and expenses directly due or incidental to the installation and connection of the sewer line shall be paid by the property owner. The property owner having a sewer line installed shall indemnify the Town from any loss or damage that may be directly or indirectly due to said installation.

- (e) All connections to the sewer system shall be made by a duly authorized employee of the Town or a qualified contractor who shall give twenty-four-hour notification of intent to begin and shall be supervised by the Public Works Department of the Town.
- (f) Upon completion of the tap, a complete description of the exact location of the tap and service line shall be provided by the property owner to the Town. The description shall include the legal description of the property served, and distances from at least two (2) established property corners and/or permanent, obvious features of the surrounding properties. This data shall be posted to the Town utility map. Failure to provide this data will result in the Town assessing a fee against the owner and the property to fund the research, including the cost of digging and surveying if necessary to provide this data for the Town records.
- (g) Billing and collection of user fees shall begin upon payment of the plant investment fees and shall be billed to the owner by the Town as set forth herein.
- (h) Alteration or extension of plumbing within any building inside the corporate limits of the Town shall be approved and authorized by a permit issued by the Building Department. All building classifications shall be determined by the Building Department as outlined in Article IV, below, and any other ordinances, requirements or regulations as adopted and amended by the Town.
- (i) Only one (1) property and one (1) use on the property shall be served by each sewer service line. Extensions of a single sewer service line to one (1) or more multiple buildings or uses on the same platted lot is prohibited if sewer is required for each structure under any Town ordinance. A separate sewer service line is required for each separate building and each separate use on a single lot, except where specific exception is granted by the Board of Trustees. Any properties, uses or buildings on a single lot which are currently being served jointly by a single sewer service line shall be brought into conformance with the requirements of this Section within one hundred eighty (180) days of the date of passage of the ordinance codified herein by the property owner.
- (j) Any additional demands created by an extension of the plumbing may require a larger service size as determined by the Town's ordinances and in Article IV, below. If a larger service is required, the property owner shall pay the difference between the cost of the existing and the new larger plant investment fee, monthly rates and installation.
- (k) Extensions of the plumbing from an existing tract or lot to another tract or lot shall not be permitted, even if all such properties are commonly owned. Subdivisions of separate parcels shall require an additional and separate P.I.F., connection fee and sewer service line to be obtained and constructed for each parcel.
- (l) Upon payment of a P.I.F. and connection fee, a tap shall be assigned to a property for which it was purchased and shall not be transferable to another property.
- (m) The Town shall sell a sewer tap only to persons obtaining a building permit. In the event no building occurs within twelve (12) months or the building permit expires, the Town shall be entitled, at its option, to repurchase the tap at the same P.I.F. and connection fee paid to the Town, at any time thereafter, by giving written notice to the purchaser of the tap or the then-owner of the property.

(Ord. 346 §4, 1992; Ord. 435 §1, 1996)

Sec. 13-25. - Service lines.

- (a) The property owner of any premises upon which sewer service is provided shall maintain and repair all sewer service lines and their fixtures from the sewer main into his or her structure so as to prevent any leakage or damage. Any such leakage and damage shall be immediately repaired at the property owner's expense.
- (b) Upon written notice, the Town may terminate sewer service to the property if the property owner fails to immediately stop all such leakage or to repair a damaged sewer service line.
- (c) The property owner shall be responsible for all damage to the sewer system resulting from failure to properly maintain or repair his or her individual service line and appurtenances. Said owner shall pay for all costs of repair to damaged public property estimated by the Town.

(Ord. 346 §5, 1992; Ord. 435 §1, 1996; Ord. 539 §1, 2001)

#### Sec. 13-26. - Easements.

- (a) Each owner of the property served by the Town sewer system shall grant to the Town an easement for any new construction of sewer service lines running through private property. Such easement shall include an easement for access by the Town to inspect and/or service, maintain and/or repair any sewer service line and any portion thereof. An easement agreement in a form acceptable to the Town shall be signed by the property owner and a copy shall be filed and maintained by the Town. Compensation for easements may be negotiated by the Board of Trustees for easements of sewer mains or lines serving more than one (1) property.
- (b) If an easement for a service line through public or private property is necessary to gain access to a Town sewer main, the property owner of the property to be connected shall be required to submit a copy of the written easement to the Town prior to any excavation of said property.

(Ord. 346 §6, 1992; Ord. 435 §1, 1996)

#### Sec. 13-27. - Sanitary pretreatment requirements.

Where deemed necessary as determined by the Public Works Foreman, a property owner shall provide, at his or her own expense, such preliminary pretreatment as may be necessary to reduce objectionable characteristics of wastewater, or to control quantities and rate of discharge.

(Ord. 346 §7, 1992)

#### Sec. 13-28. - Fees and payments.

- (a) Fees.
  - (1) Sewer user fees. Sewer user fees shall consist of a monthly service fee ("base fee") which shall be assessed for each tap and each building served and for each separate address on the property with a three-fourths-inch water meter or greater. The base fee shall be assessed for each connection between the tap and the service associated with an unambiguous address comprising a property or part property. Water meters larger than three-fourths ( $\frac{3}{4}$ ) of an inch may be assessed a base fee higher than the three-fourths-inch base fee. If a property is providing water to more than one (1) address through a single water service then the base fee shall be applied corresponding to each separate address. The property owner shall be responsible for the base fees

and calculated usage based on the meter reading. In no case shall one (1) water service serve multiple buildings. Base fees shall be billed whether the property is actually connected to the Town sewer system or is required by this Article or any prior ordinance of the Town to be connected to the system. In addition to the base fee, a monthly sewer usage fee ("usage fee") shall be charged to each property and/or address with a water meter. The usage fee shall be for the amount of water consumed since the last meter reading, as established by the water meter for such structure or unit whether direct or derived.

- a. If multiple addresses are served by the same water meter, they shall be assessed the related multiple number times the base fee for the water meter size used. Specifically, the fee is for the connection between the service and the address.
  - b. The Town will bill the property owner at least quarterly for sewer service. Commercial meters may be read more often and billed on a different schedule than residential meters. Failure by the Town to so notify a sewer user shall not constitute a waiver of any fee or charge imposed by this Article. It shall be the owner's responsibility at all times to provide the Town, in writing, with a current billing address. Unless written notice of a billing address signed by the property owner is received by the Town, the Town will send bills to the address shown in the records of the County Treasurer.
  - c. Properties that are sewer service only and do not have a water meter shall be assessed twice the base fee or the amount established by resolution of the Board of Trustees, whichever is greater.
  - d. For purposes of this Section, the following definitions shall apply:
    1. "Address" shall mean a designation identifying the location of a property or unit within a property used by individuals for a particular purpose and which may be used to indicate a delivery location to a package delivery service excluding individual units within a hotel or motel occupied continuously for less than thirty (30) days (e.g.: "33 Ute Way", "333 Highway 119, Apt. 3" or "20 Lakeview Dr., Unit 112").
    2. "Connection" shall mean a physical association between a Town-provided tap and the consumer of that service.
- (2) Sewer plant investment fees. Tap sizes used for determining plant investment fees shall be based upon a needs analysis derived from the International Plumbing Code as adopted and amended by the Town. Plant investment fees shall be charged according to the needs analysis and payment accepted only at the time of a building permit. In the event connection is made to the Town's sewer system without having paid the sewer plant investment fee in advance of such connection, the owner of the property shall pay to the Town a PIF penalty fee in addition to the sewer plant investment fee in effect at the time such connection is discovered by or disclosed to the Town. If the owner fails or refuses to pay such penalty as well as the sewer plant investment fee, the Town may summarily terminate water service to the property without further notice. The amount of the penalty provided for in this Paragraph shall be as established by resolution of the Board of Trustees.
- (3) Tapping fees. Tapping fees shall be charged in accordance with a fee schedule adopted and which may be amended by resolution of the Board of Trustees.
- (4) Out-of-Town users. Out-of-Town users will be assessed one hundred fifty percent (150%) of the in-Town user fees, plant investment fees and tapping fees, or the amount established by resolution of the Board of Trustees, whichever is greater.

- (5) Town labor, equipment and materials. Fees for use of Town labor, equipment and purchase of materials shall be as follows:
- a. Town labor, per person, per hour at the rate established by resolution of the Board of Trustees.
  - b. Town equipment is billed at the rate established by resolution of the Board of Trustees.
  - c. Materials supplied by the Town are billed at cost plus twenty percent (20%).
- (6) The Board of Trustees is authorized to adopt and amend, from time to time, a policy authorizing a waiver request process for customers to request and obtain a waiver from the usage fees imposed pursuant to paragraph (1) above, under limited and extraordinary circumstances, such as water leaks and line breaks beyond the customer's control.
- (b) Meters.
- (1) Water meters and remote water meter readouts must be easily accessible and readable. If access or readability is impaired, the property owner, at his or her own expense, shall be required to relocate the meter and remote device to a location that will allow the Public Works Department to obtain meter readings. Failure to comply with this requirement within fifteen (15) days of official notification of inaccessibility or unreadability shall result in water meter rates being charged at a flat rate fee of two (2) times the past billing or the amount established by resolution of the Board of Trustees, whichever is greater. If the readability issues are not corrected within three (3) months, a fifteen-day shut-off notice will be posted.
  - (2) Water meters must be in working order. If the water meter is broken, the property owner, at his or her own expense, shall be required to fix or replace the meter and/or remote device. Failure to comply with this requirement within sixty (60) days of official notification of a broken meter shall result in water meter rates being charged at a flat rate fee of two (2) times the past billing or the amount established by resolution of the Board of Trustees, whichever is greater. Prior to this time, the user will be charged the same as his or her past billing.
  - (3) If any meter fails to register in any billing period and has not been temporarily disconnected by notification to the Town, the owner shall be charged according to the average quantity of water used in a similar period as shown by the meter when in order.
- (c) Billing.
- (1) Billing for sewer service and any other notices relating to the sewer services are effective on the date that they are deposited in the mail addressed to the last known address of the owner as shown on the records of the Town.
  - (2) Any owner who, at the time of passage of the ordinance codified herein, has property connected to the Town sewer system and who has not received bills from the Town for sewer service, or who has not paid plant investment fees or tap fees for such connection, will be billed and shall be responsible for payment for such past sewer service as follows:
    - a. The base fee for the thirty-six-month period immediately preceding the date of passage of the ordinance codified herein;
    - b. A usage fee for the thirty-six (36) months immediately preceding passage of the ordinance codified herein;
    - c. Any unpaid connection fees and PIF;

- d. Such owners shall include those persons whose properties are connected to the Town sewer system but:
    - 1) whose property has no record of billing or payment with the Town; or 2) who has tapped into the Town sewer system without permission;
  - e. All fees and charges which accrue and remain unpaid after the date of the ordinance codified herein; and
  - f. Nothing herein shall limit the time or charges for which the Town may assess and demand payment of fees and charges in the event of the unlawful or unauthorized tapping of a sewer main without the Town's approval.
- (d) Delinquencies, Penalties and Collection. An account shall be delinquent if not paid within thirty (30) days of mailing the bill. In the event an account is delinquent, the Town may initiate the following late fee, interest and collection procedures. Any late fee imposed and collected shall comply with C.R.S. § 29-1-1102, as existing or as hereafter amended:
- (1) The Town shall assess interest on any delinquent amounts on a monthly basis in an amount established by resolution of the Board of Trustees. The interest rate established by the Board at any time shall not exceed the maximum interest rate authorized at such time by C.R.S. § 31-35-402(1)(f), or its successor statute.
  - (2) Thirty (30) days delinquent. The Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall mail, by regular mail, to the property owner at its billing address, a notice of delinquency. The notice shall notify the property owner that s/he has thirty (30) days from the date of said notice to pay the total amount due, including accumulated charges, fees and interest, in full, in cash or certified funds.
  - (3) Fifty (50) days delinquent. If the delinquency and all accumulated charges are not paid in full within twenty (20) days of the date of notice provided under paragraph (d)(2) above (50 or more days delinquent from the original due date), the Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall send a letter, by regular mail, for the total amount due, including all accumulated charges, fees and interest. The letter shall notify the owner that s/he has twenty (20) days from the date of the letter to pay the total amount due, in full, in cash or certified funds.
  - (4) Seventy (70) days delinquent. If the delinquency and all accumulated charges are not paid in full within twenty (20) of the date of the letter provided under paragraph (d)(3) above (70 or more days delinquent from the original due date), the Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall mail, by regular mail, to the property owner at its billing address, a notice of delinquency. Additionally the Town shall assess an administrative fee in an amount established by resolution of the Board of Trustees and may pursue any or all of the following:
    - a. The Town may terminate water service to the property. At least fifteen (15) days prior to such termination, the Town shall post written notice of termination upon the property and mail notice of termination by regular mail to the property owner. To avoid termination, the owner must pay the Town, in cash or certified funds, the entire amount due. If service is terminated as provided herein, the owner must pay a reconnection fee in an amount established by resolution of the Board of Trustees.
    - b. The Town may file a lien against the served property for all delinquent fees, charges, interest and penalties, as well as a County Lien Recording Fee, as established by resolution of the Board of Trustees. All such amounts due constitute a lien which is prior and superior to all other liens, claims, titles and

encumbrances, whether prior in time or not, and shall remain a lien on the property from the date such fees are delinquent until the same are paid. The failure of the Town to record such lien with the County Clerk and Recorder shall not affect the validity or enforceability of the Town's statutory lien rights or any other remedies the Town may have to collect the amounts due and owing. The property owner shall be liable for all sewer services furnished and fees and charges for said property. The lien against the property or liability against the owner may be enforced by the Town by action of law or an action to enforce the lien. The Town shall in no event be required to look to any person other than the owner of the real property served by the sewer system.

c. The Town may certify all due and unpaid fees, charges, interest, penalties and amounts to the County Treasurer for collection in the same manner as other general taxes upon such property are collected.

- (5) Payment plans for payment of delinquent accounts may be authorized.
  - (6) No error or mistake in Town records or billings, past or present, shall constitute an estoppel or waiver or otherwise prevent the Town from billing, collecting or enforcing the correct amount of any amount owed.
  - (7) No change in ownership or occupancy shall affect the application of this Section or any of the provisions of this Section, and the failure of any owner to learn that he or she purchased any property against which a lien for sewer service or tap fee exists shall in no way affect the lien against any property for such payment in full or be the basis for any claim of any kind whatsoever against the Town for refusing to turn on sewer service until charges are paid in full.
  - (8) Record of payments. The Town will maintain records of all sewer fees and charges paid and an up-to-date record of delinquent charges, in accordance with accepted accounting procedures.
- (e) In the sole discretion of the Board of Trustees, the Town may agree to provide sewer service to real property located outside the Town limits. All other provisions of this Section, including but not limited to the remedies available to the Town in the event of nonpayment, shall apply to real property located outside the Town limits that is provided sewer service by the Town.
- (f) Responsibility of owner. Each property owner with real property within the limits of the Town shall:
- (1) Determine whether his or her property has sewer service provided by the Town.
  - (2) Determine whether the owner is receiving billings from the Town for all sewer service provided to the owner's property.
  - (3) Provide written notice to the Town within thirty (30) days of billing if the owner believes the Town's billing is incorrect.
  - (4) If the owner's property is connected to the Town sewer system but is not receiving any billing, provide written notice to the Town of such fact and how long he or she has been receiving such sewer service. In such case, the Town may bill and collect from the owner for such past sewer charges and fees at such rates as are set forth in this Article and in the manner set forth hereinabove for billing collection of sewer service charges and fees.

(Ord. 671 §1, 2009; Ord. 725 §6, 2013; Ord. 743 §1, 2016; Ord. 777 §1, 2018; Ord. 821 §1, 2021; Ord. 824, §1, 2021)

Sec. 13-29. - Owner's responsibility for compliance.

The owner of each property which is required to be connected to the Town sewer system by this Article shall do all things required by this Article to connect his or her property to the Town sewer system in compliance with the requirements of this Article within one hundred eighty (180) days of passage of the ordinance codified herein. If the property owner fails to connect his or her property to the Town sewer system when required by this Article, or otherwise fails to comply with any requirements of this Article, the Town may, at its option, do one (1) or more of the following:

- (1) Have such work performed at the owner's expense and bill and collect the expense of such work in the same manner as provided in Section 13-28 above for sewer user fees; and/or
- (2) Terminate water service to the affected properties as provided in Section 13-28.

(Ord. 346 §9, 1992; Ord. 435 §1, 1996)

#### Sec. 13-30. - Service lines; demolished buildings.

Service lines not attached to a building or structure are not permitted. When a building or structure becomes demolished or abandoned, service lines shall be terminated at the main within thirty (30) days. All costs shall be borne by the owner of the property previously served by the line.

(Ord. 346 §10, 1992)

#### Sec. 13-31. - Unauthorized use of sewer system.

No person shall cause any substance to be placed into any portion of the Town sewer system which shall tend to fill up or obstruct the flow of sewer in the system, or that shall tend to pollute the effluent therein. No person shall cause or permit any hazardous substance regulated by state or federal law to be placed in the sewer system.

(Ord. 346 §11, 1992)

#### Sec. 13-32. - Repairs and maintenance.

The Board of Trustees reserves the right to temporarily suspend sewer service in any main or branch line of the municipal sewer system for the purpose of repair and maintenance of the system at any time. (Ord. 346 §13, 1992)

#### Sec. 13-33. - Vandalism.

No person shall damage, injure, deface, impair or tamper with any part of the municipal sewer system or appurtenance thereof.

(Ord. 346 §14, 1992)

#### Sec. 13-34. - Penalty.

Any person found guilty of intentionally violating the provisions of this Article shall be guilty of a civil infraction and fined as set forth in Section 1-72 of this Code.

Sec. 13-35. - Immunity from suit.

The Town, its agents and employees shall be immune from any suit, obligation or claim for damages resulting from or arising out of, directly or indirectly, any act or failure to act under this Article.

(Ord. 346 §16, 1992)

Secs. 13-36—13-50. - Reserved.

## ARTICLE III - Water System

Sec. 13-51. - Construction standards.

Construction of all water distribution lines, service lateral lines and appurtenances shall be done in accordance with the Nederland Water and Sanitary Sewer Standards and Specifications as adopted and amended.

(Ord. 345 §1, 1992; Ord. 435 §1, 1996)

Sec. 13-52. - Development costs.

- (a) Any person desiring to connect to the Town water system to serve his or her private property shall pay the entire cost of extension of the Town water service to his or her property if such connection requires an extension of the Town water distribution main. Ownership of all water main lines so extended along with any other improvements made to the water main distribution system shall be transferred to the Town upon construction acceptance.
- (b) Any and all engineering fees incurred by the Town associated with any water distribution main extension shall be reimbursed by the owner/applicant to the Town.
- (c) In the event the applicant has installed a water distribution main extension that may serve other users or if the Town has determined that oversizing of a main is necessary, the Town may, at its discretion, enter into an agreement with the applicant to enable the applicant at or prior to the date of installation to recover a portion of the cost coverage of such installation as future connections are made.
- (d) All measuring or mechanical appliances or devices that are attached to or used in connection with the Town's water system shall meet all standards and requirements established by the Town. In those instances where the Town Administrator deems it more efficient to do so, he or she may require individuals or entities seeking to connect to or use the Town's water system to purchase measuring or mechanical appliances or devices from the Town. In those instances where the Town provides measuring or mechanical appliances or devices to those seeking to connect to or use the Town's water system, the Town shall charge twenty percent (20%) in addition to the cost of such appliances or devices to compensate the Town for the time and expense involved in acquiring and providing such appliances or devices.

(Ord. 345 §2, 1992; Ord. 564 §2, 2002)

All structures which are required to have water service and which are on lots that are located within two hundred (200) feet of an operational water distribution main of the Town shall be required to connect to and use the municipal water system. The Board of Trustees may grant variances to this requirement based upon the following criteria:

- (1) No additional wells shall be constructed in the Town unless the Board of Trustees has determined that service to an area is technically or financially unfeasible. Any engineering determination shall be either conducted or reviewed by the Town's engineers and the Board of Trustees at the applicant's expense.
- (2) Any private well in existence and being used as of March 4, 1986, may continue to be used until such time as the well would need to be recased, redrilled, expanded or improved in any manner other than regular maintenance. At such time, the private well user shall be required to connect to the municipal water supply.
- (3) Any private well in existence as of March 4, 1986, shall not serve additional users or purposes other than those which it is currently serving.
- (4) Any property which can reach a Town water distribution main within two hundred (200) feet through an existing utility easement or a public street or road shall be required to connect to the Town water system. When an easement or public street or road does not exist, the Board of Trustees may waive this requirement if it finds undue hardship or expense will be incurred to acquire a private easement which is adequate to extend the water service to the property.

(Ord. 345 §3, 1992; Ord. 435 §1, 1996)

Sec. 13-54. - Water service application.

- (a) An application to extend water services shall be initiated to the Board of Trustees, requesting a water tap into the Town water system. The fee for obtaining water service shall include a plant investment fee (P.I.F.) and a mechanical connection fee (connection fee), as required in Section 13-58 below.
- (b) All P.I.F. and connection fees shall be paid in full before a building permit will be issued. Once water service is granted, a work order will be issued to the Public Works Department authorizing a water tap. A record of all such permits shall be maintained by the Town. As a minimum, each application shall contain:
  - (1) The name of the person for whose benefit such permit shall be granted;
  - (2) Identification of the property and property owner for which such permit shall be granted;
  - (3) The size of the tap;
  - (4) The estimated point at which such tapping is to be done;
  - (5) The location on the structure to which the water is to be connected; and
  - (6) The contemplated use of the water, whether it is residential (single-family or multifamily), commercial or industrial, including a detailed description of a commercial or industrial use.
- (c) No person shall uncover, make any connections with or opening into, use, alter or disturb any water line, hydrant or other part of the Town's water system or appurtenances to that system without first obtaining a written permit from the Board of Trustees. All construction or excavation activity occurring in a public right-of-way must be approved by the Public Works Department and a right-of-way permit be issued by the Town prior to beginning any

such construction or excavation. Any other provisions of this Code notwithstanding, due to the substantial risk to the public's health and safety posed by violations of this Section, any person found guilty of violating this Section shall be fined in the amount of five hundred dollars (\$500.00) for a first offense and in the amount of one thousand dollars (\$1,000.00) for each second or subsequent offense. In addition, such violator shall pay restitution to the Town for any damage to the Town's water system or any appurtenances thereof and for any water illegally taken from the Town. Nothing in this Section shall be construed to limit or interfere in any manner with the ability of authorized personnel to connect to the Town's water system for the purpose of emergency fire fighting.

- (d) All costs and expenses directly due to or incidental to the installation and connection of a water service line, including corporation valves, curb valves, curb boxes, service line shutoff valves, water meters and remote meters, shall be paid by the property owner connected or connecting to the Town's water system. The property owner having a water service line installed shall indemnify the Town from any loss or damage that may be directly or indirectly due to said installation.
- (e) All connections to the Town water system shall be made by a duly authorized employee of the Town or a qualified contractor, approved in advance by the Town, who shall give twenty-four-hour notification of his or her intent to begin, and shall be supervised by the Public Works Department. A qualified contractor, approved in advance by the Town, shall install all service line shutoff valves, water meters and remote water meters. The Town shall inspect and approve such installation.
- (f) For a three-fourths-inch or a one-inch tap, the Town shall provide, at the property owner's expense, the corporation valve, curb valve, curb box, service line shutoff valve, water meter and remote meter readout to ensure uniformity of parts used in the installations. For taps greater than one (1) inch, the property owner shall purchase the aforementioned items and said items shall be approved by the Public Works Department prior to installation.
- (g) Upon completion of the tap, a complete description of the exact location of the tap, corporation valve, curb valve and service line shall be provided by the property owner to the Board of Trustees. The description shall include the legal description of the property served, distances from at least two (2) established property corners and/or permanent, obvious features of the surrounding properties. This data shall be posted to the Town utility map. Failure to provide this data will result in the Town assessing a fee against the owner and the property to fund the research, including the cost of digging and surveying, if necessary, to provide this data for the Town records.
- (h) Charging for and collection of user fees shall begin upon payment of the plant investment fees and will be billed to the owner by the Town as set forth herein.
- (i) Alteration or extension of plumbing within any building inside the corporate limits of the Town shall be approved and authorized by a permit issued by the Building Department. All building classifications shall be determined by the Building Department as outlined in the Nederland Water and Sanitary Sewer Standards and Specifications, and any other ordinances, requirements or regulations as adopted and amended by the Town.
- (j) Only one (1) property and one (1) use of the property shall be served by each water service line. Extensions of a single water service line to one (1) or more multiple buildings or uses on the same platted lot is prohibited if water is required for each structure under any Town ordinance. A separate water service line and tap is required for each separate building and each separate use on a single lot, except where specific exception is granted by the Board

of Trustees. Any properties, uses or buildings on a single lot which currently are being served jointly by a single water service line shall be brought into conformance with the requirements of this Section within one hundred eighty (180) days of the date of passage of the ordinance codified herein by the property owner.

- (k) Any additional demands created by an extension of plumbing may require a larger meter or service size as determined by the Town's ordinances and the Nederland Water and Sanitary Sewer Standards and Specifications. If a larger service is required, the property owner shall pay the difference between the cost of the existing and the new larger plant investment fee, monthly rates and installation.
- (l) Extensions of the plumbing from an existing tract or lot to another tract or lot shall not be permitted, even if all such properties are commonly owned. Subdivisions or separate parcels shall require an additional and separate P.I.F., connection fee and water service line to be obtained and constructed for each parcel.
- (m) Upon payment of the P.I.F. and connection fee, a tap shall be assigned to a property for which it was purchased and shall not be transferable to another property.
- (n) The Town shall sell a water tap only to persons obtaining a building permit. In the event no building occurs within twelve (12) months or the building permit expires, the Town shall be entitled, at its option, to repurchase the tap at the same P.I.F. and connection fee paid to the Town, at any time thereafter, by giving written notice to the purchaser of the tap or the then-owner of the property.

(Ord. 345 §4, 1992; Ord. 546 §1, 2001; Ord. 670 §1, 2009)

#### Sec. 13-55. - Service lines.

- (a) The property owner of any premises upon which water service is provided shall maintain and repair all water service lines and their fixtures from the water main into his or her structure so as to prevent any leakage or damage. Any such leakage or damage shall be immediately repaired at the property owner's expense.
- (b) Upon written notice, the Board of Trustees may, in addition to other remedies provided in this Article, terminate water service to the property if the property owner fails to immediately stop all such leakage or to repair a damaged water service line.
- (c) The property owner shall be responsible for all damage to the water system resulting from failure to properly maintain or repair his or her individual service line and appurtenances. Said owner shall pay for all costs of repair to damaged public property and for water loss estimated by the Town.
- (d) Discharge of water to prevent freezing service lines or water mains is prohibited unless specifically authorized in writing by the Board of Trustees.
- (e) Curb boxes and shutoff valves shall be kept accessible and in good repair at all times by the property owner. If the Town expends time or materials turning on or off water supply to a property, or repairing any leaking or damaged water service line or portion thereof, all costs incurred by the Town shall be paid by the property owner to the Town as water service charges and billed, collected and enforced as set forth in Section 13-58 below.

(Ord. 345 §5, 1992; Ord. 539 §2, 2001)

#### Sec. 13-56. - Easements.

- (a) Each owner of property served by the Town water system shall grant to the Town an easement for any new construction of water service lines running through and across his or her property. Such easement shall include an easement for access by the Town to inspect and/or service, maintain and/or repair any water service line, corporation valve, curb box, water shutoff valve, water meter and/or remote meter readout, and any portion thereof. An easement agreement in form acceptable to the Town shall be signed by the property owner and a copy shall be filed and maintained by the Board of Trustees. Compensation for easements may be negotiated by the Board of Trustees for easements for water mains or lines serving more than one (1) property.
- (b) If an easement for a service line through public or private property is necessary to gain access to a Town water main, the property owner of the property to be connected shall be required to submit a copy of the written easement to the Board of Trustees prior to any excavation of said property.

(Ord. 345 §6, 1992)

#### Sec. 13-57. - Water meters.

- (a) The Town will maintain a record describing each meter installation to include the meter type and location, tap size and use type, installation date, the building and use which is to be served and certification of inspection.
- (b) Meters will be read at least quarterly by a designated representative of the Town. Commercial meters may be read more often and billed on a different schedule than residential meters.
- (c) User fees for water services and usage shall be the responsibility of the owner of the property and will be billed and assessed only to the owner of the property, regardless of any agreement between the owner or any other party for reimbursement.
- (d) No person shall tamper with, alter or deface a water meter. Any person who shall tamper with, alter or deface a water meter shall be charged with a civil infraction.
- (e) No person shall knowingly misrepresent water meter readings. Any person knowingly misrepresenting water meter readings shall be charged with a civil infraction.

(Ord. 345 §7, 1992; Ord. 435 §1, 1996; Ord. 671 §2, 2009; Ord. 803 §13, 2019)

#### Sec. 13-58. - Fees and payments.

- (a) Fees.
  - (1) Water user fees. Water user fees shall consist of a monthly service fee ("base fee") which shall be assessed for each tap and each building served and for each separate address on the property with a three-fourths-inch water meter or greater. The base fee shall be assessed for each connection between the tap and the service associated with an unambiguous address comprising a property or part property. Water meters larger than three-fourths ( $\frac{3}{4}$ ) of an inch may be assessed a base fee higher than the three-fourths-inch base fee. If a property is providing water to more than one address through a single water service then the base fee shall be applied corresponding to each separate address. The property owner shall be responsible for the base fees and calculated usage based on the meter reading. In no case shall one water meter service serve multiple buildings. Base fees shall be billed whether the property is actually connected to the Town water system or is required by this Article or any prior ordinance of the Town to be connected to the system. In addition to the

base fee, a monthly water usage fee ("usage fee") shall be charged to each property and/or address with a water meter. The usage fee shall be for the amount of water consumed since the last meter reading, as established by the water meter for such structure or unit.

- a. If multiple addresses are served by the same tap, they shall be assessed the related multiple number times the base fee for the meter size used. Specifically, the fee is for the connection between the service and the address.
  - b. The Town will bill the property owner at least quarterly for water service. Commercial meters may be read more often and billed on a different schedule than residential meters. Failure by the Town to so notify a water user shall not constitute a waiver of any fee or charge imposed by this Article. It shall be the owner's responsibility at all times to provide the Town, in writing, with a current billing address. Unless written notice of a billing address signed by the property owner is received by the Town, the Town will send bills to the address shown in the records of the County Treasurer.
  - c. As of January 1, 2009, all water users must have a water meter pursuant to Section 37-97-103, C.R.S. The property owner, at his or her own expense, shall be required to provide a water meter and remote device. Failure to comply with this requirement within sixty (60) days of official notification of a missing meter shall result in the water base fee and user rates being charged at a flat rate fee of two (2) times the past billing or the amount established by resolution of the Board of Trustees, whichever is greater. Prior to this time, the user will be charged the same as his or her past billing. If a meter is not installed within six (6) months, a fifteen-day shut-off notice will be posted.
  - d. For purposes of this Section, the following definitions shall apply:
    1. "Address" shall mean a designation identifying the location of a property or unit within a property used by individuals for a particular purpose and which may be used to indicate a delivery location to a package delivery service excluding individual units within a hotel or motel occupied continuously for less than thirty (30) days (e.g.: "33 Ute Way," "333 Highway 119, Apt. 3" or "20 Lakeview Dr., Unit 112").
    2. "Connection" shall mean a physical association between a Town-provided tap and the consumer of that service.
- (2) Water plant investment fees. Tap sizes used for determining plant investment fees shall be based upon a needs analysis derived from the International Plumbing Code as adopted and amended by the Town. Plant investment fees shall be charged according to the needs analysis and payment accepted only at the time of a building permit. In the event connection is made to the Town's water system without having paid the water plant investment fee in advance of such connection, the owner of the property shall pay to the Town a P.I.F. penalty fee in addition to the water plant investment fee in effect at the time such connection is discovered by or disclosed to the Town. If the owner fails or refuses to pay such penalty as well as the water plant investment fee, the Town may summarily terminate water service to the property without further notice. The amount of the penalty provided for in this Paragraph shall be as established by resolution of the Board of Trustees.
- (3) Tapping fees. Tapping fees shall be charged in accordance with a fee schedule adopted and which may be amended by resolution of the Board of Trustees.
- (4)

Out-of-Town users. Out-of-Town users will be assessed one hundred fifty percent (150%) of the in-Town user fees, plant investment fees and tapping fees or the amount established by resolution of the Board of Trustees, whichever is greater.

- (5) Town labor, equipment and materials. Fees for use of Town labor, equipment and purchase of materials shall be as follows:
  - a. Town labor, per person, per hour at the rate established by resolution of the Board of Trustees.
  - b. Town equipment is billed at the rate established by resolution of the Board of Trustees.
  - c. Materials supplied by the Town are billed at cost plus twenty percent (20%).
- (b) Meters.
  - (1) Water meters and remote water meter readouts must be easily accessible and readable. If access or readability is impaired, the property owner, at his or her own expense, shall be required to relocate the meter and remote device to a location that will allow the Public Works Department to obtain meter readings. Failure to comply with this requirement within fifteen (15) days of official notification of inaccessibility or unreadability shall result in water meter rates being charged at a flat rate fee of two (2) times the past billing or the amount established by resolution of the Board of Trustees, whichever is greater. If the readability issues are not corrected within three (3) months, a fifteen-day shut-off notice will be posted.
  - (2) Water meters must be in working order. If the water meter is broken, the property owner, at his or her own expense, shall be required to fix or replace the meter and/or remote device. Failure to comply with this requirement within sixty (60) days of official notification of a broken meter shall result in water meter rates being charged at a flat rate fee of two (2) times the past billing or the amount established by resolution of the Board of Trustees, whichever is greater. Prior to this time, the user will be charged the same as his or her past billing.
  - (3) If any meter fails to register in any billing period and has not been temporarily disconnected by notification to the Town, the owner shall be charged according to the average quantity of water used in a similar period as shown by the meter when in order.
- (c) Billing.
  - (1) Billing for water service and any other notices relating to the water services are effective on the date that they are deposited in the mail addressed to the last known address of the owner as shown on the records of the Town.
  - (2) Any owner who, at the time of passage of the ordinance codified herein, has property connected to the Town water system and who has not received bills from the Town for water service, or who has not paid plant investment fees or tap fees for such connection, will be billed and shall be responsible for payment for such past water service as follows:
    - a. The base fee for the thirty-six-month period immediately preceding the date of passage of the ordinance codified herein;
    - b. A usage fee for the thirty-six (36) months immediately preceding passage of the ordinance codified herein;
    - c. Any unpaid connection fees and PIF;
    - d.

Such owners shall include those persons whose properties are connected to the Town water system but: 1) whose property has no record of billing or payment with the Town; or 2) who has tapped into the Town water system without permission;

- e. All fees and charges which accrue and remain unpaid after the date of the ordinance codified herein; and
- f. Nothing herein shall limit the time or charges for which the Town may assess and demand payment of fees and charges in the event of the unlawful or unauthorized tapping of a water main without the Town's approval.

(d) Delinquencies, penalties and collection. An account shall be delinquent if not paid within thirty (30) days of mailing the bill. In the event an account is delinquent, the Town may initiate the following late fee, interest and collection procedures. Any late fee imposed and collected shall comply with C.R.S. § 29-1-1102, as existing or as hereafter amended:

- (1) The Town shall assess interest on any delinquent amounts on a monthly basis in an amount established by resolution of the Board of Trustees. The interest rate established by the Board at any time shall not exceed the maximum interest rate authorized at such time by C.R.S. § 31-35-402(1)(f), or its successor statute.
- (2) Thirty (30) days delinquent. The Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall mail, by regular mail, to the property owner at its billing address, a notice of delinquency. The notice shall notify the property owner that s/he has thirty (30) days from the date of said notice to pay the total amount due, including accumulated charges, fees and interest, in full, in cash or certified funds.
- (3) Fifty (50) days delinquent. If the delinquency and all accumulated charges are not paid in full within twenty (20) days of the date of notice provided under paragraph (d)(2) above (50 or more days delinquent from the original due date), the Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall send a letter, by regular mail, for the total amount due, including all accumulated charges, fees and interest. The letter shall notify the owner that s/he has twenty (20) days from the date of the letter to pay the total amount due, in full, in cash or certified funds.
- (4) Seventy (70) days delinquent. If the delinquency and all accumulated charges are not paid in full within twenty (20) [days] of the date of the letter provided under paragraph (d)(3) above (70 or more days delinquent from the original due date), the Town shall assess a late fee in an amount established by resolution of the Board of Trustees and shall mail, by regular mail, to the property owner at its billing address, a notice of delinquency. Additionally the Town shall assess an administrative fee in an amount established by resolution of the Board of Trustees and may pursue any or all of the following:
  - a. The Town may terminate water service to the property. At least fifteen (15) days prior to such termination, the Town shall post written notice of termination upon the property and mail notice of termination by regular mail to the property owner. To avoid termination, the owner must pay the Town, in cash or certified funds, the entire amount due. If service is terminated as provided herein, the owner must pay a reconnection fee in an amount established by resolution of the Board of Trustees.
  - b. The Town may file a lien against the served property for all delinquent fees, charges, interest and penalties as well as a County Lien Recording Fee, as established by resolution of the Board of Trustees. All such amounts due constitute a lien which is prior and superior to all other liens, claims, titles and encumbrances, whether prior in time or not, and shall remain a lien on the property from the date such

fees are delinquent until the same are paid. The failure of the Town to record such lien with the County Clerk and Recorder shall not affect the validity or enforceability of the Town's statutory lien rights or any other remedies the Town may have to collect the amounts due and owing. The property owner shall be liable for all water services furnished and fees and charges for said property. The lien against the property or liability against the owner may be enforced by the Town by action of law or an action to enforce the lien. The Town shall in no event be required to look to any person other than the owner of the real property served by the water system.

- c. The Town may certify all due and unpaid fees, charges, interest, penalties and amounts to the County Treasurer for collection in the same manner as other general taxes upon such property are collected.
- (5) Payment plans for payment of delinquent accounts may be authorized.
- (6) No error or mistake in Town records or billings, past or present, shall constitute an estoppel or waiver or otherwise prevent the Town from billing, collecting or enforcing the correct amount of any amount owed.
- (7) No change in ownership or occupancy shall affect the application of this Section or any of the provisions of this Section, and the failure of any owner to learn that he or she purchased any property against which a lien for water service or tap fee exists shall in no way affect the lien against any property for such payment in full or be the basis for any claim of any kind whatsoever against the Town for refusing to turn on water service until charges are paid in full.
- (8) Record of payments. The Town will maintain records of all water fees and charges paid and an up-to-date record of delinquent charges, in accordance with accepted accounting procedures.
- (e) In the sole discretion of the Board of Trustees, the Town may agree to provide water service to real property located outside the Town limits. All other provisions of this Section, including but not limited to the remedies available to the Town in the event of nonpayment, shall apply to real property located outside the Town limits that is provided water service by the Town.
- (f) Responsibility of owner. Each property owner with real property within the limits of the Town shall:
  - (1) Determine whether his or her property has water service provided by the Town.
  - (2) Determine whether the owner is receiving billings from the Town for all water service provided to the owner's property.
  - (3) Provide written notice to the Town within thirty (30) days of billing if the owner believes the Town's billing is incorrect.
  - (4) If the owner's property is connected to the Town water system but is not receiving any billing, provide written notice to the Town of such fact and how long he or she has been receiving such water service. In such case, the Town may bill and collect from the owner for such past water charges and fees at such rates as are set forth in this Article and in the manner set forth hereinabove for billing collection of water service charges and fees.

(Ord. 671 §3, 2009; Ord. 725 §7, 2013; Ord. 777 §2, 2018; Ord. 821 §2, 2021; Ord. 824, §2, 2021)

Sec. 13-59. - Miscellaneous.

- (a) In cases of unusual and extreme hardship because of circumstances beyond the control of the owner and unique to the owner's property, an applicant may request the Board of Trustees to consider, and the Board of Trustees may grant, a delayed payment schedule of fees as established by resolution of the Board of Trustees. An administrative fee shall be assessed for each application in the amount as set forth in Section 4-171 (nonrefundable) whenever the delayed payment is requested by the applicant. In the discretion of the Board of Trustees, the administrative fee may be reduced or waived where the fee would impose an undue hardship on the applicant, or the administrative fee may be increased where the processing and/or monitoring of the delayed payment plan will require an unusual amount of administrative time. Any unpaid balance due shall be considered a lien upon the property as provided for in Section 13-58 above. Such unpaid balance may be collected by the Town as set forth in Section 13-58 above, and the Town may discontinue water service as set forth therein.
- (b) All active water taps of the Town water system shall be required to have a water meter and a remote water meter readout of a type specified by the Nederland Water and Sanitary Sewer Standards and Specifications as adopted by the Town, and shall be installed and maintained in accordance with those standards. The meter and associated plumbing shall be maintained at the expense of the property owner. Initial installation and all modifications to the water meter and remote water meter shall be performed by the Town and the meter shall be kept sealed. The Town shall charge the cost of the meter and/or remote meter and installation and repair to the owner. Reimbursement for such cost may be billed, collected and enforced by the Town as set forth in Section 13-58 above.
- (c) Only one (1) water meter and remote water meter is allowed per tap.

(Ord. 345 §9, 1992; Ord. 435 §1, 1996; Ord. 582 §5, 2003; Ord. 824 , §3, 2021)

#### Sec. 13-60. - Owner's responsibility for compliance.

The owner of each property which is required to be connected to the Town water system by this Article shall do all things required by this Article to connect his or her property to the Town water system in compliance with the requirements of this Article within one hundred eighty (180) days of passage of the ordinance codified herein. If the property owner fails to connect his or her property to the Town water system when required by this Article, or otherwise fails to comply with any requirement of this Article, the Town may, at its option, do one (1) or more of the following:

- (1) Have such work performed at the owner's expense and bill and collect the expense of such work in the same manner as provided in Section 13-58 above for water user fees; and/or
- (2) Terminate water service to the affected properties as provided in Section 13-58 above.

(Ord. 345 §10, 1992; Ord. 435 §1, 1996)

#### Sec. 13-61. - Resumption of services.

After termination of water services, such services shall not be resumed until all delinquent payments are made on the affected property, together with the delinquent charges as provided in this Article. Thereupon, water services shall be restored to the affected property.

(Ord. 345 §11, 1992)

Sec. 13-62. - Service lines; demolished buildings.

Service lines not attached to a building or structure are not permitted. When a building or structure becomes demolished or abandoned, service lines shall be terminated at the main within thirty (30) days. All costs shall be borne by the owner of the property previously served by the line.

(Ord. 345 §12, 1992)

Sec. 13-63. - Unauthorized use of water.

No person shall procure water from any hydrant or any service line or main. No person shall use the water from any part of the water works without a Town permit, nor shall any person without lawful authority open any fire plug, stopcock, valve or other fixture pertaining to such works. No water from fire plugs shall be used by any person other than authorized personnel or agents designated in writing by the Town. A person violating any provision of this Section shall be charged with a civil infraction.

(Ord. 345 §13, 1992; Ord. 803 §14, 2019)

Sec. 13-64. - Pollution of town water supply.

No person shall cause any substance to be placed into any reservoir, stream, trench, pipe or drain that is used in or necessary for the construction, maintenance or operation of the Town water supply which shall tend to fill up or obstruct the flow of water in such stream, trench, pipe or drain, or tend to contaminate the water therein.

(Ord. 345 §14, 1992)

Sec. 13-65. - Repairs and maintenance.

The Town reserves the right to temporarily suspend water service in any main or service line of the municipal water system for the purpose of repair and maintenance of the system at any time without notice.

(Ord. 345 §15, 1992; Ord. 435 §1, 1996)

Sec. 13-66. - Vandalism.

No person shall damage, injure, deface, tamper with or impair any part of the municipal water system or appurtenances thereof, including but not limited to the water shutoff valves, water meters and remote water meters.

(Ord. 345 §16, 1992)

Sec. 13-67. - Penalty.

Any person found guilty of intentionally violating the provisions of this Article, shall be guilty of a civil infraction and fined as set forth in Section 1-72 of this Code.

(Ord. 345 §17, 1992; Ord. 435 §1, 1996; Ord. 803 §15, 2019)

Sec. 13-68. - Immunity from suit.

The Town, its agents, officials, and employees shall be immune from any suit, obligation or claim for damages resulting from or arising out of, directly or indirectly, any act or failure to act under this Article.

(Ord. 345 §18, 1992; Ord. 435 §1, 1996)

Sec. 13-69. - Providing treated water for commercial resale purposes.

- (a) No water shall be provided for the purpose of commercial resale, except in compliance with the provisions of this Section.
- (b) No water shall be provided for the purpose of commercial resale until a fee in the amount equal to the plant investment fee (tap fee) applicable to a one-inch line for an out-of-Town water user has been paid. This fee is a one-time fee and is not required each time water is obtained.
- (c) Water for commercial resale may be obtained only by connection at the Town Water Treatment Plant or such other place as may be designated from time to time by the Board of Trustees. Such connection shall be made only under the supervision of a Town employee and only after payment of a connection fee in the amount of one hundred dollars (\$100.00).
- (d) Due to the importance of protecting the integrity of the Town's water system, and notwithstanding any other provisions of this Code regarding fines or penalties, any person found guilty of violating this Section shall be fined in the amount of five hundred dollars (\$500.00) for a first offense and in the amount of one thousand dollars (\$1,000.00) for each second or subsequent offense. In addition, such violator shall pay restitution to the Town for any damage to the Town's water system or any appurtenances thereof and for any water illegally taken from the Town.

(Ord. 545 §1, 2001)

Sec. 13-70. - Sale of water for private use other than through service lines.

In the sole discretion of the Board of Trustees, the Town may agree to provide water for private, noncommercial use of individual water users other than through a water service line. Any such water shall be provided subject to the following limitations:

- (1) Water may be obtained only by connection at the Town Water Treatment Plant or such other place as may be designated from time to time by the Board of Trustees. Such connection shall be made only under the supervision of a Town employee.
- (2) A fee shall be collected for such water in the amount of fifty dollars (\$50.00) per one hundred (100) gallons or any part thereof, with the minimum fee being fifty dollars (\$50.00).
- (3) Due to the importance of protecting the integrity of the Town's water system, and notwithstanding any other provisions of this Code regarding fines or penalties, any person found guilty of violating this Section shall be fined in the amount of five hundred dollars (\$500.00) for a first offense and in the amount of one thousand

dollars (\$1,000.00) for each second or subsequent offense. In addition, such violator shall pay restitution to the Town for any damage to the Town's water system or any appurtenances thereof and for any water illegally taken from the Town.

(Ord. 544 §1, 2001)

Sec. 13-71. - Water conservation program.

- (a) Application. The Water Conservation Program set forth in this Article shall apply to all users of water supplied through the Town water system, including, without limitation, customers of any water and sanitation district or any public or private water supply company to which the Town supplies water.
- (b) Notice. The Town Administrator may implement the Water Conservation Program adopted pursuant to this Article after twenty-four (24) hours' public notice, or upon publication in a newspaper of daily circulation in the Town, whichever occurs first, whenever in the Town Administrator's reasonable judgment such measures are necessary to maintain, conserve, replenish or protect the water supply of the Town. The Town Administrator, with the consent of the Board of Trustees, shall determine the extent and duration of any water conservation measures implemented.

(Ord. 679 §1, 2010)

Sec. 13-72. - Water conservation measures.

- (a) The Town Administrator may prohibit or restrict the use of water from the Town water system or from any other source of water owned by the Town.
- (b) The Town Administrator may impose water conservation measures, including, without limitation, the following:
  - (1) Restrictions limiting water which may be used for lawn irrigation or other purposes outside a residence, apartment, commercial or industrial building or any other structure on a schedule established by the Town Administrator.
  - (2) Restrictions on filling swimming pools.
  - (3) Restrictions on vehicle washing, including, without limitation, the restriction that vehicles may be washed only with a bucket or a hose running with an automatic shut-off nozzle but not with any free-running hose.
  - (4) Restrictions on the hours during which water may be utilized for outside irrigation of lawns, gardens or landscaping.
  - (5) A moratorium on out-of-Town water permits under which no new permits to take or use water from the Town water system to serve property located outside the Town's corporate limits are issued.
  - (6) If the Town Administrator imposes a moratorium on out-of-Town water permits, the Town Administrator may, upon recommendation of the Director of Public Works, permit special requests to the Board of Trustees and only upon a written finding of extreme hardship resulting in immediate danger to life or property. The Town Administrator may impose such reasonable conditions upon the grant of any exception authorized herein as the Town Administrator deems advisable.
- (c) Before any water conservation measure is adopted, implemented or otherwise imposed by the Town Administrator, such measure shall be approved by the Board of Trustees.

## Sec. 13-73. - Special permits.

- (a) When water conservation measures are in effect pursuant to Section 13-72 above, the Director of Public Works may issue special permits to authorize additional water use as follows:
  - (1) For watering newly sodded lawns, each day for a period not exceeding fourteen (14) consecutive days;
  - (2) For watering newly seeded lawns, each day for a period not exceeding twenty-five (25) consecutive days;
  - (3) For periodic watering of outside stock at nurseries, greenhouses and stores;
  - (4) When there are circumstances that do not permit a water user to deliver three-fourths ( $\frac{3}{4}$ ) of an inch of water per week on landscaped grounds of the user's premises, if the water user submits a plan describing the area to be served and the method to be used to deliver an adequate amount of water; and
  - (5) For water schedules otherwise prohibited, in cases of a clear and present hardship.
- (b) An applicant for a special permit shall pay the special permit fee established by resolution of the Board of Trustees pursuant to Section 4-151 of this Code and apply in writing on forms provided by the Town that contain the following information: the reasons for requesting the permit; the period of time for which the permit is requested; the area or address of the premises to which such permit applies; for requests for additional watering times, a plan describing the area for which the permit is requested and a description of the method to be used to deliver an adequate amount of water to the area; and such other applicable information as the Director of Public Works may reasonably request in order to review the application.
- (c) The application shall be submitted to the Director of Public Works, who shall review all requests for special permits and approve, deny or conditionally approve each request. If the Director of Public Works denies the application or approves it with conditions, the applicant may, within five (5) days of receiving the decision, request a hearing before the Town Administrator. The Town Administrator shall hear the applicant's appeal within seven (7) days of receiving the request and render a decision thereon as soon as practical thereafter. The Town Administrator's decision shall constitute the final decision of the Town.
- (d) The holder of each special permit shall post the permit in a conspicuous place on the premises to which the permit applies so that it is readily visible from the street in front of or abutting the premises.
- (e) No person who holds a special permit shall transfer that permit from the premises for which the permit is issued to any other premises or location. Any attempt to do so voids the permit.
- (f) If any person holding a permit under this Section violates any condition of the permit, the Director of Public Works may revoke the permit, after affording the permittee an opportunity for a hearing before the Town Administrator. Before such hearing, the Director may suspend the permit for up to twenty (20) days if the Director finds that the public health, safety and welfare requires such suspension.
- (g) The Town Administrator may establish such additional procedures as deemed necessary for the review and processing of special permit applications.
- (h) The Town Administrator may establish a moratorium on the issuance of some or all of the special permits authorized by this Section.

## Sec. 13-74. - Enforcement of water conservation measures.

No owner and no occupant of a premises receiving municipal water shall fail to comply with the provisions of Section 13-55 of this Chapter, concerning the repair and maintenance of water service lines and fixtures, and Sections 13-71 through 13-73 above. Violations of the provisions of these sections during any time when water conservation measures have been imposed by the Town Administrator pursuant to Section 13-72 are subject to imposition of the following penalties:

## (1) Administrative charges:

- a. For a first violation within a twelve-month period, the Director of Public Works shall notify the owner in writing of the violation and that a fifty-dollar water waste charge is due, payable and collectable pursuant to the provisions of this Chapter within ten (10) days of the date of the notice.
- b. For a second violation within a twelve-month period at the same premises, the Director of Public Works shall notify the owner in writing of the violation and that a one-hundred-dollar water waste charge is due, payable and collectable pursuant to the provisions of this Chapter within ten (10) days of the date of the notice.
- c. For a third or any subsequent violation within a twelve-month period at the same premises, the Director of Public Works shall notify the owner in writing of the violation and that a three-hundred-dollar water waste charge is due, payable and collectable pursuant to the provisions of this Chapter within ten (10) days of the date of the notice.
- d. The notice of the water waste charge shall be served no later than thirty (30) days after the Director of Public Works learns of the violation and the identity of the owner of the property. Service shall be upon the owner of the property in person or by first-class or certified mail addressed to the last known owner of the property on the records of the County Assessor. The Director may send copies of the notice to such occupants of the property or agents of the owner as the Director deems useful. The notice shall advise the owner of the right to a hearing under Subparagraph e. below and that, if payment of the water waste charge is not received by the Town or a hearing requested within the ten (10) days, the water waste charge, together with a fifteen-dollar administrative processing fee, will appear on the next regular water bill.
- e. The owner of the property notified of a water waste charge, or any agent of the owner authorized in writing by the owner, may file a written request for a hearing regarding the factual basis for imposing the charge with the Town Administrator within ten (10) days of the date of the notice. The request must identify the notice being appealed by attaching a copy or otherwise identifying it, and shall contain the name, address and telephone number of the person to whom notice of the date, time and place of the hearing should be given. Filing occurs when the Town Administrator receives the request. The Town bears the burden of establishing the factual basis for imposing the water waste charge by a preponderance of the evidence and, if that basis is established, the Town Administrator shall order the charge paid within ten (10) days, subject to the fifteen-dollar administrative fee and the collection procedures of this Chapter if not paid

within that time. Failure to request a hearing within the time provided or attend any such hearing constitutes a waiver of the right to such hearing and a determination of all issues then existing as supporting the factual basis for imposing the water waste charge.

- (2) Additional remedies: After three (3) notices of a water waste charge have been served upon an owner pursuant to this Section within any twelve-month period, in addition to or in lieu of a further notice of a water waste charge, the Director of Public Works may, in his or her discretion:
- a. Cut off water: Suspend water service to the premises for a period of time not to exceed thirty (30) days after giving notice and an opportunity for a hearing before the Town Administrator. The owner of the premises is responsible for paying the charges required for termination of service and for resumption of service before service, if suspended, is resumed. The Director may reduce the period of suspension or hold a threatened suspension in abeyance if the owner presents and implements a plan acceptable to the Director to prevent further violations; and
  - b. Criminal penalties: Prosecute violators in Municipal Court pursuant to the provisions of Article IV of Chapter 1 of this Code and the normal procedures of a Municipal Court prosecution.

Proof of evidence: In order for the Director to proceed under this Paragraph, it is sufficient that the Director prove, by a preponderance of the evidence, that the three (3) predicate notices were properly served and that they were for alleged violations which all took place within twelve (12) months of each other.

(Ord. 679 §1, 2010)

Secs. 13-75—13-80. - Reserved.

## ARTICLE IV - Construction Standards and Specifications

### Division 1 - General Provisions

Sec. 13-81. - Scope.

The purpose of these Water Main and Sanitary Sewer Specifications is to set forth the criteria to be used in the design and construction of water mains and sanitary sewers to be accepted by and dedicated to the Town.

(Ord. 435 §1, 1996)

Sec. 13-82. - General.

The provisions stipulated in this Section are general in nature and shall be considered as applicable to all parts of these standards and specifications, including any supplements and revisions. All water mains, sanitary sewers and appurtenances shall be designed by or prepared under the direct supervision of a registered Professional Engineer, licensed to practice in the State. All drawings, specifications and calculations submitted to the Town for review shall be signed by a licensed Professional Engineer and shall bear his or her registration number and seal. He or she shall be responsible for the overall adequacy of design and shall include additional provisions not covered in these standards and specifications where required to provide proper functioning and construction for conditions encountered.

## Sec. 13-83. - Definitions and abbreviations.

- (a) Whenever the following words, phrases or abbreviations appear in these specifications, they shall have the following meanings:

*Consultant* means a person, partnership or corporation duly registered as a professional engineer according to state statutes who is hired by the Contractor and is empowered to act as his or her agent.

*Contractor* means a person, partnership or corporation in overall charge of a development or who subsequently becomes owner of properties for which the water mains and sanitary sewers are being designed and installed. The contractor shall be or shall employ persons duly licensed in the State for construction of water mains and sanitary sewers.

*Director* means the Director of Public Works or his or her authorized representatives acting on behalf of the Town. The Director shall have the authority to ascertain that all design and construction of facilities are equal to or better than the minimum requirements set forth in these specifications.

*Guest house* means an accessory building which is physically detached from a single-family dwelling unit, is serviced through the same utility meters or connections as the principal use, and is intended for occupancy only by guests of the family residing in the single-family dwelling. Kitchen facilities are not allowed.

*Inspector* means an authorized representative of the Director assigned to make detailed inspections of compliance with these standards and specifications.

*Town ordinances* means the official adopted ordinances of the Town.

*Water mains and sanitary sewers* mean any pipe intended to serve two (2) or more service connections.

- (b) Wherever the words *as directed, as required, as permitted* or words of like meaning are used, it shall be understood that the direction, requirement or permission of the Director is intended. Similarly, the words acceptable and satisfactory shall refer to acceptance by the Director.
- (c) Whenever references are made to *standard specifications, methods of testing materials, codes, practices and requirements*, it shall be understood that the latest revision of said references shall govern unless a specific revision is stated. Wherever any of the following abbreviations appear, they shall have the following meaning:

<b>Abbreviation</b>	<b>Meaning</b>
ANSI	American National Standards Institute
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
NFPA	National Fire Protection Association

<i>COSHA</i>	Colorado Occupational Safety and Health Administration
<i>OSHA</i>	Occupational Safety and Health Administration
<i>UBC</i>	International Building Code, International Conference of Building Officials, latest edition
<i>UPC</i>	International Plumbing Code, International Association of Plumbing and Mechanical Officials, latest edition
<i>USGS</i>	United States Geological Survey

- (d) Wherever the words *these specifications* or words of similar connotation are used, it shall be understood that reference is made to the Town Water Main and Sanitary Sewer Standards and Specifications.

(Ord. 435 §1, 1996)

Sec. 13-84. - Drawings, specifications and calculations requirements.

- (a) Drawings. All drawings for proposed water main and sanitary sewer construction shall be submitted to the Town for review and acceptance. Three (3) copies of drawings shall be submitted on 24" x 36" sheets; clean, clear and free from objectionable background. Overall plan shall be submitted along with individual plan and profile sheets.
- (1) Overall plan drawings. Overall plan drawings shall contain the following:
- a. Title of proposed development.
  - b. Location of streets and all street names labeled.
  - c. Location of all lot lines for lots to be served and for adjacent lots.
  - d. Block and lot numbers.
  - e. Ties to range, township, section or property line.
  - f. USGS datum and benchmark tied to Town datum. Include benchmark description.
  - g. Vicinity map.
  - h. Location of all proposed and existing easements and/or rights-of-way, with appropriate dimensions.
  - i. Topography shall be indicated using two-foot vertical contour lines and USGS datum.
  - j. Scale and north arrow.
  - k. Existing and proposed utilities; including type, size and location of utilities with reference to property lines.
  - l. Existing and proposed pipe size, material and classification.
  - m. Water and sewer service lines location; including size and materials.
  - n. Location of water service meters.
  - o. Angles at alignment changes.
  - p.

Soil test boring locations, when applicable.

- q. Scale of the overall plan shall be between 1" = 20' and 1" = 50'.
- r. Traffic control plan for all proposed construction affecting existing roadways.

(2) Individual plan and profile drawings. In addition to the requirements for the overall plan drawings, individual plan profile drawings shall contain the following:

- a. Stationing on both plan and profile of all fittings, valves, service connections or tees, fire hydrants and manholes for proper control and future location.
- b. Dimensions, grade, existing ground elevation and proposed finished street grade for water mains.
- c. Dimensions, slope, manhole rim elevations, invert elevations into and out of manholes, existing ground elevation and proposed finished street grade for sanitary sewers.
- d. Scales: horizontal - 1" = 20'; vertical - 1" = 5'.

(b) Specifications. The standards and specifications contained herein shall be the minimum technical specifications for construction of water mains and sanitary sewers. The consultant shall be responsible for determining the need for additional provisions not covered by these standards and specifications. The consultant shall submit, along with drawings for proposed water main and sanitary sewer, technical specifications that are part of contract documents for proposed construction of water mains and sanitary sewers. Where conflicts or ambiguities between these standards and specifications and those contained in contract documents for the proposed construction, the more stringent requirements shall govern as determined by the Director.

(c) Calculations. If, in the opinion of the Director, review of proposed construction drawings and specifications indicate that the proposed design does not meet the requirements of these standards and specifications, detailed design calculations for the proposed utilities may be required to be submitted by the consultant to the Director for review.

(d) Review and acceptance of drawings and specifications. Prior to the contractor beginning any construction on a water main or sanitary sewer, all construction drawings and specifications shall be accepted by the Director and the Water and Sewer Board. The Contractor shall allow time for review and shall coordinate his or her submittals with scheduled Water and Sewer Board meetings. The Director shall review said drawings, specifications and calculations and return them with either a letter of acceptance or a letter designating necessary revisions required to receive acceptance. Upon presentation of drawings and specifications revised in accordance with the letter designating revisions, the Director will accept the drawings and specifications without undue delay if such revisions are completely acceptable.

(e) Soils report. It shall be the responsibility of the consultant to determine the extent of evaluation of soils conditions. The Town reserves the right to require a complete soils report to be prepared for a development if subsurface abnormalities are suspected. If such a report is required, it shall be prepared by a registered Professional Engineer and shall contain adequate information to evaluate water main and sanitary sewer design submittals.

(f) Effective date. Construction drawings and specifications accepted by the Director shall be effective for a period not to exceed twenty-four (24) consecutive months from the official date of acceptance. After this period, the drawings and specifications shall be subject to further review by the Director to bring those portions of the drawings and specifications that are unconstructed into compliance with current Town standards and specifications.

(g)

Changes to accepted drawings and specifications. Should circumstances warrant changes to the accepted drawings or specifications, the proposed revision shall be submitted to and acceptance shall be obtained from the Director. No work shall proceed on that portion of the project being revised until said revisions are submitted and accepted. Minor deviations from the drawings or specifications shall be by written permission from the Director or the Inspector.

- (h) Record drawings. Prior to water main or sanitary sewer installation being placed in operation, two (2) sets of copies and one (1) reproducible Mylar set of record drawings, verifying all final elevations, utility locations and service locations and reflecting any and all changes to the original construction drawings shall be submitted to the Director. Record drawings shall be certified as-recorded and signed by a registered Professional Engineer, licensed to practice in the State. Information recorded and certified as-recorded may be checked at random by a licensed surveyor hired by the Town. If drawings are submitted as record drawings and are found to be just copies of the original construction drawings without recorded information, or if the information contained on the record drawings does not agree with that checked by a surveyor hired by the Town, the engineer certifying the record drawings shall pay all costs associated with verifying information contained on the record drawings.

(Ord. 435 §1, 1996)

Sec. 13-85. - Acceptance of pipeline system by town.

- (a) The water main or sanitary sewer pipeline system shall be placed into operation or be released for service connections only after all required backfilling and surface restoration and all required cleaning, testing and inspection have been completed, record drawings have been submitted and accepted, and written permission has been granted by the Director. However, final acceptance of the system shall not take place for a warranty period of two (2) years from the date written permission is granted for placing the system into operation. During the two (2) year period, any defects in the system resulting from defective materials, poor workmanship, or any other cause attributable to the Contractor responsible for the construction of the system shall be corrected at the contractor's expense, and to the satisfaction of the Director.
- (b) The Director may internally photograph a sanitary sewer line prior to final acceptance. Any defects revealed by this photography shall be corrected by the contractor.

(Ord. 435 §1, 1996)

Sec. 13-86. - Notice before commencement of work.

The contractor shall notify the Director at least twenty-four (24) hours before beginning any water main or sanitary sewer construction. If, for any reason, work should stop on a project during any stage of construction for a period of more than one (1) normal work day, it shall be the responsibility of the contractor to notify the Director, at least twenty-four (24) hours prior to any resumption of work on the project. If the contractor intends to work extended shifts, double shifts or hours other than the normal workday of Town personnel, he or she shall notify the Director at least twenty-four (24) hours prior to such extension, except in the event of an emergency. The contractor shall notify the Town Volunteer Fire Department twenty-four (24) hours prior to temporarily placing any fire hydrants out of service.

(Ord. 435 §1, 1996)

Sec. 13-87. - Traffic control.

The contractor shall be required to provide adequate construction signing, flagmen and barricades to warn vehicular and pedestrian traffic of work in progress and divert traffic as may be required during the course of construction. All signing shall be subject to the acceptance of the Director. When specifically authorized by the Director, portions of streets shall be allowed to be closed to traffic for construction. However, the contractor shall make every attempt to keep the time of closure of such streets to a minimum. It shall be the responsibility of the contractor to notify the Town Police and Volunteer Fire Departments twenty-four (24) hours prior to the closure of any street.

(Ord. 435 §1, 1996)

Sec. 13-88. - Rejected materials.

All materials installed shall be free of defects. Any defective or damaged materials found in the construction or on the construction site shall be marked and removed from the site. In the event the contractor fails to remove rejected materials from the construction site within a reasonable length of time, the Director may arrange for such removal at the expense of the contractor.

(Ord. 435 §1, 1996)

Sec. 13-89. - Contractor's responsibility.

It shall be the responsibility of the contractor to read and fully comply with all the provisions of these standards and specifications and all laws and regulations that apply to local and state agencies.

(Ord. 435 §1, 1996)

Sec. 13-90. - Safety requirements.

All water main and sanitary sewer installation in the Town shall be subject to current OSHA and COSHA safety requirements. It shall be the responsibility of the contractor to fully comply with these regulations and to provide the safety requirements for the contractor, his or her employees and the public during the time of construction.

(Ord. 435 §1, 1996)

Sec. 13-91. - Easements.

- (a) Permanent. All water mains and sanitary sewers shall be installed in public rights-of-way. If it is impossible to place the water main or sanitary sewer in the public rights-of-way, permanent easements shall be obtained. All permanent easements shall be a minimum of twenty (20) feet wide and shall be mutually exclusive for the Town water main, sanitary sewer or storm drainage utilities.
- (b) Construction easements. It shall be the responsibility of the contractor to determine the adequacy of the public right-of-way or permanent easement. If the contractor determines that a temporary construction easement is required to perform the work, it shall be the contractor's responsibility to obtain these easements. Any damage to property, either inside or outside the limits of easements, shall be the responsibility of the contractor. The contractor shall remove, protect and replace all fences or other items encountered on public or private property.

Before final acceptance shall be authorized by the Director, the contractor shall be required to furnish the Town with written releases from property owners or public agencies where side agreements or special easements have been made by the contractor or where the operations of the contractor, for any reason, have not been kept within the permanent or temporary construction rights-of-way.

(Ord. 435 §1, 1996)

Sec. 13-92. - Protection of existing facilities.

- (a) General. The contractor shall notify all utility companies and others affected by the work, prior to commencement of work in order to insure that services will not be interrupted during construction. The contractor shall be liable for all damages to existing structures and property, public or private, and he or she shall save the Town harmless from any liability or expense for injuries, damages or repairs to such facilities.
- (b) Responsibility for repair. Should any utility be damaged in the construction operations, the contractor shall immediately notify the owner of such utility, and unless authorized by the owner of the utility, the contractor shall not attempt to make repairs. In the event that, during construction it is determined that any underground utility conduit, including sewers, water mains, gas mains, drainage structures and electrical conduit, and any aboveground utility facilities are required to be relocated, the contractor shall notify the utility owner well in advance of his or her approach to such utility so that arrangements with the Town and/or owners of the affected utility can be made to complete the relocation without delay of the work.

(Ord. 435 §1, 1996)

Secs. 13-93—13-110. - Reserved.

Division 2 - Design Criteria

Sec. 13-111. - Preliminary submittals.

- (a) General. A preliminary report and plan drawing shall be submitted to, reviewed by, and accepted by the Director prior to preparation of final water main and sanitary sewer construction drawings and specifications. Acceptance of these preliminary submittals shall constitute only a conceptual approval and shall not be construed as acceptance of specific design details.
- (b) Report. The report shall include the following information:
  - (1) The estimated maximum and average water demand in gallons per minute (GPM) required for the developed area. The estimated maximum water demand shall be included for both the consumptive use and for the estimated required fire flow to meet the UBC Standards and the recommendations of the NFPA Handbook, latest edition, for the type of building assumed to be built.
  - (2) If the development is to include irrigation services, the approximate maximum irrigation water demand in GPM must be submitted separately.
  - (3) The initial and ultimate area, in acres, which could be served by the proposed sanitary sewer.
  - (4) The estimated population densities and total population to be served by the proposed sanitary sewer.

- (5) The estimated quantity and quality of any commercial and/or industrial wastewater to be discharged to the sanitary sewer system.
  - (6) Average and peak wastewater design flow rate for the proposed development area and infiltration allowance for proposed sanitary sewer.
  - (7) If alternate methods of providing water and sanitary sewer services are possible, the report shall provide an evaluation of the alternative methods.
  - (8) Any additional information that would affect the Town's ability to provide water and sanitary sewer service to the proposed area.
- (c) Preliminary plan drawing. The preliminary plan drawing shall include the following information:
- (1) The proposed methods of achieving the desired water and sanitary sewer services. Alternate methods of providing desired services, if possible.
  - (2) A preliminary plan drawing of the development showing lots and rights-of-way, USGS contours and benchmarks, existing utilities and fire hydrants within four hundred (400) feet of the proposed development, the legal boundaries of the property to be developed, the approximate boundaries of all adjacent properties, and any unusual existing and proposed features, such as creeks and drainage facilities which might influence the location of underground utilities, a general layout of the proposed water main, fire hydrant and sanitary sewer locations, and phasing of construction, if appropriate.

(Ord. 435 §1, 1996)

Sec. 13-112. - Water main design criteria.

- (a) Flow.
  - (1) The minimum size of service for a single-family dwelling shall be three-fourths ( $\frac{3}{4}$ ) inch in diameter.
  - (2) Peak daily commercial and industrial water demand shall be as accepted by the Director.
  - (3) The minimum size of all water mains shall be six (6) inches. Larger sizes shall be required as needed to provide proper water distribution and fire protection. Should the Town decide that due to anticipated future development, the diameter of the water main should be larger than that required by the contractor seeking acceptance of his or her drawings and specifications, the Town shall pay the difference in engineering and construction costs between the larger diameter water main and the water main required by the contractor.
  - (4) Water mains shall be sized to provide fire protection flow to meet the UBC Standards and the recommendations of the NFPA Handbook, latest edition, for the buildings to be served.
- (b) Pressure. All water mains shall be designed to have a maximum static head of two hundred fifty (250) feet (108 psig), a minimum static head of one hundred (100) feet (43 psig), to maintain a twenty-psig residual pressure during required fire flow, and to maintain a forty-psig residual pressure in residential areas during peak residential flows.
- (c) Location and cover. Water mains shall be generally placed south and west of street centerlines. A minimum of seven (7) feet of cover from the top of the pipe to the final finished grade shall be maintained over all existing and proposed water mains.
- (d)

Looping requirement. Water mains shall be designed through a subdivision or development so that a continuous loop is provided for an alternate source of supply.

- (e) Separation. Water main crossings of sanitary and storm sewers shall be designed and constructed in accordance with the following:
  - (1) Horizontal separation. Water mains shall be located at least ten (10) feet horizontally from any existing or proposed sanitary sewer, storm sewer or sewer manhole. The distance shall be measured from outside-of-pipe to outside-of-pipe.
  - (2) Vertical separation. Whenever a sanitary or storm sewer must cross under a water main, the sewer shall be designed and constructed such that the top (crown) of the sewer is at least eighteen (18) inches below the bottom invert of the water main. When the elevation of the sewer cannot be varied to meet this requirement, the water main shall be relocated to provide this vertical separation and reconstructed with mechanical joint ductile iron pipe, or encased with concrete for a distance of ten (10) feet on each side of the sewer. One (1) full length of water main shall be centered over the sewer so that both joints on the water main will be as far from the sewer as possible. Concrete encasement shall be constructed to conform with the standard concrete encasement detail in these standards and specifications and shall be subject to the acceptance of the Director. When a water main passes under a sanitary or storm sewer, adequate structural support shall be provided for the sewer to prevent damage to the water main. The water main shall be encased with concrete for a distance of ten (10) feet on each side of the sewer. One (1) full length of water main shall be centered under the sewer so that both joints on the water main will be as far from the sewer as possible. When a water main passes under a storm sewer and seven (7) feet of cover between the top of the water main and the bottom of the storm sewer is not maintained, the water main shall be insulated to prevent freezing. Insulation requirements shall be determined by the consultant and accepted by the Director.
  - (3) When local conditions prevent horizontal and vertical separation as stipulated above, both the water main and sewer shall be constructed of mechanical joint ductile iron pipe and may be pressure tested to assure water tightness, if required by the Director.
- (f) Water main crossings of drainage ways including natural creeks, irrigation and drainage ditches and flood channels.
  - (1) Where a water main crosses under a drainage way, the minimum depth of cover shall be four and one-half (4.5) feet from the top of the water main to the bottom of the drainage way. Backfill for the trench of the water main crossing shall be brought to within one and one-half (1.5) feet of the proposed finished grade of the drainage way and one (1) foot of medium-sized rip-rap or river rock material shall be added. The final six (6) inches of backfill above the rip-rap shall consist of a material that approximates the existing drainageway bottom.
  - (2) Where the water main crosses under Middle Boulder Creek or Beaver Creek, it shall be placed in a concrete encasement. All concrete encasement shall be constructed to conform with the standard detail of these standards and specifications and subject to acceptance of the Director. The concrete encasement shall extend a horizontal distance beyond the top of the creek bank on both sides of the creek of not less than the vertical distance from the top of the bank to the bottom of the encasement.
  - (3)

Where the water main crosses under Middle Boulder Creek or Beaver Creek, and the creek is contained in a culvert, the minimum depth of cover over the water main shall be four and one-half (4.5) feet. The concrete encasement shall extend a horizontal distance beyond both outside edges of the culvert of not less than the vertical distance from the ground surface to the bottom of the encasement, minus the outside vertical dimension of the culvert. In no case shall the encasement extend less than five (5) feet beyond each side of the culvert.

- (4) Where water main fittings and elbows are used to lower the water main to cross under a drainageway, the fittings and elbows shall not be located less than twenty (20) feet from either end of the concrete encasement.
  - (5) All water main crossings under a drainageway shall comply with the United States Army Corps of Engineers stream crossing permit requirements.
- (g) Water main pipe and fittings.
- (1) Pipe. All water mains shall be ductile iron pipe and shall be designed, manufactured and furnished according to the following criteria:
    - a. Meet AWWA Standard Specification C-151, as amended. Iron grade of pipe shall be 60-42-10.
    - b. The joint shall be either push-on joint single gasket or mechanical joint single gasket.
    - c. Minimum thickness shall be Class 50.
    - d. Cement mortar lined according to AWWA C-104.
    - e. Polyethylene wrapped in accordance with AWWA C-105. Minimum thickness of polyethylene wrapping shall be eight (8) mils.
    - f. Pipe furnished shall have a normal laying length of eighteen (18) or twenty (20) feet.
  - (2) Fittings. All fittings shall be ductile iron and shall be designed, manufactured, and furnished according to the following criteria;
    - a. Meet AWWA C-110 or ANSI A21.10 for mechanical joints and AWWA C-111 or ANSI A21.11 for push-on joint. The rubber joint gasket shall conform to the requirements of AWWA C-111, as amended.
    - b. Valves and fittings shall be Class 200.
    - c. Fittings shall be wrapped in polyethylene when used with polyethylene wrapped pipeline.
- (h) Valves and valve boxes.
- (1) Valves shall be located, where possible, at a point on the water main which would be intersected by the extension of a property line.
  - (2) The maximum spacing between valves shall not be greater than six hundred (600) feet.
  - (3) Where there are connections to other water mains, all connecting mains shall also be valved at the connection. If the connecting main is eight (8) inches or larger in diameter, there shall be two (2) valves at a tee-type connection and three (3) valves at a cross-type connection.
  - (4) All isolation valves shall be resilient seat gate valves, manufactured in accordance with AWWA C500, as amended, and shall be equipped with two-inch square operating nuts.
  - (5) Valve boxes five and one-half (5½) inches in diameter of the three-piece screw type shall be provided for all valves. The word "water" shall be cast in the valve box covers. Valve boxes shall be centered and plumb over the wrench nut of the valve and shall allow at least six (6) inches of adjustment above and below specified

depth of cover over pipe.

- (6) If the road surface above a valve is gravel, the valve box cover shall be located four (4) to six (6) inches below the gravel surface. If the valve is located below a paved road surface, the valve box cover shall be located at grade.
- (7) Where practical, valves associated with tees and crosses at intersections shall be placed in line with the intersection right-of-way lines.
- (8) No valve shall be placed in a position where vehicles may be parked on top of them on a routine basis.
- (9) Valves shall be placed at each fire hydrant and at all permanent blow-offs.
- (10) Air and vacuum release valves. All water mains shall have combination automatic air and vacuum release valves installed at each high point on the line, as determined by the Director. Air and vacuum release valves shall be installed in concrete manholes or vaults fitted with air vents open to the atmosphere and in accordance with the standard detail for air and vacuum release valves.
- (11) Blow-off valves. A one-inch permanent blow-off assembly is required at the end of mains extended into cul-de-sacs. Temporary two-inch blow-off assemblies shall be installed in those portions of the water mains which could not be chlorinated, flushed or tested by other means. Permanent blow-off assemblies shall be installed at each high point in all water mains twelve (12) inches in diameter or larger. Blow-off valves may be fire hydrants for lines smaller than twelve (12) inches. Blowoff assemblies shall consist of all valves, pipe and material necessary to install the blow-off complete in place, and shall be constructed in accordance with the standard detail for blow-off installation.
- (12) Pressure-reducing and pressure-regulating valves. Pressure-reducing and pressure-regulating valves shall be of the type capable of maintaining preadjusted downstream pressures with varying rates of flow and upstream pressure without causing water hammer, and shall be installed in concrete valve vaults of sufficient size to provide adequate maintenance and operation. They shall be installed at locations as required to maintain pressure within acceptable ranges and may be required at the discretion of the Director.
  - (i) Fire hydrants.
    - (1) In residential areas, fire hydrants shall be located so that in no case would a hose longer than three hundred (300) feet be required to reach any part of an area covered by the hydrant. One (1) hydrant shall always be in sight of least one (1) other hydrant. Closer spacing of hydrants may be required in business and high density residential areas.
    - (2) All hydrants shall stand plumb. Nozzles shall be parallel with, or at right angles to, the fire hydrant main line. Hydrants shall be set to established grade, with nozzles at least eighteen (18) inches above the ground.
    - (3) Each hydrant shall be connected to the water main with a six-inch ductile iron branch controlled by an independent six-inch gate valve and valve box located adjacent to the tee on the water main. The valve shall be located at, or within three (3) feet of, the tee from the main water line. The branch line and hydrant shoe shall have tie-rods and be wrapped with polyethylene. The main water line tee shall be thrust blocked.
    - (4) Hydrant drainage. A drainage pit three (3) feet in width and three (3) feet deep shall be excavated below each hydrant and completely filled with washed rock (as designated on the typical fire hydrant and assembly detail), under and around the shoe of each hydrant to a level six (6) inches above the top of the pipe lateral offsets.

- (5) Six-inch ductile iron manufactured offsets maybe used on ductile iron branch lines to allow proper elevation setting of the hydrant shoe.
  - (6) All plugs, bends, reducers, tees and fire hydrants shall be anchored by rods and clamps in accordance with the details on the typical fire hydrant and assembly detail.
  - (7) Fire hydrants shall be red-colored Mueller Centurian A-423 conforming with AWWA Standard C502, as amended. Hydrants shall be three-way, two-hose (2½-inch) and one pumper (4½-inch) nozzle, with "National Standard Screw Threads for Fire Hose Couplings and Fittings," as amended, published by the Insurance Services Office. Hydrant valves shall be opened by turning left (counterclockwise). Inlet connection to the water main for the valve shall be six (6) inches, mechanical joint.
- (j) Thrust blocks. All plugs, tees, bends and hydrants shall be provided with thrust blocks. The thrust blocks shall be placed between the undisturbed earth of the trench wall and the fitting; the backing shall be so placed that the pipe and fitting joints will be accessible for repair. The fitting shall be protected from concrete by eight-mil-thick polyethylene. Thrust block, type and strength of concrete and dimensions shall be in accordance with the thrust block detail.
- (k) Concrete vaults and valve manholes. All valve manholes, air relief and vacuum valve vaults, pressure reducing valve vaults, meter vaults and other vaults shall be precast or poured-in-place concrete. Design of vaults and valve manholes shall be for traffic loading and shall include aluminum rungs, sump pit, cast iron rings and covers of a pattern acceptable to the Director with the word water cast thereon. All vaults and valve manholes shall be watertight and all joints, pipe openings and other places where infiltration could exist shall be sealed from the outside of the vault or manhole with a mastic waterproof seal. All inside joints shall be grouted.
- (l) Water services.
- (1) Each residential, commercial or industrial structure shall be served by a separate water service line and meter, except for guest houses. Water service shall be located ten (10) feet south or west of sewer services. Water service line shall be installed in a continuous straight line and shall enter the property at the center of the lot, unless otherwise shown and dimensioned on the accepted construction plans.
  - (2) No water taps shall be made prior to hydrostatic testing and acceptance of water mains.
  - (3) Water service line installation shall be in accordance with AWWA Standard C-800, or as otherwise determined by the Director.
  - (4) All service lines shall consist of corporation stops, curb stops, the meter and service pipeline. Service lines of diameter two (2) inches and smaller shall be Type K (soft) copper. All water service lines shall have minimum cover specified in the UPC.
  - (5) Cross-connections. There shall be no physical connection between any water service line, inside or outside of any property or building, and any pipes, pumps, hydrants or tanks where any unsafe or contaminated water including steam condensation or cooling water could be discharged or drawn into the water system.
- (m) Water meters and appurtenances.
- (1) All water meters shall be installed on the interior of the residential, commercial or industrial building unit in a freeze-proof location, with a remote register installed on the exterior of the building at eye level in a location easily accessible as determined by the Director. Meters shall be of the same size as the service line between

the water main and the meter. All water meters, regardless of size, connected to a property owner's water utility system, shall be furnished by and remain the property of the property owner.

- (2) No outside meters or meter pits shall be allowed unless otherwise accepted by the Director.
  - (3) Water meters shall comply with AWWA Standard C700-77 for accuracy, capacity, pressure loss and dimensions.
- (n) Pipe thawing materials.
- (1) A thaw cable shall be installed at each valve box on the water main, shall extend from the lid of the valve box to the water main, and shall be connected to the pipe using a thermite weld.
  - (2) All water main pipe joints shall be bonded. Joint bonds shall be connected to the pipe using a thermite weld.

(Ord. 435 §1, 1996)

Sec. 13-113. - Sanitary sewer design criteria.

- (a) Flow.
- (1) The average sewage flow shall be determined by the following:
    - a. Residential areas. On a basis of three and two-tenths (3.2) people per residence and one hundred (100) gallons per day per person.
    - b. Multi-family areas. On a basis of three hundred (300) gallons per day per living unit.
    - c. Commercial areas. Usage shall be based on engineered design. In no case shall a basis of less than two thousand five hundred (2,500) gallons per day per acre be used unless sufficient supporting analyses can be presented.
    - d. Industrial areas. Usage shall be based on engineered design. In no case shall a basis of less than five thousand (5,000) gallons per day per acre be used unless sufficient supporting analyses can be presented.
  - (2) The average sewage flow shall be multiplied by a peak factor to obtain the peak sewage flow. Peak factors shall be as follows:

<b>Sanitary Sewer Diameter</b>	<b>Peak Factor</b>
10-inch and smaller	4.0
12-inch and 15-inch	3.5
Larger than 15-inch	3.0

- (3) The sewage flow used for design of sanitary sewers shall be the sum of the peak sewage flow (average flow multiplied by peak factor) and the flow due to infiltration and flows from existing and projected future upstream sanitary sewers. The flow due to infiltration shall be based upon a minimum of two hundred (200) gallons per

inch diameter per mile of pipe per day multiplied by the total length of pipe in miles and the pipe diameter in inches. Actual requirements for existing sanitary sewer lines that are tributary to those under design shall also be included.

- (4) Sanitary sewers fifteen (15) inches in diameter and smaller shall be designed to convey the design flow at a maximum flow depth of one-half ( $\frac{1}{2}$ ) of the pipe diameter. Sanitary sewers eighteen (18) inches in diameter and larger may be designed to convey the design flow up to a maximum flow depth of three-quarters ( $\frac{3}{4}$ ) of the pipe diameter.
  - (5) Roof drains, foundation drains, surface drainage, cooling water and other storm water connections to sanitary sewers are prohibited.
- (b) Location and cover.
- (1) Sanitary sewers shall be generally placed five (5) feet south of the centerline in east-west streets and five (5) feet east of the centerline in the north-south streets.
  - (2) All sanitary sewer manholes shall be located to be accessible to sewer maintenance and cleaning vehicles currently utilized by the Town.
  - (3) The minimum depth of cover for sanitary sewers shall be seven (7) feet from finished grade to the top of pipe. Sanitary sewers shall be designed deep enough to prevent freezing and backup. Where possible, sewers shall be installed deep enough to accommodate all future extensions and connections that can be foreseen.
  - (4) Sanitary sewers shall cross below water service lines and water mains and shall be constructed to provide a separation of at least eighteen (18) inches between the bottom of the water main and the top of the sanitary sewer. Sanitary sewers shall be constructed at last ten (10) feet horizontally from any water main or its appurtenances, measured from outside-of-pipe to outside-of-pipe. When local conditions prevent a vertical or horizontal separation as described above, the sanitary sewer and water main shall be constructed as specified in Section 13-112 above regarding separation.
- (c) Size, alignment and slope.
- (1) No sanitary sewer shall be less than eight (8) inches in diameter.
  - (2) Individual dwelling or building sanitary sewer service lines may be six (6) inches or four (4) inches in diameter, provided that hydraulic capacity is not exceeded.
  - (3) Sanitary sewers shall be designed so that the pipeline between any two (2) adjacent manholes is on a straight line.
  - (4) Material changes, changes in slope and changes in pipe size shall occur at manholes only.
  - (5) All slopes between manholes shall be uniform.
  - (6) Slopes shall provide mean velocities no less than two (2) feet per second at the design flow rate. Minimum slopes for sanitary sewers based upon the Manning equation with  $n = 0.013$  shall be:

<b>Size of Sanitary Sewer (inches)</b>	<b>Minimum Slope (foot/foot)</b>
8	0.004
10	0.0028

12	0.0022
<u>15</u>	0.0015
<u>15</u>	0.0015

- (7) When it is necessary to design or install sanitary sewers with a slope greater than that required to achieve a maximum velocity of ten (10) feet per second at the design flow rate, anchoring of sanitary sewer pipe shall be required. Concrete collars shall be provided as detailed in the anchoring detail.
- (d) Crossings. Sanitary sewer crossings of drainage ways shall conform to the requirements for water main crossings of drainage ways as outlined in Section 13-112.
- (e) Encasement and casings.
- (1) Concrete encasements shall be installed on sanitary sewers under the following conditions: where sewers are too shallow to sustain traffic or other loads; where horizontal movement of sewer may be experienced; at potable water main crossings; at all locations where infiltration may occur; and at any location designated by the Director. Concrete encasements shall be designed and constructed in accordance with the standard detail for concrete encasements.
- (2) Pipe casings for sanitary sewers shall be used where borings under rights-of-way are required by the using agency. All casings shall conform with the standard pipe casing detail and shall be subject to the acceptance of the Director.
- (f) Sewer pipe, fittings and joints.
- (1) Rigid polyvinylchloride pipe (PVC). All PVC pipe shall be manufactured in accordance with the requirements of ASTM D-1784, Rigid Poly (Vinyl Chloride) and Chlorinated Poly (Vinyl Chloride) Compounds and D 3034-SDR 35, Type PSM Poly (Vinyl Chloride) (PVC) Sewer Pipe and Fittings, as amended. Pipe and fitting markings shall include the appropriate ASTM Designations and Bell Classification Numbers (12454-B or 12454-C or other acceptable classifications), name or trademark of manufacturer, and nominal diameter. Pipe joint assemblies shall be bell and spigot with an O-ring rubber gasket.
- (2) Ductile iron pipe. Ductile iron pipe shall be bell and spigot pipe, centrifugally cast and shall conform to ANSI A21.51 AWWA Specification C-151-76, as amended. All ductile iron pipe used for sanitary sewer line construction shall contain a PVC lining according to ANSI A21.4 and AWWA C-104. Class of pipe shall be Class 50 unless a higher class is required for strength.
- (g) Manholes.
- (1) All manholes shall be a minimum of forty-eight (48) inches in diameter and shall be installed at the upper end of each sanitary sewer line, at all changes in slope, size, alignment or pipe material and at all road intersections. Manholes installed in midblock shall be aligned with the extension of property lines. Manholes shall conform to the manhole standard detail.
- (2) Manholes shall be located in areas which are not subject to flooding from surface runoff.
- (3) Manholes shall be installed at distances not greater than four hundred (400) feet.

- (4) All dead-end manholes, where future sewer extension is anticipated, shall have sanitary sewer pipe laid through the manhole a maximum of one (1) pipe length and plugged with a plug acceptable to the Director.
- (5) A monitoring manhole shall be constructed on the sanitary sewer service lines of all industrial users as determined by the Director. The monitoring manhole shall contain provisions for installation of a permanent wastewater flow monitoring device and a platform for supporting an automatic wastewater sampling device.
- (6) Manholes may be either precast concrete or cast-in-place and shall conform to the manhole standard detail. Precast manhole risers and cones shall be manufactured in conformity with ASTM C478, as amended, and shall be so marked by the manufacturer. Manhole access openings shall be twenty-four (24) inches or greater.
- (7) The base on all manholes shall be a minimum of eight (8) inches thick, and the overall outside dimensions of the base shall be one (1) foot greater than the outside dimensions of the manhole constructed thereon.
- (8) Where a second sanitary sewer line enters a manhole, the invert on the second sewer line shall enter the manhole at least two-tenths (0.2) foot higher, or match crowns of pipe with different size pipe, than the invert of the outlet sewer line. In no case shall a second sewer line be allowed to intersect with the outlet line at an angle less than ninety (90) degrees. If alignment and slope allow, the sewer main shall be laid through the manhole. A minimum drop of two-tenths (0.2) foot shall be required from invert to outlet.
- (9) All manholes located outside of dedicated streets rights-of-way shall be designed and constructed with a locking-type cover and the manhole ring shall be bolted to the manhole frame.
- (10) Manhole frames and covers shall be solid four-hundred-pound cast iron, twenty-four-inch inside diameter, acceptable to the Director. Covers with more than one (1) lifting hole shall not be acceptable. The lifting notch shall not allow surface water to enter the manhole.
- (11) If the road surface above a manhole cover is gravel, the cover shall be located four (4) to six (6) inches below the gravel surface. If the manhole is located below a paved road surface, the manhole cover shall be located at grade.
- (12) Individual sanitary sewer service lines shall not be allowed to connect directly to manholes unless otherwise accepted by the Director. No sanitary sewer service line shall connect to the main sewer line closer than five (5) feet from the uphill manhole.
- (13) All cement used in concrete and mortar for constructing manholes shall conform to ASTM C150, Type II, as amended.
- (14) Inlet and outlet pipes shall be joined to the manhole with a gasketed flexible watertight connection or any watertight connection arrangement acceptable to the Director that provides for differential settlement to take place between the sanitary sewer pipe and manhole wall.
- (15) The invert of the lowest pipe entering a manhole shall be at least eight (8) inches above the top of the base slab so that the sewer flow channel in the manhole may be installed and shaped. The flow channel through manholes shall be made to conform in shape, slope and smoothness to minimize hydraulic losses through the manhole section. Cut pipe shall not extend beyond the inside face of the manhole wall.
- (16) Drop manholes. Drop manholes shall be avoided whenever possible. No drop greater than one-tenth (0.1) foot or that drop required for change in pipe size will be allowed, unless more than two (2) feet, on the average, extra excavation depth for the sanitary sewer is required to avoid creating a drop manhole. Drop manholes shall be constructed exactly as regular manholes, except that the manhole base shall be extended upstream

far enough to form a base for the concrete encasing the sewer pipe drop entering the bottom of the drop manhole. The drop entering the manhole shall be completely encased in concrete up to the spring line of the pipe of the main sanitary sewer line. A cleanout shall be placed in the manhole at the level of the main sanitary sewer line. All drop manholes shall be completely lined with coal tar epoxy, except for PVC drop sections. Drop manholes shall conform to the drop manhole standard detail.

- (h) Sanitary sewer services. Each building or structure shall be served by a separate sanitary sewer service line connected to a sanitary sewer main. The service line shall be perpendicular to the main sewer line while in the public right-of-way.

(Ord. 435 §1, 1996)

Secs. 13-114—13-130. - Reserved.

### Division 3 - General Specifications for Both Water Main and Sanitary Sewer Construction

Sec. 13-131. - Trench excavation.

- (a) General. Excavation for water main and sanitary sewer pipelines, fittings and appurtenances shall be by open trench to the depth and alignment shown on the accepted construction drawings. Where depth of trench and conditions allow, tunneling, boring or jacking may be permitted when tunneling, boring or jacking methods of construction are submitted to and accepted by the Director. When jacking is permitted, only persons experienced in that work, using suitable equipment, shall perform the jacking operation.
- (b) Limit of excavation. Except by written permission of the Director, the maximum length of trench permitted to be open at any one (1) time shall be four hundred (400) feet, or the distance necessary to accommodate the amount of pipe installed in a single day, whichever is smaller. This distance shall be the collective length at any location, including open excavation, pipe laying and appurtenances, construction and backfill which has not been temporarily resurfaced. No trench shall be left open at any time that the contractor is not on the job site engaged in construction operations.
- (c) Trench width. The overall trench width shall not be more than sixteen (16) inches nor less than twelve (12) inches wider than the largest outside diameter of the pipe to be laid therein, measured at a point twelve (12) inches above the top of the pipe, exclusive of branches. Excavating and trenching shall be true to line so that a clear space of not more than eight (8) inches or less than six (6) inches in width is provided on each side of the largest outside diameter of the pipe in place. For the purpose of this Section regarding trench width, the largest outside diameter shall be the outside diameter of the bell, on bell and spigot pipe. All trenching sizes shall be in accordance with the bedding details. In the event that the maximum trench widths previously specified are exceeded either through accident or otherwise, and if the Director determines that the design loadings of the pipe will be exceeded, the contractor shall be required to either use a higher class bedding or use a pipe of stronger class. Cost of such remedial measures shall be at the contractor's expense.
- (d) Bracing excavations. All excavations shall be properly sloped or supported in the manner as required by OSHA Federal Register Volume 37, No. 243, Sub-Part P, Section 1926. 652, as amended, or as required by COSHA laws as may be necessary to protect life, property and the work. Shoring shall be designed by a professional engineer

registered to practice in the State. Sharing design shall be submitted to the Director for acceptance. In the event that the sidewalls of the trench are sloped to meet safety requirements, the sloping shall terminate at a depth not less than twelve (12) inches above the top of the pipe barrel, and from that point down the trench width shall be limited to that previously specified.

- (e) Trench bottom excavation. The trench bottom shall be excavated to a depth as specified in the bedding materials section of these standards and specifications unless otherwise specified by the consultant and accepted by the Director. Before the pipe is laid, the trench bottom shall be graded by backfilling with bedding material to provide uniform bearing and support for the entire length of pipe. A continuous trough shall be excavated to receive the bottom quadrant of the pipe barrel, and bell holes shall be provided at each joint to permit the jointing to be performed properly and to permit the pipe to be uniformly supported.
- (f) Unsuitable trench bottoms. Where unsuitable foundation bedding material is encountered in the trench bottom, such material shall be removed to a depth acceptable to the Director. The unsuitable material shall be replaced with bedding material and compacted as specified in the bedding materials section to provide a suitable foundation for the pipe.
- (g) Over-excavating for rock. When rock or hard clay is encountered in the trench bottom, the trench shall be over-excavated to a depth of six (6) inches below the bottom of the pipe. The over-excavated material shall be replaced with an acceptable bedding material and compacted as specified in the bedding materials section.
- (h) Over-excavating for unstable trench conditions. When unstable conditions are encountered in the trench bottom, the trench shall be over-excavating to a depth of six (6) inches below the bottom of the pipe. The over-excavated material shall be replaced with trench stabilizing material as specified in the bedding materials section.
- (i) Dewatering.
  - (1) The contractor shall provide and maintain, at all times during construction, ample means and devices with which to divert surface water and to promptly and properly dispose of all water entering the trench or water and sewer utility structure excavation. Pipe trenches or structure excavation shall be kept free from water during excavation, construction, pipe laying and jointing. The method of dewatering shall maintain a water surface below the bedding material.
  - (2) Dewatering shall be accomplished by the use of well points, sump pumps, rock or gravel drains placed below subgrade foundations or subsurface pipe drains.
  - (3) The contractor shall dispose of the water in a suitable manner without damage to adjacent property, without being a menace to public health or without causing a public inconvenience or nuisance. The water shall not be drained into work completed or under construction. Trench water shall not be allowed to enter any sewer lines either by gravity or by pumping. All manholes under construction shall be sealed tightly to prevent water from excavation or groundwater from entering the sanitary sewer system.
  - (4) The dewatering operation shall continue until such time that it is safe to allow the water table to rise in the excavation. Pipe trenches shall contain enough backfill to prevent pipe flotation.
- (j) Grading and stockpiling. The contractor shall control stockpiling and grading of trench excavation material in a manner that shall not endanger the work and that shall avoid obstructing sidewalks, driveways and fire hydrants. Grading and stockpiling shall prevent water from running into excavations. Satisfactory provisions shall be made for street drainage at all times.

- (k) Pipe clearance in rocks. Ledge rock, boulders and stones larger than twelve (12) inches in their greatest dimension shall be removed from the trench to provide a clearance of at least six (6) inches between the bottom or side of the pipe and/or appurtenances and the rock.

(Ord. 435 §1, 1996)

Sec. 13-132. - Bedding materials.

The pipe shall be carefully bedded as shown in the bedding details. The minimum support for the pipe except for PVC sanitary sewer pipe shall be Class C bedding unless otherwise required by the Director. PVC sanitary sewer pipe shall be a minimum of Class B bedding.

- (1) Class A bedding (concrete cradle). Class A bedding shall be defined as that method of bedding in which the lower one-half (½) of the pipe is set in nonreinforced concrete. The minimum thickness of concrete under the lowest part of the conduit shall be one-eighth (⅛) of the outside pipe diameter, but not less than six (6) inches. The concrete shall extend upward around the pipe to the spring line of the pipe barrel. The width of the concrete cradle shall be at least equal to the outside pipe diameter plus eight (8) inches. Class A bedding shall be used when designated on the accepted construction drawings, or as determined by the Director.
- (2) Class B bedding (granular foundation). Class B bedding shall be defined as that method of bedding in which the pipe is set on compacted granular material supporting the lower one-half (½) of the pipe barrel. The trench shall be excavated to a depth below the established grade equal to one-eighth (⅛) of the outside pipe diameter, but not less than four (4) inches. In rock excavation, the minimum depth of bedding material for Class B bedding shall be six (6) inches. Class B bedding shall be used for PVC sanitary sewer pipe or as determined by the Director.
  - a. Compacted granular material. Compacted granular material shall be a well-graded gravelly material meeting the following requirements and compacted to ninety percent (90%) of maximum dry density as determined by ASTM D698:

<b>Square Mesh Sieve Size</b>	<b>Total Passing by Sizes (%) by Weight</b>
1"	100
¾"	90 to 100
⅝"	20 to 55
#4	0 to 10
#8	0 to 5

b.

Uniform graded material. Uniform graded material shall be placed over and around the sides of the pipe to a depth of at least twelve (12) inches above the top of the pipe to prevent pipeline damage from larger stones. This uniform graded material shall consist of on-site acceptable material with rocks no larger than two (2) inches in the longest and largest dimension, compacted in maximum six-inch lifts to a maximum dry density of ninety percent (90%), as designated by ASTM D698.

- (3) Class C bedding (granular foundation). Class C bedding shall be defined as that method of bedding in which the pipe is set on compacted granular material supporting the lower quadrant of the pipe barrel. The trench shall be excavated to a depth below the established grade equal to one-eighth ( $\frac{1}{8}$ ) of the outside pipe diameter, but not less than four (4) inches. Uniform graded material as described under Class B bedding shall be placed over and around the sides of the pipe to a minimum of at least twelve (12) inches to prevent pipeline damage from larger stones.
- (4) Trench stabilizing material. Trench stabilizing material shall consist of washed rock of one and one-half (1 $\frac{1}{2}$ ) inches in diameter.

(Ord. 435 §1, 1996)

Sec. 13-133. - Backfilling and compaction of backfill.

- (a) General.
  - (1) In general, backfill material shall be that material excavated from pipeline trenches on the site that is free from frozen materials and large amounts of organic or other objectionable materials. When the on-site excavated material is not satisfactory for use as backfill, as determined by the Director, or whenever there is a shortage of satisfactory backfill material from any acceptable on-site source, the contractor shall furnish all necessary suitable backfill material and shall dispose of the condemned excavated material.
  - (2) Unless otherwise specified, all excess backfill material shall be disposed of off the rights-of-way and public property by the contractor at his or her expense.
  - (3) Backfilling shall proceed immediately after each joint of pipe is laid in order to protect the pipeline.
  - (4) Backfill material shall be placed around the pipe and compacted as specified below. The remainder of the trench shall be filled in one (1) or more lifts with acceptable backfill material in such a manner so as not to damage the pipe or to cause any misalignment of the installed pipeline.
  - (5) Moisture density testing.
    - a. In-place moisture density tests shall be performed as directed by the Director to ensure that trench backfill complies with specified requirements. The contractor shall employ, at the contractor's expense, a recognized testing laboratory acceptable to the Director to perform soil testing and inspection service for quality control testing during backfill operations. Where backfill compaction does not meet moisture and density test requirements, and after backfill has been removed as directed by the Director and the situation corrected, additional tests shall be performed as directed until compaction meets or exceeds requirements, with the cost borne solely by the contractor.
    - b. Number of tests. At a minimum, in-place moisture density tests shall begin at a point one and one-half (1.5) feet above the top of pipe and shall be performed in two-foot intervals to finished grade. Tests shall be performed a minimum of once every one hundred (100) feet of pipeline and a minimum of once between every manhole, water or sewer utility structure or pipe outlet, along the trench, or as determined

by the Director. Final acceptance of the water main or sanitary sewer line by the Town shall be contingent upon satisfactory compaction results. No testing of the water main or sanitary sewer line shall be allowed until satisfactory compaction is obtained.

(b) Backfill material and compaction.

- (1) Uniform graded material. Uniform graded material shall consist of material previously specified and shall be compacted as previously specified.
- (2) Remaining backfill material and compaction. Material used to backfill the trench above uniform graded material shall consist of material which has been excavated from the trench with no rubbish, frozen material, broken pavement, other debris, stones or other consolidated material greater than two (2) inches in diameter, organic muck or other materials considered unacceptable by the Director. Clay and similar material with a plasticity index in excess of twenty (20) shall not be considered suitable for backfilling trenches located in streets, roads, highways or thoroughfares. Remaining backfill material shall be deposited in layers in maximum of eight-inch lifts and compacted by surface or internal vibrators, or hand or power tampers. The remaining backfill material shall be compacted to a minimum of ninety percent (90%) of maximum density as determined by ASTM D698. If the piping installation is within a roadway or within ten (10) feet of a roadway or structure, the material shall be compacted to a minimum of ninety-five percent (95%) of maximum density as determined by ASTM D698.
- (3) Select borrow material. If the existing material excavated from the trench is found to be unacceptable for backfill, or if insufficient quantities of on-site material are available for backfill, select borrow material shall be imported for remaining backfill. Select borrow material shall be a well-graded mixture of sound mineral aggregate particles containing sufficient, proper quality bonding material to secure a firm, stable foundation when placed and compacted in the trench. When tested with laboratory sieves, the material shall meet the following gradation requirements:

<b>Sieve Size by Weight</b>	<b>Total Passing by Sieves (%)</b>
4"	100%
#10	80%
#200	15% to 15%

It shall be the responsibility of the contractor to locate material meeting this specification, and to secure acceptance of the Director before such material is delivered to the project. Select borrow material shall be compacted as specified for remaining backfill material.

- (c) Maintenance of backfill. All backfill shall be maintained in a satisfactory condition, and all places showing signs of settlement shall be filled and maintained during all construction phases and for a period of two (2) years following the date the water main or sanitary sewer pipeline system is placed into operation. When the contractor is notified by the Director that any backfill is hazardous, he or she shall correct such hazardous condition at once.

Sec. 13-134. - Surface restoration.

- (a) Pavement, curb, gutter, sidewalk, drainage culverts, headwalls or other street improvements destroyed, removed or damaged during construction shall be repaired or replaced to a condition equal to that prior to construction, to the same elevation and alignment, to the satisfaction of the Director. The subgrade for all restored surfaces shall be thoroughly compacted by a method of compaction acceptable to the Director. The cost of restoration work and removal of all debris from the site of the work shall be at the expense of the contractor.
- (b) Natural or artificial groundcover destroyed, removed or damaged during construction shall be reseeded and shall have erosion control provided to restore the groundcover to a condition equal to that prior to construction, to the same elevation and alignment, to the satisfaction of the Director.

(Ord. 435 §1, 1996)

Sec. 13-135. - Water for construction.

Water for construction purposes, testing and the flushing of new water mains and sanitary sewers is available from the Town municipal water distribution system. The contractor shall make arrangements with the Director before utilizing any water. All valves connected to fire hydrants shall be operated in accordance with the instructions of the Director. All water used for construction shall be metered by a meter supplied by the Town. Water used for construction shall be paid for by the contractor.

(Ord. 435 §1, 1996)

Sec. 13-136. - Grade stakes.

The consultant shall provide grade stakes for all water main and sanitary sewer line installation. These stakes shall locate the respective water main or sanitary sewer alignment location and elevation. The maximum distance between stakes shall be twenty-five (25) feet. All water main fittings, valves and appurtenances shall be staked for location and elevation. All manholes shall be staked for centers, line and elevation.

(Ord. 435 §1, 1996)

Sec. 13-137. - Installation of water and sewer taps in trenches opened for installation or extension of water or sewer mains.

- (a) At any time when a trench has been constructed or opened for the purpose of constructing, installing or extending a water or sewer main beneath a road that is paved or has been designated to be paved, to the extent the owners of property adjacent to such trench or the right-of-way through which such trench has been constructed, have paid for or otherwise acquired water or sewer taps, the owners of such water or sewer taps shall be, at the property owner's expense, required to install such taps while the trench is open and to extend the service lines from such tap to the property line.
- (b) At any time when a trench has been constructed or opened for the purpose of constructing, installing or extending a water or sewer main beneath a road that is unpaved and has not been designated to be paved, to the extent the owners of property adjacent to such trench or the right-of-way through which such trench has been constructed,

have paid for or otherwise acquired water or sewer taps, the owners of such water and sewer taps shall be encouraged to install such taps while the trench is open, at the expense of the property owner.

- (c) All installations of water or sewer taps shall be performed under the supervision of Town personnel.

(Ord. 543 §1, 2001)

Secs. 13-138—13-150. - Reserved.

#### Division 4 - Standards and Specifications for Water Main Construction

Sec. 13-151. - General.

All water main construction within the Town and for future connection to the Town water system shall be performed according to these specifications. These specifications include the furnishing and installation of all water main piping, valves, valve boxes, fire hydrants, related appurtenances and water services necessary to complete the water mains. Excavation, bedding and backfill of trenches for water main shall comply with the requirements detailed in the general specifications for both main and sanitary sewer construction section. All work, including correction work, shall be inspected by the Director or the Inspector, who shall have the authority to halt construction when it does not adhere to these specifications or standard construction practices. Should any portion of these specifications be violated, the Director or Inspector shall order further construction to cease until all deficiencies are corrected. All work shall be performed in accordance with the latest revision of the AWWA Specifications referenced herein.

(Ord. 435 §1, 1996)

Sec. 13-152. - Materials.

- (a) Material handling and storage. Pipes, fittings, valves and appurtenances shall be loaded and unloaded or otherwise handled in such a manner as to minimize the possibility of damage prior to installation. All materials to be used for water main construction shall be stored at the construction site in such a manner as to prevent damage and to assure that these materials are kept as clean as possible prior to installation.
- (b) Ductile iron pipe and fittings. Ductile iron pipe shall be manufactured, furnished and installed in strict accordance with the standard specifications and criteria detailed previously in Section 13-112 of this Article. Each length of pipe shall be plainly stamped, indelibly marked or color coded as to length, weight, class and type, and bear the manufacturer's trademark or name. Pipe and fitting interior and exterior shall be provided with a coating of coal tar epoxy material approximately one (1) mil thick. Coating shall be continuous and smooth, neither brittle when cold nor stick when exposed to sunlight, and strongly adherent to pipe at all temperatures.
- (c) Gate valves. Gate valves shall conform to the specifications contained in Section 13-112. Gate valves shall conform to a minimum working pressure of one hundred fifty (150) psig. The consultant shall evaluate the pressure requirements for specific locations, shall require higher pressure classification where necessary and shall submit such evaluation to the Director for acceptance. Valve seats, discs and stem shall be constructed of bronze. Stem seals shall be with two (2) O-rings, each of which shall be designed to allow replacement under full line pressure when the valve is in the full open position. Valves shall open left (counterclockwise). Extension stems with a two-

inch, square operating nut and support for the upper end of the extension shall be provided for all valves installed more than five (5) feet deep. The stem shall be of adequate length to allow the operating nut to be no more than five (5) feet below the finished grade. The extension stem shall be mechanically connected to the operating nut. All gate valves shall have mechanical joint ends.

- (d) Fire hydrants. Fire hydrants shall comply and be manufactured in accordance with the specifications detailed in Section 13-112. Hydrants shall operate under one hundred fifty (150) psig working pressure and shall be cast iron and bronze mounted. The consultant shall evaluate the pressure requirements for specific locations, shall require higher pressure classification where necessary and shall submit such evaluations to the Director for acceptance.
- (e) Air and vacuum release valves. Air and vacuum release valves shall be provided as specified in Section 13-112, shall automatically release air from water lines when the water lines are being filled with water, and shall admit air into the lines when water is being withdrawn in excess of the inflow. Valves shall be iron body, with bronze trim. Floats shall be stainless steel. Two-inch gate valves shall be installed on the stem between the water main and relief valve as shown on the standard detail for air and vacuum release valves. Pipe and fittings used in the relief valve systems shall be galvanized steel, standard weight, and the connection shall be threaded. Gate valves shall be bronze and threaded, and shall have hand wheels.
- (f) Pressure-reducing and pressure-regulating valves. Pressure-reducing and pressure-regulating valves shall be as specified in Section 13-112 and shall be of the flanged, globe body, fully bronze mounted, external pilot operated, piston type meeting the following requirements: fully powered by water from the water pipeline in which they are installed; not dependent upon diaphragms, levers or springs for piston movement or positioning; have a piston position indicator rod firmly attached to the piston and passing through a stuffing box and valve top for external, visual piston position indication; be designed and constructed so as to facilitate repairs and internal dismantling without removal of valve from pipeline; be furnished with renewable leather-cup power piston seals; flanged cast iron body shall be Class 250; be constructed of new, first-quality materials and components throughout; be constructed so as to provide easy access to the pilot to allow pilot removal while the main valve is under pressure; be furnished with all necessary pilots, blocking valves, needle valves, strainers and control piping; be capable of being operated from above ground by use of two-inch-square valve keys. Pressure-reducing and pressure-regulating valves shall have gate valves and pressure gauges on both upstream and downstream sides and shall have bypasses with smaller pressure-reducing and pressure-regulating valves to handle minimum flows as determined by the Director. The consultant shall evaluate the pressure requirements for specific locations of pressure-reducing and pressure-regulating valves, shall require higher pressure classification where necessary, and shall submit such evaluations to the Director for acceptance.
- (g) Rods and clamps. All water main elbows, plugs, reducers, fire hydrants and appurtenances shall be provided with tie rods and clamped in accordance with the standard details. Rods and socket clamps shall be used on ductile iron pipe systems. Where mechanical joint ductile iron pipe is used, rods may be bolted through the joint bolt holes. Number and size of rod shall be as indicated in the standard details.
- (h) Pipe thawing materials.
  - (1) Wire. No. 2 AWG wire for joint bonding shall be bare, single-conductor, stranded copper. No. 250 MCM wire for thaw cable shall be single-conductor, stranded copper with six-hundred-volt TW insulation.
  - (2)

Thermite weld materials. Thermite weld welder, sleeve and cartridge shall be sized per manufacturer's recommendations for pipe diameter and wire sizes. Thermite weld materials shall be Cadweld by Erico Products, Inc.; Thermoweld by Continental Industries, Inc.; or equivalent.

(Ord. 435 §1, 1996)

Sec. 13-153. - Installation.

(a) General; laying of pipe.

- (1) All pipe and pipe fittings shall be carefully loaded into the trench by means of a hoist, ropes or other suitable tools or equipment in such a manner to prevent damage to the water main materials and protective coatings and linings. Under no circumstances shall water main materials be dropped or dumped into the trench. All pipe and pipe fittings shall be carefully examined for cracks or other defects immediately before installation. Every precaution shall be taken to prevent foreign material from entering the pipe while it is being placed in the trench. During pipe laying operations, no debris, tools, clothing or other material should be placed in the pipe. As each length of pipe is placed in the trench, the spigot end shall be centered in the bell and the pipe forced on and brought to correct line and grade. Precautions shall be taken to prevent dirt from entering the joint space.
- (2) At times when pipe laying is not in progress, the open ends of the pipe shall be closed by a water tight plug or other means acceptable to the Director. If water is in the trench, the plug shall remain in place until the trench is completely dewatered.
- (3) Where pipe is laid at a grade of ten percent (10%) or greater, the laying shall start at the bottom of the grade and shall proceed upward with the bell ends of the pipe upgrade. The cutting of pipe for inserting valves, fittings or closure pieces shall be performed in a neat and workmanlike manner without damage to the pipe or cement lining and so as to leave a smooth end at right angles to the axis of the pipe. Flame cutting of pipe by means of an oxygen-acetylene torch shall not be allowed. No pipe shall be laid when, in the opinion of the Director or the Inspector, trench conditions are unsuitable.
- (4) Ductile iron pipe shall be installed in accordance with AWWA C-600.
- (5) Trench excavation, bedding, backfill and compaction testing shall be performed as specified in the general specifications for both water main and sanitary sewer construction sections.

(b) Jointing of mechanical joint pipe.

- (1) Cleaning and assembly of joint. The last eight (8) inches of the outside spigot and inside bell of mechanical joint pipe shall be thoroughly cleaned to remove oil, grease, grit, excess coating and other foreign matter from the joint and then painted with gasket lubricant. The ductile iron gland shall be slipped on the spigot under the pipe with the lip extension of the gland toward the socket, or bell end. The rubber gasket shall be painted with the gasket lubricant and placed on the spigot end with the thick edge towards the gland.
- (2) Bolting of joint. The entire section of pipe shall be pushed forward to seat the spigot end of the bell. The gasket shall then be pressed into place within the bell. Care shall be taken to locate the gasket evenly around the entire joint. The cast iron gland shall be moved along the pipe into position for bolting, all of the bolts inserted, and the nuts screwed finger-tight. All nuts shall be tightened with a torque limiting wrench. The torque for various sizes of bolts shall be as follows:

<b>Bolt Diameter (inches)</b>	<b>Range of Torque (foot - pounds)</b>
5/8	40 - 60
7/8	60 - 90
1	70 - 100
1 1/4	90 - 120

Nuts spaced one hundred eighty (180) degrees apart shall be tightened alternately in order to produce an equal pressure on all part of the gland. Maximum allowable deflection of mechanical joint pipe shall be as specified in AWWA C-600 or by the pipe manufacturer, whichever is less.

- (c) Jointing push-on pipe.
  - (1) Cleaning and assembly of joint. The inside of the bell or coupling and the outside of the spigot end shall be thoroughly cleaned to remove oil, grit, excess coating and other foreign matter. The circular rubber gasket shall be flexed inward and inserted in the gasket recess of the bell socket, or the coupling end of the pipe.
  - (2) A thin film of gasket lubricant shall be applied to either the inside surface of the gasket or the outside of the spigot end of the pipe or both. Gasket lubricant shall be supplied by the pipe manufacturer and submitted to the Director for review.
  - (3) The spigot end of the pipe shall be placed into the bell or coupling end, without touching the ground with the spigot end after cleaning. The joint shall then become completed by forcing the spigot end to the bottom of the socket. Pipe shall be marked with a depth mark to ensure that the spigot end is inserted to the full depth of the joint. Field-cut pipe lengths shall be marked by painting of file mark. The spigot end shall be ground or filed to resemble a manufactured pipe end. Complete assembly instructions shall be provided by the pipe manufacturer.
  - (4) Permissible deflection on push-on joint. Whenever it is desirable to deflect push-on joint pipe in order to form a long radius curve, the amount of deflection shall not exceed the maximum limits specified in AWWA C-600 or the pipe manufacturer, whichever is less.
- (d) Installation of water main appurtenances.
  - (1) Valve boxes and valve vaults. A valve box or valve vault shall be provided for every valve as specified in Section 13-112 of this Article. The valve box cover shall be installed flush with the surface of the finished pavement or embedded in an eighteen-inch square by six-inch thick concrete pad when placed in an area that is not paved, in accordance with the specifications in Section 13-112.
  - (2)

Valves shall be set and joined to pipe in the manner specified for cleaning, laying and joining ductile iron pipe. In instances where the valve is to be installed adjacent to a tee or cross-fitting, there shall be at least an eighteen-inch length of pipe, but never more than a twenty-four-inch length of pipe between the valve and the fitting. The valve shall have the interior cleaned of all foreign matter before installation. Valves shall be inspected in the open and closed positions prior to installation to ensure that all parts are in working condition.

- (e) Fire hydrants. Hydrants shall be installed as detailed in the specifications for Section 13-112.
- (f) Pipe thawing materials. The electrical connection of joint bonding wire and thaw cable to ductile iron pipe shall be by the Thermite Weld method. Joint bonds shall be eighteen (18) inches long. Wires shall be provided with formed sleeves attached with a hammer die as recommended by the welder manufacturer. Before the connection is made, the pipe shall be cleaned to bare metal by making a two-inch-by-two-inch window in the coating and then filing or grinding the pipe to produce a bright metal surface. After the connection is made, it shall be coated with a coat of cold-applied coal-tar mastic and a thermite weld cap applied as shown on the thermite weld and joint bond detail. Any damage to the pipe lining shall be repaired according to the pipe lining applicator's recommendations.

(Ord. 435 §1, 1996)

Sec. 13-154. - Testing and disinfection of water mains.

- (a) Leakage test.
  - (1) The contractor shall perform a leakage test on all newly installed sections of water main. The contractor shall provide all necessary equipment to perform the test under the observation of the Director. Equipment shall include some accurate means of measuring in gallons and tenths of gallons the amount of water pumped into the main during the test. At least twenty-four-hour notice shall be given by the contractor to the Director prior to performing the test.
  - (2) The duration of each leakage test shall be two (2) hours, during which time the pipe section shall be subjected to a constant hydrostatic test pressure of one hundred fifty (150) psig.
  - (3) Leakage shall be defined as the quantity of water that must be supplied into the newly laid water main, or any valved section thereof, to maintain the specified leakage test pressure after the air in the pipeline has been expelled and the pipeline has been filled with water. The pipe installation shall not be accepted if the leakage is greater than that determined by the following formula:

L =

$$\frac{ND}{P}$$

3700

For mechanical joints and push-on joints, "L" is the allowable leakage in gallons per hour; "N" is the number of joints in the length of pipeline tested; "D" is the nominal diameter of the pipe in inches; and "P" is the average test pressure during the leakage test, in pounds per square inch.

(4)

If any leakage test of pipe discloses leakage greater than that specified in the above formula, the contractor shall, at his or her own expense, locate and repair the defective joints or pipeline until the leakage test meets the standards set forth within these specifications. The Town shall not be responsible for any test failures that result from components of the existing water system that the contractor elects to use in these tests. The use of such components are at the contractor's risk, and the contractor shall repair any damages that result.

- (b) Disinfection of water main. Upon completion of construction of new or repaired or extensions of existing water mains, and prior to placing the water distribution system or portion thereof into operation, all waterlines, valves, hydrants and appurtenances shall be thoroughly flushed and disinfected, using a chlorine gas mixture or hypochlorite and water mixture applied in amounts sufficient to produce a dosage of fifty (50) mg/l, and in accordance with AWWA Standard Specifications C-601, as amended, and in accordance with the requirements of the Colorado Department of Health. Chlorine dosage shall be retained in the line at least twenty-four (24) hours, after which time the residual at the end of the line and at other representative points in the line shall be at least ten (10) mg/l. If the residual at the end of twenty-four (24) hours is less than ten (10) mg/l, the entire disinfection operation shall be repeated.

(Ord. 435 §1, 1996)

Sec. 13-155. - Water services.

- (a) General. Water services shall be designed and constructed in accordance with the specifications contained in Section 13-112 of this Article. The installation of water taps on the water main shall be performed by the Public Works Department personnel and shall be installed at the time of water main construction, after the main has been tested and accepted by the Director. Excavation for water main taps shall be performed by the contractor. At no time shall a contractor place water service line taps on a water main. The consultant shall provide grade stakes for both horizontal and vertical location of all service stop boxes. These grade stakes shall also locate the stop box at a point five (5) feet behind the property line. The contractor shall be responsible for bedding, backfill, compaction and maintenance of water service line trenches. Water services shall conform to the water service line and meter installation standard detail.
- (b) Connections.
- (1) Service water lines two (2) inches or smaller in diameter shall be connected to the water main by means of a bronze corporation stop of the same size as the service line. Service line pipe larger than two (2) inches in diameter shall be connected to the main by a tee connection (wet tap). No underground joints shall be allowed in the copper service pipeline between corporation stop and curb stop. Care shall be taken to properly install water service lines so that enough slack is in the service lines to protect against pullout problems. Water mains shall be tapped at a forty-five-degree angle above the horizontal center line of the water main on the same side of the pipe as the building to be served.
- (2) Tapping of water mains may require excavating bedding material and cutting or removing part of the corrosion protective polyethylene wrapping. After taps are made, the wrapping shall be repaired or replaced by the contractor installing the service line in such a manner as to protect both the service line and the water main. Service taps shall have a minimum separation of twenty-four (24) inches and be no closer than twenty-four (24) inches to a coupling. No more than four (4) service taps shall be permitted on any one (1) joint of pipe.
- (c)

Service saddles, corporation stops and curb stops.

- (1) Service saddles. Water service saddles shall be bronze casting with double silicone bronze straps, Series 183-0 as manufactured by R.H. Baker and Company; Type 323 by Smith-Blair, Inc., or an acceptable equal.
  - (2) Corporation stops. Corporation stops shall be AWWA taper thread to copper connection of pack joint and shall be a Ford Type F-600 or an acceptable equal.
  - (3) Curb stop. A curb stop or valve of the same size as the service pipe and conforming to the following standard shall be installed on every service line between the water main and the meter at a point at or near the property line. Curb stops shall be compression to compression connections and shall be Ford ball valves, B44666M (1½-inch), B44-777M (2-inch) or acceptable equal. The curb stop service box shall be a cast iron box, extension type. The curb stop box shall be installed exactly center over the curb stop valve and in a vertical position. The top lid of the curb stop box shall be installed a maximum of one (1) inch above the final grade.
- (d) Water meters and appurtenances.
- (1) Water meters shall be new, first line quality and of the positive displacement type for cold water service, with provision for frost protection, and shall be either nutating-disc or oscillating-piston type. Capacity shall be sized for thirty (30) GPM flow, be equipped with magnetic drive, hermetically sealed registers; be readily adaptable to remote cable communication, read-out assemblies design and manufactured for the brand of meter being supplied.
  - (2) The body cases of the water meter shall be all bronze construction with manufacturer's serial number appearing thereon and shall have raised markings to indicate the direction of flow and the size. All cases shall have a minimum wall thickness capable of withstanding any hydrostatic test pressure of four hundred fifty (450) psig. The outer case shall be separable from and allow removal of measuring chambers. The cases shall be of two-piece construction sealed by a tamperproof seal wire.
  - (3) The measuring chamber of the water meter shall be separate from the outer casing and so secured in the main case that the accuracy of the meter will not be affected by any distortion of the case that might occur when operating under a pressure of one hundred fifty (150) psig.
  - (4) All water meters shall be provided with strainer screens installed in the meter. Strainer screens shall be rigid and of nonferrous material, fit snugly, be easy to remove and have an effective straining area of at least double that of the main-case inlet.
  - (5) Pistons and discs in the water meters shall be smoothly finished. Disc plates, whether flat or conical, shall be either reinforced or equipped with thrust rollers. The piston and disc spindle shall be securely fastened. Pistons and discs shall be made of vulcanized hard rubber, or a suitable synthetic polymer with specific gravity approximately equal to that of water. The pistons and discs shall have sufficient dimensional stability to retain operating clearances at working temperatures of up to eight hundred (800) degrees Fahrenheit and not warp or deform when exposed to operating temperatures of one thousand (1,000) degrees Fahrenheit. Piston oscillations or disc mutations shall be within five percent (5%) of the figure recommended in AWWA Standard C-700-77 for the size of meter being supplied.
  - (6) The remote register of the water meter shall be enclosed in a freeze-proof, tamper-resistant enclosure, permit setting or resetting of the register, display a minimum register indication of one hundred (100) U.S. gallons on the first wheel and a minimum allowable capacity register of ten million (10,000,000) gallons, display the

manufacturer's serial number on the dial plate or register enclosure cover, have odometer register numerals not less than three-sixteenths (3/16) inch in height, register not less than ninety-eight and one-half percent (98.5%) and not more than one hundred one and one-half percent (101.5%) of the water actually passed through the meter at any flow rate.

- (7) The water meter shall produce a low voltage current impulse transmitted via conductor to a remote totalizing register without any source of external power, and activate an electromechanical totalizing register at any location not to exceed five hundred (500) feet from the meter via No. 19 copper wire or larger.

(Ord. 435 §1, 1996)

Secs. 13-156—13-170. - Reserved.

## Division 5 - Standards and Specifications for Sanitary Sewer Construction

Sec. 13-171. - General.

Furnishing and installation of all sanitary sewer lines, manholes, sanitary sewer services and all other related appurtenances or work within the Town or for future connection to the Town sanitary sewer system shall be performed according to these specifications and those specifications detailed in Section 13-113 of this Article. Excavation, bedding and backfill of trenches of sanitary sewers shall comply with the requirements detailed in the general specifications for both water main and sanitary sewer construction section. Work covered by this specification shall not be accepted until specified testing and backfilling connected with the work has been satisfactorily completed. Any section of sanitary sewer that is found to be defective in tests, materials, alignment, grade or jointing prior to final acceptance shall be corrected to the satisfaction of the Director.

(Ord. 435 §1, 1996)

Sec. 13-172. - Materials.

- (a) General. Materials to be incorporated in the construction of sanitary sewers shall conform to the requirements specified in Section 13-113 of this Article.
- (b) Materials handling and storage. All pipeline, fittings and accessories shall be loaded and unloaded or otherwise handled in such a manner to minimize the possibility of damage. All materials shall be stored at the construction site in such a way as to prevent damage and to assure cleanliness.
- (c) PVC pipe. Refer to Section 13-113 of these specifications for ASTM designation for PVC pipe and appurtenances.
  - (1) Tests. All PVC pipe shall be subject to all tests conducted in accordance with Standard Method of Test for External Loading Properties of Plastic Pipe by Parallel-Plate Loading, ASTM Designation D2412, as amended.
  - (2) Straightness. Maximum allowable ordinate as measured from the concave side of the pipe shall not exceed one-sixteenth ( $^1/16$ ) inch per foot of length. Pipe lengths shall be limited to twenty-foot maximum to insure compliance with this requirement.
  - (3)

Internal diameter. Pipe shall be so constructed that the initial internal vertical diameter does not decrease by more than five percent (5%) in order to provide the complete hydraulic carrying capacity conceived by the consultant.

- (4) Field testing. In addition to the construction and testing procedures outlined in other sections of these specifications, the contractor shall be required to install the pipe in such a manner so that the maximum ring deflection of the pipeline under load shall be limited to five percent (5%) (plus manufacturing tolerances) of the vertical internal pipe diameter. The contractor shall be required to pull a five-percent go no go gage through the pipe after completion of backfill operations, for all sections of pipe designated by the Director. The Director shall determine the footage to be tested, but in no case shall the test section be less than four hundred (400) feet or between manholes, whichever is less. Testing shall be performed at the expense of the contractor. All pipe exceeding the five-percent deflection shall be considered to have reached the limit of its serviceability and shall be relaid or replaced prior to final acceptance at the expense of the contractor.
- (5) Connection to manholes. Rubber gasket-type manhole water stops with integral steel tightening band shall be used on all PVC pipe at entrances and exits to manholes when precast manhole bases are used.
- (d) Ductile iron pipe. Ductile iron pipe and appurtenances shall conform to the specifications contained in Section 13-113.
- (e) Underdrain pipe (if required). The following materials may be used for underdrain pipe, if required:
  - (1) Extra-strength nonreinforced concrete conforming with ASTM C-14, nonperforated, with rubber joint construction conforming with ASTM C443 rubber gasket joint construction and installed without the gasket.
  - (2) Perforated PVC conforming to the requirements of ASTM D-3034-73a, as amended.
  - (3) Perforated PVC conforming to the requirements of ASTM 2729, as amended.
- (f) Manholes.
  - (1) General. Manhole materials shall conform to the specifications contained in Section 13-113 and the manhole standard details. Concrete used in precast manhole sections and cast-in-place bases shall have a twenty-eight-day compressive strength of three thousand (3,000) psi.
  - (2) Manhole steps. Manhole steps shall be aluminum or copolymer polypropylene coated steel and shall be cast into the concrete manhole wall at the same time the manhole section is cast. Manhole steps shall be no more than eighteen (18) inches from the rim elevation of the manhole nor more than eighteen (18) inches from the bench of the manhole. Aluminum steps shall be drop-front design with a minimum tread width of nine (9) inches.
  - (3) Manhole frame and cover. Manhole covers shall have the word sewer clearly cast in its surface.
- (g) Connection fittings between dissimilar sanitary sewer pipe. All connections between dissimilar sewer main or sewer service pipe shall be acceptable to the Director. In general, such connection shall be made only with compression-gasketed slip joint adaptors made specifically for joining the two dissimilar types of pipe together. External-type rubber couplings with external clamps shall only be used in special conditions with the acceptance of the Director. The external clamps shall be stainless steel. All compression joints for existing vitrified clay pipe shall meet ASTM C-425, as amended.

(Ord. 435 §1, 1996)

- (a) General. Sanitary sewer pipeline shall be laid in trenches prepared in accordance with the general specifications for both water main and sanitary sewer construction section. The laying of sanitary sewer pipe shall commence at the lowest point and proceed upgrade so that the pipe is laid with the bell ends facing in the direction of laying. The pipe shall be placed in such a manner that the specified bedding provides a solid, unyielding, uniform bearing surface for the full length of the barrel. The laying of pipe shall terminate at manholes except for single-length stubouts from manholes. Bell holes shall be provided at all joints. Equipment used in handling and jointing the pipe shall have adequate capacity to handle the proper closure of joints. All pipes shall be carefully centered, so that when joined together they shall form a conduit with a smooth, uniform invert. The pipe shall be laid accurately to the grade and alignment specified on the accepted construction drawings. Blocking or wedging of the pipe to achieve proper positioning in grade shall not be permitted, except where required for the proper construction of concrete cradles or encasement. At times when pipe laying is not in progress, the open ends of the pipeline shall be closed by a watertight plug or cap. If water is encountered in the trench, the plug shall remain in place until the trench is pumped completely dry. The grade shall be accurately established for each joint by laser beam. The laser beam shall be checked with a level each time it is moved, each day before construction proceeds, and thereafter as required to assure that the laser beam is set to the correct alignment. All pipe shall be protected during handling against impact shocks and free fall. No pipe section shall be placed in the sewer line if it has been damaged while lowering into the trench.
- (b) Joints. The method of joining ductile iron or PVC sanitary sewer pipe in the trench shall be in accordance with specifications of the pipe manufacturer and to the satisfaction of the Director.
- (c) Manhole construction.
  - (1) Manholes shall be constructed at the locations and to the elevations indicated on the accepted construction drawings. Manholes shall be constructed to vertical plumb so as to form a circle in a horizontal plane. The internal diameter of four-foot manhole barrels shall be maintained to a distance of not more than four (4) feet below finished grade. From that point, the manhole barrel shall be tapered to the twenty-four-inch internal diameter for four-foot diameter manholes as shown on the standard manhole drawing. The manhole barrel shall be watertight at all joints. Precast concrete adjustment rings shall be used on top of the cone to support and adjust the manhole frame to the required final grade. The cone section shall not extend closer than eight (8) inches to, nor more than sixteen (16) inches from, the top of the manhole ring. Maximum depth of adjustment rings shall be such that there are no more than eighteen (18) inches between steps.
  - (2) The horizontal joints between precast concrete manhole sections shall be plastered and troweled smooth, inside and outside, with Portland cement mortar. The mortar shall not be less than five-eights ( $\frac{5}{8}$ ) inch in thickness over the joint and shall extend at least four (4) inches either side of the joint. The joint between the manhole base and the lowest precast section shall be grouted, inside and outside.
  - (3) Sealants. The contractor shall have the option of using preformed flexible plastic joint sealing compound in lieu of mortar for the horizontal joints between precast concrete manhole sections. The flexible plastic joint sealing gaskets shall be an acceptable equal to RAM-NEK or RUB-R-NEK as manufactured by K.T. Schneider Company, Inc., of Houston, Texas.
- (4)

The bottom of all manholes shall be smoothly shaped to conform to the pipe, as shown on the Standard Detail so as to allow a free, uninterrupted flow of sanitary sewage. Changes in direction of flow through the manhole shall be made with a smooth curve channel having as large a radius as possible. The change in size of channel shall be made gradually and evenly and shall be formed directly in the concrete. The flow channel through the manhole base shall be made to conform in shape, slope and smoothness to maintain the same velocity as that in the sewers. The floor of the manhole outside of the channel shall be finished to brush surface and shall slope to the channel. The top elevation of the manhole base shall not be less than eight (8) inches under the lowest pipe invert entering the manhole.

- (5) The sanitary sewer pipe shall be laid continuously through manholes wherever grade and alignment permit.  
After the manholes are constructed, the upper half of the pipe shall be cut out and bottom finished.
  - (6) All manhole concrete work shall be protected from freezing.
  - (7) Manhole exteriors shall be supplemented by a waterproof coal-tar epoxy coating where the Director determines unfavorable groundwater conditions prevail.
  - (8) All PVC piping shall have a manhole water stop gasket firmly attached to the pipe prior to grouting into the manhole. The opening in the manhole wall where a pipe enters or leaves shall be mortared shut and patched both inside and out with nonshrink mortar.
- (d) Connections to existing manholes. Sanitary sewer pipe connections to existing manholes, where there is no existing pipe stubbed out, shall be performed in such a manner that the finished work shall conform as nearly as practicable to the requirements specified for new manholes. The contractor shall break out as small an opening in the existing manhole as necessary to insert the new sewer pipe. The existing concrete foundation bench shall be chipped to the cross-section of the new pipe in order to form a smooth continuous invert similar to what would be formed in a new concrete base. Cement grout shall be used as necessary to smoothly finish the new invert and to seal the new line to insure that the junction is water tight.
- (e) Drop manholes. Construction of outside drop manholes shall be in accordance with the design criteria for sanitary sewers and with the standard detail for drop manholes.

(Ord. 435 §1, 1996)

Sec. 13-174. - Testing of sanitary sewer construction.

- (a) Compaction testing. Testing of backfill compaction for sanitary sewer line and manhole installation shall be in accordance with the specifications for backfilling and compaction of backfill as specified in the general specifications for both water main and sanitary sewer construction.
- (b) Sanitary sewer pipeline leakage and infiltration testing.
  - (1) General. At the option of the Director, each section of sanitary sewer between two (2) successive manholes shall be tested for leakage and/or infiltration. These tests shall be performed subsequent to acceptance of backfill compaction test results by the Director. Even though a section of sanitary sewer may have previously passed the leakage or infiltration test, each section of sewer may be tested subsequent to the last backfill compaction operation in connection therewith, wherein the opinion of the Director, heavy compaction equipment or any of the operations of the contractor or others may have damaged or affected the required watertight integrity of the pipe, structure or appurtenances. The contractor shall furnish all materials required for the tests. Tests shall be made in the presence of the leakage and infiltration Director. If the leakage and/or

infiltration rate as shown by the tests specified herein is greater than the amount specified within this section, the pipe joints shall be repaired, or if necessary, the pipe shall be removed and relaid by the contractor. The sanitary sewer shall not be considered acceptable until the leakage and/or infiltration rate, as determined by testing, is less than that allowable. The contractor may at his or her option air-test or water-test for leakage except where:

- a. In the opinion of the Director, excessive groundwater is encountered, then the infiltration test shall be performed; or
- b. Where the difference in elevation between the invert of the upper manhole and the invert of the lower manhole is more than ten (10) feet, then the air test shall be made.

(2) Leakage testing.

- a. Water test. Each section of sanitary sewer between two (2) successive manholes shall be tested by closing the lower end of the sewer to be tested and the inlet sewer of the upper manhole with plugs or stoppers and filling the pipe and manhole with water to a point four (4) feet above the invert of the open sewer in the upper manhole or to a height of ten (10) feet above the invert of the sewer in the lower manhole, whichever gives the least hydrostatic pressure on the lower manhole. The total leakage shall be the decrease in volume in water in the upper manhole. The leakage shall not exceed twenty-three hundredths (0.23) gallon per hour per inch of nominal diameter of sanitary sewer pipe per one hundred (100) feet of sewer pipe being tested. The length of service connections shall not be used when computing the length of sewer main being tested. The leakage limits shall exclude exfiltration of manholes. If the leakage is shown by the water leakage test as greater than allowed, the pipe shall be overhauled and, if necessary, replaced and relaid until joints and pipes shall hold satisfactorily under this test. All tests shall be completed before street or trench is resurfaced. The contractor shall furnish all labor and materials for making the tests required. If components of the existing sanitary sewer system are used for these tests, the Town shall not be responsible for problems encountered in testing of these components. The contractor assumes all risks and shall be responsible for repair of damages incurred to such existing components.
- b. Air test procedure. Each section of sanitary sewer between two successive manholes shall be tested by plugging all pipe outlets with suitable test plugs. Air shall be slowly added until the internal pressure is raised to four (4) psig. The compressor used to add air to the pipe shall have a blow-off valve set at five (5) psig to assure that at no time the internal pressure in the pipe exceeds five (5) psig. The internal pressure of four (4) psig shall be maintained for at least two (2) minutes to allow the earth temperature to stabilize, after which the air supply shall be disconnected and the pressure allowed to decrease to three and one-half (3.5) psig. The time in minutes that is required for the internal air pressure to drop from three and one-half (3.5) psig to two and one-half (2.5) psig shall be measured and the results compared with the values listed in the following table:

<b>Pipe Diameter (inches)</b>	<b>Test Time (minutes)</b>	<b>Minimum Distance Between Manholes (feet)</b>
8	4	340

10	5	260
12	6	230
15	7	170
<u>18</u>	<u>9</u>	<u>150</u>

The above tabulated value shall be used for the respective diameter pipes except where the distance between successive manholes is less than the above tabulated values, in which case the following formula shall be used to determine the test time:

$$T = 0.000183 d^2 L$$

T = test time, in minutes;

d = inside diameter of pipe, in inches;

L = distance between successive manholes in feet.

If the pressure drop from three and one-half (3.5) psig to two and one-half (2.5) psig occurs in less time than the above tabulated or calculated values, the pipe shall be overhauled and, if necessary, replaced and relaid until the joints and pipe shall hold satisfactorily under this test.

An air pressure correction is necessary when the prevailing groundwater is above the sewer line being tested. Under this condition, the air test pressure shall be increased four hundred thirty-three thousandths (0.433) psig for each foot the groundwater level is above the invert of the pipe. If the prevailing groundwater is more than two (2) feet above the invert of the pipe, the infiltration test shall be used. Thus, internal air pressure should never exceed five (5) psig. If components of the existing sanitary sewer system are used for the test, the Town is not responsible for problems encountered in testing of these components. The contractor assumes all risks and shall be responsible for repair of damages incurred to such existing components.

- (3) Infiltration testing. If, in the construction of a section of the sanitary sewer between manholes, excessive groundwater is encountered, the test for leakage shall not be used, but instead, the end of the sewer at the upper manhole shall be closed sufficiently to prevent the entrance of water and pumping of groundwater shall be discontinued for at least three (3) days, after which the section of sanitary sewer lines shall be tested for infiltration. The infiltration shall not exceed sixteen-hundredths (0.16) gallons per hour, per inch of diameter, per one hundred (100) feet of sanitary sewer line being tested or as indicated in the following table, where the computed length does not include the length of sewer service laterals entering that section of line. Where any infiltration in excess of this amount is discovered before completion and acceptance of the sewer, the sewer shall be immediately uncovered and repair or modifications shall be made as required to reduce the amount of infiltration to a quantity within the specified amount of infiltration before the sewer is accepted, at the expense of the contractor. Should, however, the infiltration be less than the specified amount, the contractor shall stop

any individual leaks that may be observed when directed to do so by the Director. The contractor shall furnish all labor and materials for making the tests required. All tests shall be completed before the street or trench is resurfaced. If components of the existing sanitary sewer system are used for these tests, the Town is not responsible for problems encountered in testing of these components. The contractor assumes all risks and shall be responsible for repair of damages incurred to such existing components.

#### **Allowable Limits of Infiltration**

(200 gallon/inch diameter/mile/day or 0.16 gallon/inch diameter/100 feet/hour)

<b>Diameter of Sewer (inches)</b>	<b>Infiltration Gallons/ Hour/100 Feet (gallons)</b>
8	1.3
10	1.6
12	1.9
15	2.4
<u>18</u>	2.8

- (c) Manhole leakage test. Manholes shall be tested for leakage separately from the sanitary sewer pipe. The sewer pipes entering the manhole shall be plugged. If the groundwater table is below the invert of the manhole, the manhole shall be filled with water to a depth of five (5) feet above the invert. If the groundwater table is above the invert of the manhole, the manhole shall be filled to a level at least three (3) feet above the groundwater table or to the top of the uppermost precast manhole section, whichever is less, but not less than five (5) feet above the manhole invert. After soaking for one (1) hour, the manhole shall be filled to the original level. It shall then be tested for two (2) hours. The allowable drop of water shall be one-fourth ( $\frac{1}{4}$ ) inch. No manhole shall be accepted that has any visible infiltration when empty. At least twenty percent (20%) of all manholes shall be tested. Based upon these tests and visual inspection of all manholes, additional tests may be required for other manholes. Any manhole testing unsatisfactorily shall be repaired and retested until satisfactory results are obtained.
- (d) Tests for alignment and grade, and damaged or defective pipe in place. After the sanitary sewer pipe has been installed, tested for leakage, backfilled and manhole raised to grade, the Director will lamp or television (TV) inspect all lines. All defective portions of the new sanitary sewer facilities will be noted to the contractor after the lamping or TV operation is complete. All lines shall be flushed and manholes cleaned by the contractor prior to the lamping or TV procedure. At the request of the Director, the line shall be balled to remove dirt, rocks or other foreign matter not removed during the flushing operation. No flushed water or material shall be discharged to existing sewer lines. In case there is still some question as to the condition of the sanitary sewer line, the Director may require that pictures be taken of the interior of that portion of the sewer line under question. After pictures

have been interpreted by the Director, should the sewer line be interpreted to be defective, the cost of taking the pictures shall be borne by the contractor. Should the sewer line be interpreted as being acceptable, the cost of taking the pictures shall be borne by the Town. All pictures shall become the property of the Town after interpretation. Final acceptance of the sanitary sewer lines and related facilities shall not be granted until all tests are successful and all items listed for correction by the Director have been accomplished by the contractor.

(Ord. 435 §1, 1996)

Sec. 13-175. - Sanitary sewer service lines.

- (a) Location and connections. Sanitary sewer service lines shall be constructed in accordance with the specifications contained in Section 13-113 of this Article. Sanitary sewer lines which are designed for residential subdivisions shall have tees included in the main for service lines. The tees are to be located at approximately the middle of the lot to be served. The service lines are to be constructed in conjunction with the sanitary sewer mains and are to be installed to a point six (6) feet inside the property line and plugged. The sanitary sewer service line shall be laid not less than the minimum grade as required by the International Plumbing Code. Service lines shall enter the main at an angle of ninety (90) degrees or less to the main upstream of the connection, as shown in the Service Wye Detail. No sewer service line shall enter the main against the flow in the main. In the event that there is a need for additional service line connections once the sewer main has been installed, or a need to tap into an existing main, such service line connections shall be performed by the Town and the cost billed to the contractor. The contractor shall coordinate said connections with the Director.
- (b) Separation. Sanitary sewer service lines shall be located at least ten (10) feet measured horizontally from all water service lines.
- (c) Staking of location. The consultant or contractor shall place a grade stake locating each sewer service before it is installed. Both the tee and the end of the service shall be so staked. Where all taps are made, the contractor shall keep accurate records of service connections including location, elevation of the service at the property line and type of connection provided. Service connections shall be located with respect to the survey line stationing and/or house corners or lot corners, where services lines are not being connected immediately after installation of the tap to the main. The contractor shall furnish and set two (2) marker posts. One (1) marker post shall be buried a minimum of three (3) feet, shall extend a minimum of two (2) feet above the ground surface and shall have a piece of green flagging at the top or be painted green. The second marker shall extend from the end of the stubbed service line to eighteen (18) inches below the existing surface. The marker posts shall be wood 2 x 4's, 4 x 4's or No. 4 rebar.
- (d) Notification. If the sanitary sewer service of any existing customer may be affected by a service connection or reconnection to a new or existing sewer, the existing customer shall be given a twenty-four-hour notice by the contractor stating when and for how long service may be interrupted.

(Ord. 435 §1, 1996)

Secs. 13-176—13-190. - Reserved.

Sec. 13-191. - Scope.

Where, in any specific case, different requirements are specified by the International Building Code, other codes or regulations adopted by the Town or the provisions of this Article, the more restrictive shall govern.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-192. - Definitions.

Unless the context specifically indicates otherwise, the following terms, as used in this Article, shall have the meanings hereinafter designated:

*Approved backflow prevention device* means a device accepted and approved by the Director of Public Works as suitable for protection against cross-connections as contained in this Article.

*Auxiliary water supply* means any water supply on or available to a customer or user's premises other than the utilities' water supply system.

*Backflow* means the flow of water or other liquids, fluids, mixtures, gases or any other substance into the distribution main, water supply system, any user's potable water system or any service line from any source other than its intended source.

*Backflow prevention device* means any approved backflow prevention device or any device intended to prevent backflow or protect against cross-connections.

*Certified cross-connection control technician* means a person who has received training in the testing, operation and maintenance of cross-connection containment devices. Such person must be certified by the Colorado Department of Public Health and Environment and approved by the Director of Public Works.

*Colorado Cross-Connection Control Manual* means the most current edition of the Colorado Cross-Connection Control Manual published by the Colorado Department of Public Health and Environment.

*Colorado Primary Drinking Water Regulations* means any regulations promulgated by the State or any agency thereof to assure the safety of public drinking water supplies and to enable the State to assume responsibility for enforcing the standards established by the Federal Safe Drinking Water Act (Public Law 93-523), as amended.

*Cross-connection* means any unprotected actual or potential connection or structural arrangement between the water supply system or a user's potable water system or service line and any other source or system through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas or substance not meeting the current Colorado Primary Drinking Water Regulations, as such regulations exist now or may hereafter be amended. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur are considered to be cross-connections.

*Cross-connection control service standards and specifications* means The Colorado Cross-Connection Control Manual, as amended by the Director of Public Works.

*User's potable water system* means any water supply located on the user's premises, whether supplied by the utilities' water supply system or an auxiliary water supply.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-193. - Unlawful acts.

- (a) It shall be unlawful for any person to pollute or contaminate any service line, user's potable water system or the water supply system with any water or other liquids, fluids, mixtures, gases or any other substance not meeting the Colorado Primary Drinking Water Regulations.
- (b) It shall be unlawful for any person to make, install, maintain or permit to exist any cross-connection, unless it is protected by an approved backflow prevention device meeting the requirements of the cross-connection control service standards and specifications.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-194. - Plan approval.

All drawings, plans, specifications and other documents required by Section 13-51 of this Chapter shall be submitted to and approved by the Director of Public Works prior to connecting a service line to the water supply system. Such information must include, but may not be limited to, the following:

- (1) Water service type, size, location and related appurtenances;
- (2) Meter type, size and location;
- (3) Backflow prevention assembly type, size and location; and
- (4) Fire sprinkler systems service line, type, size and location of backflow prevention assembly.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-195. - Installation.

All approved backflow prevention devices shall be installed at the user's expense in accordance with the cross-connection control service standards and specifications.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-196. - Inspection.

All backflow prevention device installations shall be inspected for compliance with this Article and approved by the Director of Public Works prior to the furnishing of water service. The Town shall not be subjected to any liability for any deficiency or defect which is not discovered by inspection, nor shall the owner, developer, customer or user of such premises be absolved from any liability for such deficiency or defect and any responsibility to correct such deficiency or defect.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-197. - Admission to property.

Whenever it shall be necessary for the purposes of this Article, the Director of Public Works has the power, upon the presentation of proper credentials, to enter and inspect at any reasonable time and in any reasonable manner any property, premises or place for the purpose of investigating any actual, suspected or potential cross-connection, ascertaining noncompliance with this Article or assuring proper installation and operation of any backflow prevention device. Any such entry shall be at reasonable times unless an emergency situation exists. The occupant of such property or premises shall render all proper assistance in such activities. If entry or inspection to any property is denied or not promptly consented to, or at any other time to investigate sources of contamination impacting the water supply system, the Director of Public Works is empowered to obtain, from any court with jurisdiction, a warrant to enter and inspect any such property, premises or place.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-198. - Requirements.

- (a) Without limitation, and in addition to the general requirements of this Article, any commercial user desiring to connect a service line to the water supply system after April 1, 2005, shall install an approved backflow prevention device on each service line, at the user's expense, within a user's potable water system, immediately following the meter and, in all cases, before the first branch line leading off the service line.
- (b) Without limitation, and in addition to the general requirements of this Article, any new or existing commercial or residential user connected to or desiring to connect a service line to the water supply system after April 1, 2005, shall install an approved backflow prevention device on each service line, at the user's expense, within a user's potable water system, immediately following the meter and, in all cases, before the first branch line leading off the service line wherever the following conditions exist:
  - (1) In the case of a premises with an auxiliary water supply, such as a well or independent water tank, which presents cross-connection hazards, the water supply system shall be protected by installing an approved backflow prevention device in the service line appropriate to the degree of hazard found within the user's premises.
  - (2) In the case of premises on which any industrial fluids or any other objectionable substance is handled in such a fashion as to create a cross-connection, the water supply system and the user's potable water system shall be protected by installing an approved backflow prevention device in the service line appropriate to the degree of hazard found within the user's premises.
  - (3) In the case of premises having internal cross-connections that cannot be permanently corrected and controlled or having intricate plumbing and piping arrangements, or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impractical or impossible to ascertain whether or not cross-connections exist, the water supply system shall be protected by installing an approved backflow prevention device in the service line appropriate to the degree of hazard found within the user's premises.
  - (4) In the case of premises where there is a fire protection system that is connected to the Town's water supply, an approved backflow prevention device shall be installed in accordance with the cross-connection control service standards and specifications.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-199. - Management plan.

The Director of Public Works may require any user to submit a cross-connection control management plan. The management plan shall be approved by the Director of Public Works and must include, but shall not be limited to, information on all backflow prevention devices, testing frequencies and a hazard assessment and identification.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-200. - Testing.

Any user at any premises where a backflow prevention device is required by this Article shall have operational tests made upon installation and at least annually after installation. Such tests shall be performed, at the user's expense, by a certified cross-connection control technician and shall be performed in accordance with the procedures identified in the cross-connection control service standards and specifications. In those instances where the Director of Public Works deems a hazard to be great enough, such tests may be required at more frequent intervals.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-201. - Maintenance and replacement of backflow prevention devices.

All backflow prevention devices shall be repaired or replaced at the expense of the user whenever the device is found to be defective by the user, a certified cross-connection control technician or the Director of Public Works. All backflow prevention devices not meeting the requirements of this Article shall be replaced at the user's expense. Any such backflow prevention device shall be repaired or replaced within ten (10) days of discovery by the user, a certified cross-connection control technician or the Director of Public Works, unless arrangements satisfactory to the Director of Public Works are made.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-202. - Recordkeeping.

Records of all test, inspections, repairs and replacements of backflow prevention devices shall be kept by the user, the certified cross-connection control technician and the Director of Public Works for a period of three (3) years after such tests, inspections, repairs and replacements. The certified cross-connection control technician shall submit to the Director of Public Works a copy of all such tests, inspections, repairs and replacements on forms provided by the Director of Public Works. If requested by the Director of Public Works, the user or certified cross-connection control technician shall immediately provide copies of such tests, inspections, repairs and replacements.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-203. - Hazard identification.

The Director of Public Works may conduct surveys of water supply system users to identify potentially hazardous service connections or cross-connections. Surveys may consist of written instruments, verbal interviews or physical inspections. Water supply system users shall complete such survey and otherwise cooperate in the identification of potentially hazardous service connections or cross-connections according to terms and conditions prescribed by the Director of Public Works.

Whenever a user fails to complete a hazard identification survey in accordance with this Section, the water supply system shall be protected, at the user's expense, by the most protective approved backflow prevention device provided for in the cross-connection control service standards and specifications, regardless of the actual hazard present.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-204. - Enforcement; remedies.

It is the purpose of this Section to provide additional and cumulative remedies. The Director of Public Works may use the following remedies either individually, sequentially or in any order:

- (1) Whenever the Director of Public Works finds that any user has violated or is violating this Article, the Director of Public Works may take any action authorized in this Article or elsewhere in this Chapter.
- (2) Any person who has violated or is violating this Article may be subject to the penalties provided for in this Article or elsewhere in this Chapter. No person shall be subjected to such penalties until and unless that person fails to comply with an emergency suspension order.
- (3) Imminent hazard order. The Director of Public Works may issue an imminent hazard order when he or she reasonably concludes that any of the following circumstances exist:
  - a. Any use of or connection to the Town's water supply system has been made, or appears imminent to be made, in violation of the provisions of this Article;
  - b. Violation of any provision of this Article has occurred or appears imminent to occur;
  - c. Any discharge of wastewater, industrial wastes or other wastes into the wastewater treatment system contrary to the provisions of this Article; or
  - d. Any other act or condition which damages, injures or threatens to damage or injure the Town's water system or wastewater systems.

An imminent hazard order may contain administrative fines and/or extra cost charges. Failure to comply with an imminent hazard order may be deemed an emergency circumstance justifying issuance of an emergency suspension order under Paragraph (4) below.

- (4) Emergency suspension order. The Director of Public Works may order the emergency suspension of any user's water service when such suspension is necessary in the opinion of the Director of Public Works to protect any person or the water supply system. The time at which the water service will be terminated must be specified. An emergency suspension order may contain administrative fines and/or extra-costs charges. Water service may be suspended if:
  - a. Unprotected cross-connections exist on the user's premises;
  - b. A defect is found in an installed backflow prevention device; or
  - c. A backflow prevention device has been removed or bypassed.
- (5) Extra-costs charges. The Director of Public Works may assess a charge to recover costs incurred by the utilities for monitoring, investigation and/or any quantifiable damages to the water supply system attributable to any person who is found to have violated this Article. Extra-costs charges may be assessed as part of an imminent hazard order or an emergency suspension order.

- (6) Administrative fines. Not as a criminal penalty and only as an administrative measure (civil penalty), administrative fines encourage compliance and offset unquantifiable damage to the public water supply from noncompliance, any user who is found to have violated any provision of this Article or orders issued hereunder may be assessed an amount not to exceed one thousand dollars (\$1,000.00) per violation per day. Each day on which noncompliance shall occur or continue may be deemed a separate and distinct violation. Notwithstanding the foregoing, no person shall be liable for any administrative fines for violations occurring before receipt of that person's first imminent hazard order regarding the violation.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Sec. 13-205. - Rights of appeal.

- (a) Administrative review. Any person aggrieved by an imminent hazard order of the Director of Public Works may appeal said order to the Board of Trustees, if a timely request for hearing is made within ten (10) days. The decision of the Board of Trustees shall be a final order.
- (b) Judicial review.
  - (1) Any party adversely affected by the decision of the Board of Trustees may appeal it to the District Court in and for Boulder County, Colorado, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. If the alleged violator fails to submit a timely written request for a hearing, the alleged violator has failed to exhaust administrative remedies and may not appeal to the District Court.
  - (2) Emergency suspension order. An emergency suspension order shall constitute final agency action for all purposes under this Article and applicable state statutes, rules and regulations.

(Ord. 597 §1, 2003; Ord. 648 §1, 2008)

Secs. 13-206—13-220. - Reserved.

CHAPTER 15 - Annexations

*Footnotes:*

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**Editor's note—** Ord. 834, §2, adopted Dec. 20, 2022, repealed the former Ch. 15, §§15-1—15-6, and enacted a new Ch. 15 as set out herein. The former Ch. 15 pertained to similar subject matter and derived from Ord. 435 §1, adopted 1996; Ord. 444 §1, adopted 1997; Ord. 661 §1, adopted 2008; Ord. 725 §8, adopted 2013.

ARTICLE I. - General Provisions

Secs. 15-1—15-9. - Reserved.

ARTICLE II. - Annexation Procedures

Sec. 15-10. - Purpose.

The purpose of this Chapter is to establish a procedure to bring land under the jurisdiction of the Town of Nederland in compliance with the Colorado Municipal Annexation Act of 1965, as amended ("Annexation Act") and Section 30 of Article II of the Colorado Constitution. This Chapter, in part, provides supplemental requirements for annexation pursuant to the Colorado Municipal Annexation Act of 1965, and is not to be construed as altering, modifying, eliminating or replacing any requirement set forth in the Annexation Act or the Colorado Constitution, or any requirements set forth in other portions of the Nederland Municipal Code. In the event of a conflict between the Annexation Act, the provisions of this Chapter and/or any requirements set forth in other portions of this Code, it is the expressed intent of the Board of Trustees that the most stringent provision shall control.

(Ord. 834, §2, 2022)

Sec. 15-11. - Step 1, Pre-petition conference.

The petitioner shall schedule a pre-petition conference with the Town Administrator, or designee, to discuss any special conditions pertaining to the annexation and to obtain an annexation petition. The pre-petition conference is intended to include discussions of the municipal zoning designation for the property and potential development density, access, on- and off-site development improvements.

(Ord. 834, §2, 2022)

Sec. 15-12. - Step 2, Annexation petition submittal.

The petitioner shall submit two (2) copies of the following information to the Town:

- (1) Annexation petition form.
- (2) Petition fee and fee agreement. A nonrefundable fee for Town staff time to process the petition must be paid. The petitioner is also required to pay a deposit to cover costs of processing the petition: (a) the cost of review by the Town Attorney, Town Engineer, Town Planner and any other expert whom the Town may wish to employ; (b) notice and publication expenses; and (c) a bond for the expected election expenses. Actual costs may exceed the deposit, in which case the petitioner shall be responsible for costs in excess of the deposit according to the fee agreement. The Town shall provide the petitioner with a copy of the most current fee schedule and fee agreement form.
- (3) Letter of intent and statement of community need. The petitioner shall provide a cover letter for the annexation petition that introduces the petitioner to the Board of Trustees, requests annexation of the petitioner's property, describes how the community will benefit from the proposed annexation, explains what zoning is requested and details development plans for the property, if applicable.
- (4) Completed petition for annexation to the Town of Nederland (Section 31-12-107, C.R.S.).
- (5) Four (4) copies of the annexation map (Section 31-12-107(1)(d), C.R.S.). All annexation maps shall be drafted at a scale that best conveys the detailed survey. Acceptable scales are 1" = 50', 1" = 100' or 1' = 200' (for large properties). The annexation map shall be on a reproducible medium with outer dimensions of twenty-four (24) by thirty-six (36) inches and shall contain the following information:
  - a. The date of preparation, the scale and a symbol designating true north.

- b. The name of the annexation.
  - c. The names and addresses of the petitioner and the firm or person responsible for preparing the annexation map.
  - d. The written legal description (please also provide an electronic version of the legal description in Microsoft Word format).
  - e. Vicinity map.
  - f. Section, quarter-section and other monument corners and a description of all monuments that mark the property boundaries and all control monuments.
  - g. Lot and block numbers if the area is already platted.
  - h. The purpose, width, location and ownership of all existing and proposed easements and rights-of-way.
  - i. Existing and requested zoning and acreage of each requested zone.
  - j. Ownership of all parcels within and adjacent to the annexation.
  - k. Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.
  - l. Certification blocks for the surveyor, petitioner, Planning Commission, Board of Trustees and any other certifications that the Town staff deems appropriate.
- (6) Concept plan. All concept plans shall be made with an engineer's scale, minimum scale to be one (1) inch represents one hundred (100) feet, and shall be on a reproducible medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. The concept plan shall contain the following information:
- a. The date of preparation, the scale and a symbol designating true north.
  - b. The name of the annexation.
  - c. The names, addresses and phone numbers of the petitioner and the firm or person responsible for preparing the concept plan.
  - d. The boundary of the property.
  - e. Existing and proposed easements and rights-of-way.
  - f. Block numbers and lot numbers with approximate dimensions (if known).
  - g. Location of major improvements (permanent structures) with dimensions and descriptions.
  - h. Location of existing easements.
  - i. Location and approximate acreage of proposed land uses, including open space and public sites to be dedicated.
  - j. Existing watercourses with adequate easements for flood control.
  - k. Land use table that includes land uses, approximate acreage of each land use, percentage of each land use, proposed density or floor area ratio and proposed number of dwelling units.
  - l. Significant natural or manmade features on the site, such as bluffs, trees, ditches and wetlands.
- m.

Existing topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if the land is too flat for contours) and five (5) feet if the slope is greater than ten percent (10%).

- n. Areas of potential hazard such as one-hundred-year floodplain, rockslides, subsidence or other similar hazards and mineral areas of economically feasible extraction value.
- o. Proposed zoning.
- p. Adjacent land uses.
- q. A traffic impact analysis prepared by a qualified professional, who is pre-approved by the Town. The traffic impact analysis shall include, at minimum, an evaluation of the vehicular and pedestrian traffic patterns, together with estimated trips per day, for roads within the subdivision and for all routes leading from the subdivision and connecting to highway and arterial roads.
- r. An environmental impact report prepared by a qualified professional, who is pre-approved by the Town. The environmental impact report shall, at a minimum, describe the impact of the proposed development on the environment of the Town, the area proposed for annexation, and the surrounding area, and proposals to mitigate any negative impact to the environment.

- (7) Description of soil types and their limitations.
- (8) Proof of ownership report. Such report must have an effective date less than thirty (30) days prior to the date of the submittal of the annexation petition.
- (9) Mailing lists and envelopes. The petitioner shall provide the Town Clerk with two (2) sets of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the return address and shall be addressed to the property owners within three hundred (300) feet of the property, mineral interest owners of record, mineral and oil and gas lessees for the property, and the appropriate referral agencies (including Boulder County, school districts, special districts, and irrigation ditch companies).
- (10) Description of consistency with the Comprehensive Plan. The petitioner shall provide a narrative discussing how the project relates to the goals, policies and strategies set forth in the Comprehensive Plan.
- (11) Water rights. The petitioner shall provide a water rights report for the property prepared by a qualified water engineer or water attorney detailing the water rights appurtenant to and severed from the property to be annexed and their historical use. The report must include both surface and subsurface (tributary and nontributary groundwater). At the petitioner's expense, the Town's engineers and attorneys will analyze the proposed water dedication, or cash in lieu payment. In addition, the petitioner shall provide a deed transferring all subsurface (nontributary) water rights to the Town as authorized by Article 90 of Title 37, C.R.S.
- (12) Zoning of property to be annexed. Zoning must be requested simultaneously with annexation. The petitioner must submit a completed zoning application form and a zoning map.
- (13) Current property tax statement.
- (14) Vicinity map with a radius of one and one-half (1.5) miles, at a minimum scale of one (1) inch represents two thousand (2,000) feet and at a size of eight and one-half (8.5) inches by eleven (11) inches.
- (15) School district impact. For all annexations in excess of ten (10) acres, the petitioner shall obtain from the school district governing the area to be annexed a statement of the effect of the annexation upon the school district, including an estimate of the number of students generated by the proposed annexation and the capital

construction required to educate such students.

- (16) Annexation impact report for annexations in excess of ten (10) acres (Section 31-12-108.5, C.R.S.).
  - a. The Town shall review the impact report prepared by the petitioner regarding the proposed annexation not less than twenty-five (25) days before the date of the annexation hearing. The Town Clerk must file this report within five (5) days after the report is prepared (see Step 10).
  - b. The annexation impact report shall include the following:
    1. A map of the Town and adjacent territory showing the following information:
      - i. The present and proposed boundaries of the Town in the vicinity of the proposed annexation;
      - ii. The present streets, major trunk water lines, sewer interceptors and outfalls, other utility lines and ditches and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation; and
      - iii. The existing and proposed land use pattern in the areas to be annexed.
    2. A copy of any draft or final pre-annexation agreement, if available.
    3. A statement of the Town's plans for extending or providing for municipal services within the area to be annexed.
    4. A statement of the Town's plans for the financing of municipal services to be extended into the area to be annexed and an estimate of any incremental costs to the Town for providing these services.
    5. A statement identifying all existing districts within the area to be annexed.
    6. A statement of the effect of the annexation upon the school district governing the area to be annexed, including the estimated number of students generated and the capital construction required to educate such students.
  - c. If the annexation includes a flagpole, the annexation impact report must consider the parcels that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream or other natural or artificial waterway.

- (17) Electronic copy of petition package (pdf format is acceptable, except the legal description must be a Word file).

(Ord. 834, §2, 2022)

Sec. 15-13. - Step 3, Staff certifies petition is complete.

Within a reasonable period of time, Town staff shall either confirm that the petition is complete and in compliance with all submittal requirements or reject it as incomplete and notify the petitioner of any deficiencies. If the petition is rejected, the petitioner may correct any deficiencies in the petition package and resubmit the required number of copies of the petition as specified by Town staff. If all documents are complete and accurate, Town staff shall submit the annexation petition to the Town Clerk.

(Ord. 834, §2, 2022)

Sec. 15-14. - Step 4, Annexation petition referral to the Board of Trustees.

Following confirmation from Town staff that the petition and maps meet the statutory content requirement, the Town Clerk shall communicate the submission of the annexation petition to the Board of Trustees (Sections 31-12-107(1)(f), 31-12-107(2)(d), C.R.S.).

(Ord. 834, §2, 2022)

Sec. 15-15. - Step 5, Present Substantial Compliance Resolution to the Board of Trustees.

The Board of Trustees will review the annexation petition at a regular or special meeting. If the Board of Trustees finds that the annexation petition complies with the Annexation Act, it shall adopt a resolution of substantial compliance and set the date, time and place for the eligibility public hearing to determine compliance with the review criteria (Sections 31-12-107(1)(f), (g), 31-12-107(2)(e), 31-12-108(1), C.R.S.). The hearing shall not be less than thirty (30) days nor more than sixty (60) days after the effective date of the resolution of substantial compliance (Section 31-12-108(1), C.R.S.). If the Board of Trustees finds that the petition is not in compliance with the Annexation Act, it shall make such determination by resolution and take no further action.

(Ord. 834, §2, 2022)

Sec. 15-16. - Step 6, Town Clerk publishes public notice.

At least thirty (30) days before the Board of Trustee holds the eligibility public hearing, the Town Clerk shall publish notice of the date, time and place of the eligibility public hearing. This notice must be published once a week for four (4) successive weeks in accordance with Section 31-12-108(2), C.R.S. If the property is being simultaneously zoned, the Town must publish the notice of the date, time and place of the Planning Commission hearing to consider the proposed zoning at least fifteen (15) days prior to that hearing in accordance with Section 16-253(b), Nederland Municipal Code. The Town Clerk shall also post an electronic copy of the petition package and any other pertinent information on the Town's website for public review and comment.

(Ord. 834, §2, 2022)

Sec. 15-17. - Step 7, Town provides petitioner draft annexation agreement.

At the Town's discretion, the Town will provide to the petitioner a draft annexation agreement not less than three (3) weeks prior to the eligibility public hearing before the Board of Trustees. This document outlines the responsibilities of the petitioner and the Town regarding the provision and extension of streets and utilities, the dedication of water rights and the applicability of Town regulations. The water dedication, or cash in lieu payment, must be provided to the satisfaction of the Board of Trustees and after investigation by the Town's engineers and attorneys. The annexation agreement will include a requirement that the petitioner agrees not to request a change in zoning that would allow for an increase in residential density or increase in the number or square footage of commercial or industrial buildings or uses for a period of ten (10) years following the effective date of the annexation agreement.

(Ord. 834, §2, 2022)

Sec. 15-18. - Step 8, Town Clerk refers annexation petition to the Planning Commission and sets the Planning Commission meeting.

Upon the adoption of the substantial compliance resolution and setting of the eligibility public hearing date before the Board of Trustees, the Town Clerk will set a regular or special meeting of the Planning Commission to review the annexation petition. This meeting is to be set prior to the date of the eligibility public hearing before the Board of Trustees. Section 15-24 identifies the action to be taken by the Planning Commission at this meeting.

(Ord. 834, §2, 2022)

Sec. 15-19. - Step 9, Town Clerk refers annexation petition to the county and school and special districts.

Upon the adoption of the substantial compliance resolution and setting the eligibility public hearing date before the Board of Trustees, the Town Clerk shall send copies of the published notice, the annexation petition and the resolution initiating the annexation procedure by certified mail (return receipt requested) to the Clerk of the Board of County Commissioners of Boulder County, the Boulder County Attorney, the school district and all special districts having territory within the annexed area.

(Ord. 834, §2, 2022)

Sec. 15-20. - Step 10, Town Clerk files annexation impact report.

In accordance with Section 31-12-108.5, C.R.S., the Town Clerk shall file one (1) copy of the impact report with the Board of County Commissioners governing the area proposed to be annexed at least twenty (20) days before the date of the eligibility public hearing. The preparation and filing of the annexation impact report may be waived upon approval of both the Town and the Board of County Commissioners. This step is not required if the annexation is ten (10) acres or less.

(Ord. 834, §2, 2022)

Sec. 15-21. - Step 11, Petitioner posts signs on property and provides signed affidavit to Town.

At least fourteen (14) days prior to the date of the eligibility public hearing, the petitioner shall post a sign at least thirty-six (36) by forty-eight (48) inches in size on the property notifying the public of the eligibility hearing date. The sign shall include the time and place of the eligibility public hearing and the petitioner's name. Prior to posting the sign, the petitioner shall obtain approval from the Town Clerk as to the content of the sign. The petitioner shall submit to the Town Clerk an affidavit certifying the posting of the sign on the property. The petitioner is required to periodically review the sign to confirm that it remains standing and is visible during the posting period. The petitioner shall submit to the Town Clerk a second affidavit certifying that the petitioner completed the periodic review of the sign.

(Ord. 834, §2, 2022)

Sec. 15-22. - Step 12, Town Clerk sends notices.

Upon the Board of Trustees adoption of the substantial compliance resolution and setting the eligibility hearing, the Town Clerk shall post a notice of the eligibility hearing on the Town's website. The Town Clerk shall send by first class mail a notice of the submission of the annexation petition and the date of the eligibility public hearing scheduled with the Board of Trustees to the following parties: property owners within three hundred (300) feet of the boundaries of the proposed annexation; irrigation ditch companies whose rights-of-way traverse the property to be annexed; mineral estate owners and their lessees of the property to be annexed; and the Colorado Division of Wildlife. Notice provided by the Town to the owners of the minerals estate and their lessees shall not relieve the petitioner from the responsibility of providing notice as required by Section 24-65.5-101 et seq., C.R.S. In accordance with Section 31-12-105, C.R.S., in the case of annexation, the Town Clerk shall also provide by regular mail to reflected in the records of the County Assessor written notice landowner's right to petition for annexation pursuant to Section 31-12-107, C.R.S.

(Ord. 834, §2, 2022)

Sec. 15-23. - Step 13, Staff report.

The Town staff will review the petition materials and the comments received from interested parties and prepare a report in advance of the Planning Commission meeting on the annexation petition. The staff report will explain the plan for development and the requested zoning. The staff report will also address how the proposed annexation is or is not consistent with the comprehensive plan. The staff report will consider the compatibility of the current condition of the property and the proposed development of the property with the Town's Zoning Code.

(Ord. 834, §2, 2022)

Sec. 15-24. - Step 14, Planning Commission review and make a recommendation.

- (a) The Planning Commission shall consider the annexation petition at a regular or special meeting to be held prior to the date of the eligibility public hearing before the Board of Trustees.
- (b) Zoning of the annexed property must be completed no later than ninety (90) days after the effective date of the annexation ordinance, Section 31-12-115(2), C.R.S. The Planning Commission may hold a public hearing on the zoning of the property at the same meeting that it reviews the annexation petition.
- (c) The Planning Commission shall, by resolution, recommend approval of the petition for annexation with or without modifications and/or conditions, or recommend denial. If a zoning ordinance on the property is before the Planning Commission at the same meeting, the Planning Commission is to make recommendation on the zoning ordinance. The failure of the Planning Commission to provide a recommendation within seven (7) days of the Planning Commission meeting shall be deemed an unconditional recommendation of approval of the annexation and/or the zoning ordinance.

(Ord. 834, §2, 2022)

Sec. 15-25. - Step 15, Staff report update.

The petitioner may revise the annexation and zoning petition package as necessary following the Planning Commission meeting. The Town staff will review any changes to the petition and update the staff report prepared in Step 13 above to incorporate any changes to the petition and the Planning Commission's recommendation for the Board of Trustees. The petitioner is not permitted to make changes to the petition or the map at this point in time as those are already approved by the substantial compliance resolution.

(Ord. 834, §2, 2022)

Sec. 15-26. - Step 16, Board of Trustees eligibility public hearing and action.

- (a) Upon the submission of documentation in accordance with this Chapter and upon compliance with the notice and hearing requirements as set forth in the Annexation Act and Section 30 of Article II of the Colorado Constitution, the Board of Trustees may consider the approval of an ordinance annexing the subject property to the Town at the eligibility public hearing.
- (b) In accordance with Section 31-12-110, C.R.S., upon completion of the eligibility public hearing, which must be recorded, the Board of Trustees shall set forth its findings of fact and its conclusion based on:
  - (1) The compliance of the proposed annexation with all applicable annexation review criteria as set forth in Section 15-29 of this Chapter.
  - (2) Whether an election is required under Section 31-12-107(2), C.R.S., and/or Section 15-28 of this Chapter.
- (c) The Board of Trustees shall also determine whether additional terms and conditions are to be imposed.
- (d) If the Board of Trustees, in its sole discretion, finds that the annexation is not in the best interest of the Town, it may deny the petition by resolution stating the grounds for such denial. In the event the Board of Trustees considers and disapproves such annexation, no similar request may be heard for a period of one (1) year from the date of denial. The Town Administrator shall determine whether a new petition is similar.
- (e) The Board of Trustees may continue the hearing to a future specified date, time, and place in accordance with Section 31-12-108(3), C.R.S.

(Ord. 834, §2, 2022)

Sec. 15-27. - Step 17, Special process for signed petition referring annexation ordinance to an election.

It is in the intent of the Board of Trustees to allow the registered electors of the Town the opportunity to vote on an approved annexation ordinance. The Board of Trustees provides this special procedure to require the Board of Trustees to refer an annexation ordinance to a special election.

- (1) Following the Board of Trustee's adoption of an annexation ordinance in Step 6, the Board of Trustees will direct the Town Clerk to make available a petition for special annexation election and to publish on the Town website the availability of the petition for special annexation election within five (5) days of the Board of Trustee's vote on the annexation ordinance.
- (2) The petition for special annexation election shall be signed by at least thirty (30) registered electors of the Town of Nederland and submitted to the Town Clerk within thirty (30) days after the publication of the annexation ordinance.

- (3) If the Town Clerk receives a petition for special annexation election with the required number of signatures, the ordinance shall not take effect and the Board of Trustees shall refer the annexation ordinance to a special election and set the date for a special election for not less than sixty (60) and not more than ninety (90) days after the final determination of petition sufficiency, unless otherwise required by the state constitution. The annexation ordinance shall not take effect unless a majority of the registered electors voting on the measure at the election vote in favor of the annexation ordinance.
- (4) The petitioner for an annexation ordinance that is subject to an election pursuant to this Section shall pay the reasonable costs and expenses incurred by the Town in the calling, the preparation, and the conducting of the election. At the time of submission of a petition for an annexation that may be subject to an election in accordance with this Section, the petitioner shall deliver to the Town an adequate bond, in an amount determined by the Town Clerk, to secure the petitioner's full payment of the Town's costs and expenses associated with the election.

If the election on the annexation ordinance includes other ballot issues or questions, the petitioner for annexation shall pay a share of the election costs proportionate to the number of ballot issues or questions. In the event that the bond deposited by the petitioner exceeds the Town's actual costs and expenses of the election, the Town shall promptly refund any remaining deposited funds to the petitioner following a final accounting by the Town Clerk of the costs and expenses of the election.

- (5) All elections held pursuant to this Section shall be conducted in accordance with the applicable statutory provisions governing the Board of Trustees' submission of referred municipal ordinances to the registered electors of the Town. The date of any election required by this Section shall be subject to the discretion of the Board of Trustees.

(Ord. 834, §2, 2022)

#### Sec. 15-28. - Election for petitions for annexation election.

If the Board of Trustees determines that the annexation petition meets the requirements of Section 31-12-107(2) and Section 30(1)(a) of Article II of the Colorado Constitution, an election shall be called to determine whether a majority of the landowners and the registered electors in the area proposed to be annexed approve such annexation. Such election must be conducted pursuant to Section 31-12-112, C.R.S.

(Ord. 834, §2, 2022)

#### Sec. 15-29. - Annexation review criteria.

It shall be the general policy of the Board of Trustees with respect to annexations and the consideration of annexation petitions that:

- (1) Annexation is a legislative and discretionary act. With the exception of an initiated petition for the annexation of an enclave, the Board of Trustees shall exercise its sole discretion in the annexation of territory to the Town.
- (2) The property is eligible for annexation if the requirements of Sections 31-12-104 and 31-12-105, C.R.S., are met.
- (3)

The land to be annexed and the uses proposed for the land will contribute to the orderly growth of the Town and will generally conform to the goals and policies of the Comprehensive Plan,

- (4) Certain public facilities and amenities are necessary and must be constructed as part of any territory annexed to the Town in order that the public needs may be served by such facilities. These facilities include, but not by way of limitation, arterial streets, bridges, public parks and recreation areas, school sites, fire and police station sites and storm drainage facilities. The annexation of lands to the Town shall be shown not to create any additional cost or burden on the then-existing residents of the Town to provide such public facilities in any newly annexed area.
- (5) The petitioner for annexation shall be responsible for paying the Town's full cost for processing the annexation petition, from initial discussion with Town staff through the approval and recording of the final annexation documents, unless otherwise approved by the Board of Trustees.
- (6) All subsurface (nontributary) water rights shall be dedicated to the Town at the time of annexation as authorized by Article 90, Title 37, C.R.S.

(Ord. 834, §2, 2022)

Sec. 15-30. - Annexation of flagpoles or rights-of-way.

- (a) The Town Clerk shall provide, by regular mail to the owner of any eligible parcels abutting the flagpole (see Subsection 15-29(c)), as reflected in the records of the County Assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to Section 31-12-107, C.R.S. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.
- (b) Prior to completion of an annexation in which the contiguity is achieved by annexing a flagpole, the Town shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements below and for which an annexation petition has been received by the Town no later than forty-five (45) days prior to the date of the Board of Trustees public hearing in Section 15-25.
- (c) Eligible parcels shall include:
  - (1) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;
  - (2) Any subdivision that consists of only one (1) subdivision filing upon the petition of the requisite number of property owners within the subdivision, as determined pursuant to Section 31-12-107, C.R.S.; and
  - (3) Any subdivision filing within a subdivision that consists of more than one (1) subdivision filing upon the petition of the requisite number of property owners within the subdivision filing, as determined pursuant to Section 31-12-107, C.R.S.
- (d) The eligible parcels shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by Section 31-12-104(1)(a) is achieved by the annexing flagpole.
- (e)

The impact of the annexation on the parcels described in Subsection 15-29(6) shall be considered in the annexation impact report, if required.

- (f) As part of the same hearing, the Board of Trustees shall consider and decide upon any petition for annexation of any eligible property that complies with the eligibility requirements in this Section and in Section 15-29.

(Ord. 834, §2, 2022)

Sec. 15-31. - Step 18, Final submission.

In the event the Board of Trustees approves an annexation ordinance, and if required, the annexation is approved in an election in accordance with Section 15-27 and Section 15-28, the petitioner shall submit to the Town Clerk four (4) Mylars of the final annexation map and two (2) bound copies of the concept plan and a CAD file of the annexation map within ten (10) days of the effective date of the annexation ordinance.

(Ord. 834, §2, 2022)

Sec. 15-32. - Step 19, Record annexation map.

The Town Clerk shall record four (4) certified copies of the annexation ordinance and map with the County Clerk and Recorder. The Town shall request that the County Clerk and Recorder forward one (1) copy of the annexation map and ordinance to the Colorado Department of Local Affairs and one (1) copy of the annexation map and ordinance to the Colorado Department of Revenue.

(Ord. 834, §2, 2022)

CHAPTER 16 - Zoning

ARTICLE I - General Provisions

Sec. 16-1. - Title.

This Chapter may be known and cited as the Town Zoning Code or the Town Zoning Ordinance.

(Ord. 209 Art. I §1, 1981; Ord. 435 §1, 1996)

Sec. 16-2. - Purpose.

- (a) The provisions of this Chapter are the minimum requirements for the protection of the public health, safety, comfort, convenience, order, prosperity and welfare. It is the intent of this Chapter to achieve the foregoing by regulating uses of land to prevent congestion of roads and streets; to minimize danger and loss from fire, flood and natural hazards; to prevent overcrowding of land and buildings; to avoid excessive concentration of population; to provide off-street parking; to maintain access to light and air; to preserve natural drainage ways and natural resources in a manner compatible with reasonable use of land; to protect and increase the tax base to pay for

necessary community services and facilities; to foster economic development and thereby provide employment; to segregate conflicting uses of land; and to provide a reasonable use for all privately owned property consistent with the goals and policies of the comprehensive plan as developed and adopted to date.

- (b) Furthermore, the Town takes note of its limited capability to service new growth and hereby seeks to protect the citizens from adverse offensive noise, dust, odors, heat, glare, smoke, air pollution, water pollution, crowding of buildings and abnormal vehicular traffic.

(Ord. 209 Art. I §2, 1981)

#### Sec. 16-3. - Scope.

- (a) This Chapter applies within the corporate limits of the Town now and hereafter established.
- (b) The provisions of this Chapter shall not annul or abrogate any lawful permit or use lawfully established on the effective date of the ordinance codified herein.

(Ord. 209 Art. I §3, 1981)

#### Sec. 16-4. - Authority.

This Chapter is authorized by Chapter 31, Article 23, C.R.S. (Ord. 209 Art. I §4, 1981)

#### Sec. 16-5. - Word usage.

As used in this Chapter, the phrase used for includes arranged for, designed for, maintained for and occupied for.

(Ord. 209 Art. XI §1, 1981; Ord. 435 §1, 1996)

#### Sec. 16-6. - Definitions.

As used in this Chapter the following words shall be interpreted and defined in accordance with the provisions set forth in this Section:

*Accessible year around* means an area that can be accessed for its designated purpose regardless of weather circumstances. Such an area shall be graded sufficiently to be accessible for its intended purpose and shall be able to be maintained clear of snow and debris.

*Alley* means a minor right-of-way dedicated to public use, which gives a secondary means of vehicular access to the back or side of properties otherwise abutting a street. An alley may be used for public utility purposes. An alley shall be twenty (20) feet wide unless platted otherwise.

*Alternative tower facility* means an existing or proposed structure that is compatible with the natural setting and surrounding structures and that camouflages or conceals the presence of the antennae and can be used to house or mount a CMRS antenna. Examples include manmade trees, clock towers, bell steeples, light poles, silos, existing utility poles, existing utility transmission towers and other similar alternative designed structures.

*Animal hospital* means a veterinary hospital where animals are brought for medical and surgical treatment to be held during the time of such treatment. All facilities for holding the animals on the premises shall be housed in a completely enclosed building and used incidental to such medical and surgical services only.

*Building* means any structure built for the shelter or enclosure of persons, animals, chattels, property or substances of any kind, excluding fences. To qualify as one (1) building for the purposes of this Chapter, all portions, additions or extensions shall be connected by an attachment that is an enclosed part of the building, and which is usable by the occupants thereof.

*Building, accessory* means a building detached from the principal building on the lot which meets the requirements of Section 16-72.

*Building height* means the vertical distance measured from the average natural grade within the building footprint to the uppermost point of the roof of the building. Average natural grade is one-half (½) the sum of the highest point and the lowest point that is within the building footprint.

*Building, principal* means the main building on a lot as distinguished from a subordinate or accessory building.

*Business and professional office* means the office of an engineer, dentist, doctor, attorney, real estate broker, insurance broker, architect or other similar professional persons; and any office used primarily for accounting, correspondence, research, editing or administration.

*Cafe, restaurant or cafeteria* means a commercial eating establishment where snacks or meals are vended for consumption indoors on the premises.

*Child care center* means a facility that:

- a. Is not a residence;
- b. Is licensed by the State, and;
- c. Is maintained for the whole or part of a day for the care of more than six (6) children under the age of sixteen (16) years not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes pursuant to Section 26-6-102(1)(6), C.R.S.

The term includes facilities commonly known as day care centers, day nurseries, nursery schools, kindergartens, preschools, play groups, day camps, summer camps and centers for developmentally disabled children; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system. The term shall not include any facility licensed as a day care home under the provisions of this Chapter. The term does not include any such facilities which may serve as the primary residence of said children on a twenty-four-hour basis, in which case such a facility shall be regulated as a group home or group living quarters.

*Clinic* means offices for one (1) or more physicians, surgeons, dentists or other practitioners of the healing arts, but does not include rooms for the abiding of patients.

*Club* means any nonprofit membership organization, including a lodge catering exclusively to members, and whose facilities are limited to meeting, eating and recreational uses and whose activities are not conducted principally for monetary gain.

*Club, for profit* means any establishment catering exclusively to members and whose facilities are used for meeting, eating and recreational uses and whose activities are conducted principally for monetary gain. Activities on the premises may include the consumption of legal drugs and alcohol, provided that all licenses, permits and other approvals necessary for such consumption at the particular location to be lawful are obtained and maintained and that all other laws, rules and regulations applicable to such consumption at the particular location are met.

*Commercial amusement* means an enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the activity. Commercial amusements include miniature golf courses, arcades, Ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, bowling alleys, pool parlors and similar activities.

*Commercial mobile radio service (CMRS) facility* means unmanned facility consisting of antennas, equipment and equipment storage shelter and/or cabinet(s) used for the reception, switching and/or transmission of wireless telecommunications including, but not limited to, paging enhanced specialized mobile radio, personal communication services, cellular telephone and similar technologies.

*Common open space* means a parcel of land, an area of water or a combination of both land and water, within any site designated as a planned unit development. Common open space does not include streets, alleys, parks, off-street parking and loading areas, public open space or other facilities dedicated by the developer for public use. Common open space shall be substantially free of structures, but may contain such improvements that are approved as part of the planned unit development and are appropriate for the recreation of residents of the planned unit development.

*Common property* means a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites in planned unit development or other described land areas.

*Comprehensive development plan* means the comprehensive plan for the Town which has been officially adopted to provide long-range development policies for the Town and which includes, among other things, the plan for land use, land subdivisions, circulation and public facilities.

*Density* means the number of dwelling units per acre of land devoted to housing and related open space.

*District* means an area or areas within the limits of the Town for which the regulations and requirements governing use, lot and bulk of building and premises are uniform.

*Drive-in establishment* means an establishment which is designed to provide, wholly or in part, service to customers while they remain in their automobiles parked upon the premises.

*Dwelling, multi-unit or multifamily* means a building used by two (2) or more families living independently of each other in separate dwelling units, but does not include hotels, motels or resorts.

*Dwelling, single-family* means a detached principal building other than a mobile home designed for or used as a dwelling exclusively by one (1) family as an independent living unit.

*Dwelling unit* means one (1) or more rooms with internal connections that provides complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

*Dwelling unit, accessory* means a dwelling unit that is an accessory building for a single household and that remains under the same ownership as the principal dwelling unit on the lot. There are two (2) types of accessory dwelling units:

- a. *Integrated accessory dwelling unit* means a separate and complete dwelling unit that is located inside of, or attached by a shared common wall to, the principal dwelling unit, permitted under the provisions of Section 16-98.
- b. *Detached accessory dwelling unit* means a separate and complete dwelling unit within an accessory building permitted under the provisions of Section 16-98.

*Easement* means authorization by a property owner for the use by the public, a corporation or persons of any designated part of his or her property for specific purposes.

*Employees* means all persons, including proprietors, working on the premises during the largest shift at peak season.

*Equipment storage shelter* means unmanned accessory structure or cabinets used for freestanding facilities or, when necessary, roof- or building-mounted facilities to house CMRS equipment. Said shelters and/or cabinets shall not exceed three hundred fifty (350) square feet for each facility.

*Expansion* and *remodeling* mean work performed to increase the finished or usable square footage of the structure or increase the footprint of the structure and includes, but is not limited to, installing new or enlarging existing windows, adding decks over thirty (30) inches high, finishing the basement, converting the garage or other uninhabitable space to habitable space or constructing an accessory structure.

*Family* means an individual or two (2) or more persons related by blood or marriage, or an unrelated group of not more than four (4) persons living together in a dwelling unit.

*Family care home* means a facility for child care in a place of residence of a family or person for the purpose of providing family care and training for a child under the age of sixteen (16) years who is not related to the head of such home, and such facility is licensed pursuant to Section 26-6-102(4), C.R.S. The term includes any family care home receiving a child for regular twenty-four-hour care and any home receiving a child from any State-operated institution for child care or from any child placement agency.

*Fence* means a freestanding structure of metal, masonry, composition or wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

*Freestanding facility* means a CMRS facility that consists of a stand-alone support structure, antennas and associated equipment storage shelter.

*Frontage* means that portion of a lot, parcel, tract or block abutting upon a street or other right-of-way.

*Garage, private* means an accessory building or accessory portion of the main building designed for the shelter or storage of motor vehicles owned or operated by occupants of the main building only.

*Garage, public* means a garage, other than a private garage, used for the housing or care of motor vehicles, or where such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

*Guest house* means an accessory building to a single-family dwelling unit which is serviced through the same utility meters or connections as the principal use and is intended for occupancy only by guests of the family residing in the single-family residence. The guests may not pay compensation for the use of the guest house and may not stay in the guest house for more than thirty (30) consecutive days, and kitchen facilities shall not be allowed. The same guests residing in the guest house for more than thirty (30) days in any one-year period shall be *prima facie* evidence of an intent by the occupant of the single-family dwelling to circumvent this provision.

*Hedge* means a fence or boundary formed by a dense row of shrubs or low trees.

*Home occupation* means an occupation carried on in the dwelling or accessory building by members of the family occupying the dwelling, and up to one (1) on-site employee; provided that the residential character of the building is maintained and the occupation is conducted in such a manner as not to infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

*Homeowners' association* means an incorporated, nonprofit organization operating under recorded land agreements through which:

- a. Each lot and/or homeowner in a planned unit development or other described land area is automatically a member;
- b. Each lot is automatically subject to charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property; and
- c. Such charge, if unpaid, becomes a lien against the property.

*Hospital* means any building or portion thereof used for diagnosis, treatment and care of human ailments; but does not include medical clinics, rest homes and retirement homes.

*Hotel* means a commercial establishment that provides temporary lodging in rooming units.

*In-home child care* means a place of residence that is licensed by the State and provides less than twenty-four-hour care within the provider's place of residence.

*Kennel* means a lot or building in which four (4) or more dogs or cats at least six (6) months of age are kept commercially for board, propagation or sale.

*Laboratory* means a building or portion of a building devoted to experimental studies or testing and analysis of materials.

*Lot* means a portion or parcel of land (whether a portion of a platted subdivision or otherwise) occupied or intended to be occupied by a building or use and its accessories, together with such yards as are required under the provisions of this Chapter, having not less than the minimal area, usable open space and off-street parking spaces required by this Chapter for a lot in the district in which such land is situated, and having frontage on a street. A lot must be an integral unit of land held under unified ownership in fee or in co-tenancy, or under legal control tantamount to such ownership. A lot shall not include a tract.

*Lot area* means the total horizontal area within the lot lines of a lot.

*Lot, corner* means a lot of which at least two (2) adjacent sides abut for their full length upon a street.

*Lot coverage* means the percentage of the total lot area available for bulk or buildings.

*Lot depth* means the average horizontal distance between front and back rear lot lines.

*Lot, double frontage* means a lot which runs through a block from street to street and which has nonintersecting sides abutting on two (2) or more streets or other rights-of-way.

*Lot, interior* means a lot other than a corner lot.

*Lot line, front* means the property line dividing a lot from the right-of-way of the street. For a corner lot, the shortest street right-of-way line shall be considered as the front line. For a double frontage lot, the local street right-of-way line shall be considered as the front lot line, or, if both streets are local streets, the lot line to the front of a structure or abutting structures as established by architectural detail and plan shall be considered as the front lot line.

*Lot line, rear* means the property line opposite the front lot line.

*Lot line, side* means any lot line other than a front or rear lot line.

*Lot width* means the distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

*Maintenance*. See the definition of *repair and maintenance* below.

*Maximum employment* means the average number of persons employed on the primary shift during the annual peak production period.

*Microcell facility* means CMRS facility used to provide increased capacity in high-call demand areas or to improve coverage in areas of weak coverage that is no larger in dimensions than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

*Mineral processing* means facilities for processing ores and minerals to extract salable components and store unusable components (tailings) in settling ponds and landfill. Includes unit operations such as crushing, grinding, flotation, gravity and magnetic separation and pumping.

*Mixed use* means a multi-use structure containing a mixture of commercial and/or office uses combined with residential uses. For a multi-level structure, all of the street level frontage, including at least thirty percent (30%) of the total square footage of the structure, shall be used for commercial and/or office uses. For a single-level structure in the CBD and GC zoning districts, at least thirty percent (30%) of the total use shall be commercial and/or office uses, including all of the street level frontage.

*Mobile home* is defined in Section 16-121 of this Chapter.

*Mobile home park* is defined in the mobile home ordinance of the Town.

*Motel* means a hotel which usually is arranged in such a manner that individual rooming units are directly accessible from an automobile parking area.

*Nonconforming lot* means any parcel of land, held in separate ownership from adjoining properties, that does not conform to the minimum lot area or any other lot requirement required by this Chapter, prior to the effective date of the ordinance codified herein or any predecessor or amendment thereto.

*Nonconforming situation* means the situation when, on the effective date of this Chapter, an existing lot or structure or use of an existing lot or structure does not conform to one (1) or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum square footage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this Chapter, or because land or buildings are used for purposes made unlawful by this Chapter. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this Chapter but shall be governed by the provisions of Chapter 18, Article V.

*Nonconforming structure or use* means a lawful existing structure or use at the time the ordinance codified herein or any amendments thereto became effective which does not conform to the requirements of the district in which it is located.

*Nursing home* means a commercial institution providing residential accommodations together with living assistance, healthcare service(s), and/or skilled nursing service(s) and may include hospice care.

*Off-street loading space* means an accessible year around space located outside of a public street or alley for the discharge of passengers, or a space directly accessible year around to the building it serves for bulk pickups and deliveries by delivery vehicles.

*Off-street parking area* means any parking area located wholly off a public street or alley within the limits of one (1) or more lots in which the parking use is permitted and that results in no net loss of established or potential public parking.

*Open space* means land which is free of structures which are not directly related to the function of the open space.

*Outlot* means an area of a plat set apart for uses different than the uses on the lots on the plat. Unless specifically stated otherwise on the plat, no buildings shall be allowed on an outlot, and an outlot shall be considered a portion of the plat set aside by the owner for open space purposes for the benefit of the property owners of the remainder of the property on the plat.

*Parking space* means a rectangular area of private property owned by or under the permanent control of the applicant containing no less than one hundred eighty (180) square feet with maneuvering and access space accessible year-round of twenty (20) feet in length and nine (9) feet in width.

*Permitted use* means a use specifically allowed in one (1) or more of the various districts without the necessity of obtaining a use permit.

*Personal service shop* means an establishment for the purpose of supplying limited personal services such as, but not limited to, barber shops, shoe shops, boot shops or beauty shops.

*Planned unit development* means a project of a single owner or a group of owners acting jointly, involving a related group of residences, businesses or industries and associated uses, planned as a single entity and therefore subject to development and regulation as one (1) land-use unit rather than as an aggregation of individual buildings located on separate lots. The planned unit development includes usable, functional open space for the mutual benefit of the entire

tract; and is designed to provide variety and diversity through the variance of normal zoning and subdivision standards so that maximum long-range benefits can be gained, and the unique feature of the development or size preserved and enhanced while still being in harmony with the surrounding neighborhood. Approval of a planned unit development does not eliminate the requirements of subdividing.

*Planning Commission* means the officially appointed Planning Commission of the Town.

*Premises* means a general term which means part or all of any lot, parcel or tract, or part or all of any building, or structure or group of buildings or structures located thereon.

*Primary residence* shall have the same meaning as set forth in Section 6-92 of this Code.

*Private horse stables* means any area wherein a horse, mule and/or donkey is maintained for private, noncommercial recreation.

*Private utility* means any utility other than a municipally owned and operated utility, including telephone, electric and gas utilities, and other privately owned and operated utilities.

*Property line* means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner and does not include the streets or alleys upon which said lot, parcel or tract abuts.

*Public hearing* means a meeting called by a public body for which public notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions.

*Public horse stables* means any area wherein a horse, mule and/or donkey is maintained for public, commercial, recreation for hire or boarding for hire.

*Rate*, as pertains to mineral processing, means the amount of ore or other raw material delivered to the processing site on a daily basis.

*Remodeling*. See the definition of *expansion* and *remodeling* above.

*Repair and maintenance* mean work performed that does not increase the finished or usable square footage of the structure and does not increase the footprint of the structure to include repairs to existing roofing, siding, windows, plumbing fixtures, electrical fixtures, flooring, walls or building supports. Repair and maintenance do not include any work performed to expand or remodel the structure.

*Repeater facility* means CMRS facility that extends coverage of a cell.

*Retail* means sale to the ultimate consumer for direct consumption and/or use and not for resale.

*Retirement home* means a commercial institution providing long-term (greater than thirty (30) days) residential accommodations for persons customarily aged sixty (60) or older and which institution includes the provision of services, activities, and living assistance typically desired and needed by the institution's residents.

*Rights-of-way, public* means all streets, roadways, sidewalks and alleys, and all other areas reserved for present or future use by the public, as a matter of right, for the purpose of vehicular or pedestrian travel.

*Roof-, structure- or building-mounted facility* means CMRS facility in which antennas are mounted to an existing structure, on a roof of a building or on the building face. The facility will include both antennas and related equipment. The equipment may be located in the existing structure, or within an unmanned equipment storage shelter. Facilities within this category may include microcell or repeater facilities.

*Rooming unit* means a room which may be used for sleeping, eating, cooking, and sanitation within a principal commercial (mixed use, hotel, or motel) building.

*Salvage yard* means any lot, parcel or tract used for the storage, keeping, sale or abandonment of salvage items and/or for the permanent dismantling, demolition or abandonment of automobiles, or other salvage items or parts thereof.

*Screening* means decorative fencing, evergreen hedges or earth berms maintained for the purpose of concealing from view the area behind such screening.

*Service station* means a building or premises on or in which the principal use is the retail sale of gasoline, oil or other fuel for motor vehicles; and which may include, as an incidental use only, facilities used for the polishing, greasing, washing or other cleaning or light servicing of motor vehicles, convenience store or tire sales; but which may not include liquefied petroleum gas distribution facilities, facilities for major repairs of motor vehicles, or rental operations.

*Setback line* means a line or lines designating the area outside of which buildings may not be erected.

*Shopping center* means a composite arrangement of shops and stores, developed as an integral unit, which provide a variety of goods and services to the general public.

*Short-term rental* shall have the same meaning as set forth in Section 6-92 of this Code.

*Sign* is as defined in the sign code of the Town.

*Small cell network* means a collection of interrelated small cell facilities designed to deliver wireless service.

*Small CMRS cell facility* means either:

- (1) A personal wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended as of August 6, 2014; or
- (2) A wireless service facility that meets both of the following qualifications:
  - a. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and
  - b. Primary equipment enclosures are not larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, and cut-off switch; or
  - c. A microcell facility, as defined in this section.

*Small wind turbine* means a wind energy conversion system consisting of wind turbines, towers and associated control or conversion electronics, which has a rated capacity of twenty (20) kilowatts or less.

*Special review use* means a use which, although not permitted outright in a particular district, may be permitted by the Planning Commission and the Board of Trustees in accordance with the standards and procedures set out in this Chapter.

*State-licensed group home* means a home licensed by the State which services not more than eight (8) developmentally disabled persons (person having cerebral palsy, multiple sclerosis, mental retardation, autism or epilepsy) and appropriate staff.

*Street* means the entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and placement of utilities; and includes the terms road, highway, lane, place, avenue and alley or other similar designations.

*Street, arterial* means any street serving major traffic movements which is designed primarily as a traffic carrier between cities or between various sections of the Town, which forms part of a network of through streets, and which provides service and access to abutting properties only as a secondary function.

*Street, collector* means any street designed primarily to gather traffic from local or residential streets and carry it to the arterial system.

*Street, freeway* means any divided street or highway with complete access control and grade-separated interchange with all other public streets and highways. For the purposes of this Chapter, the term freeway includes the term expressway.

*Street, frontage* means a local street lying parallel to and adjoining an arterial street or freeway right-of-way, which provides access to abutting properties and protection from through traffic.

*Street, local* means any street other than an arterial, collector or freeway street.

*Structural alteration* means any change to the supporting members of a structure including foundations, bearing walls, partitions, columns, beams or girders; or any structural change in the roof.

*Structure* means anything constructed or erected with a fixed location from the ground above grade, but does not include poles, lines, cables or other transmission or other distribution facilities of public utilities.

*Townhouse* means one (1) of a group of not fewer than three (3) nor more than twelve (12) attached dwelling units, each dwelling unit located on a separate lot. No single group shall exceed two hundred forty (240) feet in length.

*Travel campers*, also to include facilities referred to as *campers*, *camp trailers* or *travel trailers*, means a living unit designed for temporary occupancy and equipped for use with wheels or mounted on motorized vehicles for the purposes of relocation by highway transportation.

*Use* means the purpose for which land or a structure is designed, arranged, intended, occupied or maintained.

*Use, accessory* means a use subordinate to the primary or principal use of a building which meets the requirements of Section 16-72.

*Use, principal* means the main use of land or of a structure as distinguished from a subordinate or accessory use.

*Variance* means a legal modification of applicable zoning district provisions, such as yard, lot area or width, use, building, setback and off-street parking and loading regulations, granted due to the peculiar conditions existing within a single piece of property.

*Vision clearance area* means a triangular area on a lot at the intersection of two (2) streets or a street and a railroad, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in the regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines and intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. The vision clearance area contains no planting, walls, structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height measured from the top of the curb or existing grade unless said structures or obstructions are more than eighty percent (80%) open.

*Wind tower* means the monopole or guyed monopole structure that supports a small wind turbine.

*Wind turbine* means the blades and associated mechanical and electrical conversion components whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

*Wireless facilities* means a commercial mobile radio service facility, an equipment storage shelter, a freestanding facility, a microcell facility, a repeater facility and any appurtenances thereto.

*Yard* means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this Chapter.

*Yard, front* means the yard between the side lot lines and measured horizontally at right angles from the front lot line to the principal structure.

*Yard, rear* means the yard extending between the side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of the principal structure.

*Yard, side* means the yard between a principal structure and the side lot line, measured horizontally at right angles to the side lot line from the side lot line to the nearest point of the main principal structure.

(Ord. 209 Art. XI §1, 1981; Ord. 422 §§4 6, 1996; Ord. 435 §1, 1996; Ord. 453 §1, 1997; Ord. 455 §1, 1997; Ord. 507 §1, 1999; Ord. 645 §§1, 2, 2008; Ord. 648 §8, 2008; Ord. 680 §2, 2010; Ord. 722 §1, 2013; Ord. 725 §9, 2013; Ord. No. 751 §1, 2017; Ord. 784 §1, 2018; Ord. 791 §1, 2018; Ord. 804 §2, 2020; Res. 2021-06 §§1, 2, 2021)

#### Sec. 16-7. - Interpretation and application.

After the effective date of the ordinance codified herein, no structure or premises shall be used or occupied, and no structure or portion thereof shall be erected, moved, constructed, reconstructed, extended, enlarged or altered contrary to the provisions of this Chapter. No portion of a lot area, open space, off-street parking space or yard required about or in connection with any building for the purposes of complying with this Chapter may be included as a portion of a lot area, open space, off-street parking area or yard similarly required for any other building or its use.

(Ord. 209 Art. I §5, 1981)

#### Sec. 16-8. - Application of overlapping regulations.

Whenever a provision of this Chapter or any provision of any other law, ordinance, resolution, rule or regulation of any kind contain any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern. All uses and all locations and bulk permitted under the terms of this Chapter shall be

in conformity with all other provisions of law.

(Ord. 209 Art. I §6, 1981; Ord. 435 §1, 1996)

Sec. 16-9. - Zoning map; district boundaries established.

The location and boundaries of the districts designated in this Chapter are established as shown on the map entitled "Zoning District Map of the Town of Nederland" dated November 17, 1981, signed by the Mayor and the Town Clerk, and hereafter referred to as the zoning map.

(Ord. 209 Art. I §7, 1981)

Sec. 16-10. - Zoning map adopted; amendment procedure.

- (a) The zoning map and all the notations thereon are made part of this Chapter.
- (b) A signed copy of the zoning map containing the zoning districts designated at the time of the adoption of this Chapter shall be maintained without change on file in the office of the Town Clerk.
- (c) Changes made in district boundaries or other matter portrayed on the zoning map shall be made in accordance with the provisions of this Chapter. Changes shall be entered on the zoning map promptly after the amendment has been approved by the Board of Trustees. A copy of each amended map shall be kept permanently on file by the Town Clerk.

(Ord. 209 Art. I §8, 1981)

Sec. 16-11. - Extension of processing deadlines.

If, in the sole discretion of the Zoning Administrator, an application submitted pursuant to this Chapter is of sufficient complexity to require more than routine review and evaluation, the Zoning Administrator, Planning Commission and/or Board of Trustees, or, if the receipt of information necessary to review and evaluation is not available in a timely manner, the Zoning Administrator may extend the deadlines established herein for public hearing and/or action by the Planning Commission and/or Board of Trustees and must provide the Planning Commission and/or Board of Trustees documentation of all relevant issues discussed with the applicant. Unless otherwise agreed to by the applicant, the time frame for review by the Town shall not exceed six (6) months.

(Ord. 382 §5, 1994; Ord. 645 §3, 2008; Res. 2021-06 §3, 2021)

Secs. 16-12—16-30. - Reserved.

**ARTICLE II - District Regulations**

Sec. 16-31. - District categories.

In order to implement the purposes and provisions of this Chapter, the Town hereby establishes the following zoning districts:

- (1) Mountain residential (MR). The mountain residential district is established to accommodate residential and related uses on one (1) acre or larger lots. While oriented toward steep mountain topography, it may be established anywhere in the Town to maintain a low density, mountain residential character while permitting economically feasible urban services.
- (2) Low density residential (LDR). The low density residential district is established to accommodate low density residential neighborhoods with lots at least sixteen thousand (16,000) square feet in size. This district provides a combination of the large lot character of the MR district and the development economics of the MDR district.
- (3) Medium density residential (MDR). The medium density residential district is established to accommodate residential and related uses at suburban density requiring a minimum lot size of eight thousand (8,000) square feet. As is the case in the F, MR and LDR districts, the dominant form of housing to be permitted in the MDR district is single-family detached unless the appropriateness of other housing forms is demonstrated through an approved planned unit development plan.
- (4) High density residential (HDR). The high density residential district is established to accommodate residential and related uses at urban densities requiring a minimum lot size of four thousand (4,000) square feet. Again, single-family detached units are preferable in this district; however, multifamily units may be approved through the special review or planned unit development procedures of this Chapter.
- (5) Neighborhood commercial (NC). The neighborhood commercial district is established to accommodate residential and a limited range of commercial uses. Those commercial uses deemed to have significant incompatibility with existing or potential residential uses, or for which the use will cause a significant increase in traffic volume on secondary residential streets, shall not be permitted.
- (6) Central business district (CBD). The central business district is established to accommodate a limited range of commercial uses in an intensely developed core commercial area. To this end, front and side yard setbacks are not applicable in the CBD district; however, trash and fire access shall be provided in the rear yards.
- (7) General commercial (GC). The general commercial district is established to accommodate a wide range of commercial uses including many uses deemed inappropriate in the NC and CBD districts.
- (8) Industrial (I). The industrial district is established to accommodate light industrial uses, mineral processing uses and industrial uses of a commercial nature which for aesthetic and safety reasons are deemed inappropriate in the commercial districts and mineral processing.
- (9) Public. Public areas in which public and semi-public facilities and uses are located, including, without limitation, governmental and educational uses.

(Ord. 209 Art. II §1, 1981; Ord. 246 §1, 1983; Ord. 435 §1, 1996; Ord. 645 §4, 2008; Ord. 650 §1, 2008; Res. 2021-06 §4, 2021; Ord. 819 §2, 2021)

Sec. 16-32. - Use groups.

- (a) This Section provides for grouping of similar uses into use groups. In each zoning district, use groups permitted outright are designated "Y," use groups permitted by special review are designated "R" and use groups prohibited are designated "N."
- (b)

Any use that is not specifically permitted in this Section shall be deemed to be a prohibited use. If a question arises as to whether a specific use does or does not fall within the expressed use categories, application may be made to the Planning Commission for a determination as to whether a specific use is permitted. Any decision by the Planning Commission may be reviewed by the Board of Trustees within thirty (30) days of the decision of the Planning Commission.

(c) Use group table.

<b>USE GROUPS</b>	<b>DISTRICTS</b>					
	<b>MR</b>	<b>NC</b>	<b>CBD</b>	<b>GC</b>	<b>I</b>	<b>P<sup>7</sup></b>
	<b>LDR</b>					
	<b>MDR</b>					
	<b>HDR</b>					
<i>Agricultural Use Groups</i>						
Crop production	Y	Y	N	Y	Y	R
Animal production	R	N	N	N	N	N
Private home stables	1	N	N	N	N	N
Public horse stables	N	N	N	R	N	R
Outdoor kennels	N	N	N	N	N	N
Fish hatchery	N	N	N	N	R	R
<i>Educational and Child Care Use Groups</i>						
In-home child care	R	R	N	R	N	N
Private, elementary and secondary schools, State-licensed group homes for the developmentally disabled, child care centers	R	R	N	R	N	N
<i>Residential Use Groups</i>						
Single-family dwelling units	Y	Y	N	N	N	Y <sup>8</sup>

Multi-family dwelling units, up to 4 dwelling units	Y	Y	N	N	N	N
Multi-family dwelling units, exceeding 4 dwelling units	R <sup>3</sup>	R <sup>3</sup>	N	N	N	N
Mobile homes	4	N	N	N	N	N
Family care home	N	R	R	R	R	N
Accessory dwelling unit	Y	Y	N	N	N	N
Nursing home	4	N	N	N	N	
Retirement home	4	N	N	N	N	N
<i>Mixed Uses</i>	N	R	Y <sup>10</sup>	Y <sup>10</sup>	R	N
<i>Commercial Use Groups</i>						
Club	N	R	Y	Y	N	N
Club, for profit	N	R	R	R	N	N
Enclosed retail, eating and drinking	N	R	Y	Y	N	N
Office, financial, medical, personal service establishments	N	Y	Y	Y	Y	N
Outdoor sales, eating and drinking, or other outdoor commercial activities or establishments	N	R	R	R	N	N
Hotels and motels	N	R	R	R	N	N
Campgrounds and resort cabins	N	N	N	N	N	R
Commercial uses, including but not limited to animal hospitals, enclosed kennels, car washes, cleaning and laundry plants, cold storage lockers, building material and equipment dealers, wholesaling services, construction trades	N	R	R	R	N	N

Motor vehicle sales and repair	N	R	N	R	R	N
Fuel sales and storage	N	N	N	R	R	N
Service stations	N	R	R	R	R	N
Sexually oriented businesses	N	N	N	N	R	N

## *Industrial Use Groups*

Commercial/industrial uses, including but not limited to building contractor's yards and transportation centers	N	N	N	R	R	N
Medical clinics	N	R	R	R	N	R
Small wind turbines	R	R	R	R	R	R
Warehousing and facilities for the manufacturing, fabrication, processing or assembly of products, provided that such facilities are completely enclosed; processing of minerals and ores at a rate of 100 tons per day or less, provided that noisy and/or dusty stationary equipment is enclosed	N	N	N	N	R	N
All other facilities for the manufacturing, fabrication, processing or assembly of products; processing of minerals and ores at the rate of more than 100 tons per day	N	N	N	N	R	N
Salvage yards, impound lots, saw mills and mineral extraction	N	N	N	R	R	N
Commercial/industrial uses, including but not limited to small warehouses; and storage facilities	N	N	N	N	Y	R
Research facilities	N	R	R	R	R	R

## *Public, Quasi-Public Use Groups*

Parks oriented toward lots and passive recreation	Y	Y	Y	Y	Y	Y <sup>5</sup>
Outdoor recreational facilities, including but not limited to lighted tennis courts, playfields and stadiums	R	R	N	R	R	Y <sup>5</sup>
Elementary and secondary schools	R	R	N	N	N	R
Trade and business schools	N	R	N	Y	Y	R
Churches, chapels, temples and synagogues	R	R	R	R	R	N
Cemeteries	R	N	N	N	N	R
Halfway houses and community homes	R	R	N	N	N	N
State-licensed group homes for the developmentally disabled, child care centers	N	N	N	N	N	N
Hospitals and mortuaries	N	R	N	R	N	R
Municipal offices and shops	Y	Y	Y	Y	Y	R
Municipal facilities and uses operated by the Town, including offices, water and sewer services, shops, law enforcement, community center or any other public facilities operated by any governmental or quasi-governmental services requested by the Town	Y <sup>5</sup>	R				
Municipal water and sewer facilities	R	R	R	R	R	R

*Marijuana Establishment Use Groups:*

Marijuana cultivation facility	N	R	R	R	R	N
Marijuana product manufacturing facility	N	R	R	R	R	N
Marijuana testing facility	N	R	R	R	R	N
Retail marijuana store	N	R	Y	Y	N	N

Medical marijuana center	N	R	Y	Y	N	N
Medical marijuana optional premises for cultivation	N	R	R	R	R	N
Medical marijuana infused product facility	N	R	R	R	R	N
Medical transporters	N	N	N	N	N	N

"N" = use groups prohibited

"R" = use groups permitted by special review

"Y" = use groups permitted outright

Footnotes:

<sup>1</sup> Private horse stables shall be permitted in the MR district only by special review. They shall not be permitted in the LDR, MDR or HDR districts.

<sup>2</sup> Reserved.

<sup>3</sup> Multi-family units above 4 dwelling units proposed for development on a parcel or parcels that total 1 acre or more in size shall be required to meet the requirements of Section 16-152 of this Chapter.

<sup>4</sup> These uses shall be permitted only in the HDR district through special review use application and approval and must comply with all laws, including local ordinances and state statutes.

<sup>5</sup> There must be a public hearing prior to issuing a building permit for any new facilities relying upon this use group.

<sup>6</sup> Reserved.

<sup>7</sup> Uses permitted in this zone district must be publicly owned.

<sup>8</sup> Caretaker units only.

<sup>9</sup> Reserved.

<sup>10</sup> See Section 16-60 of this Code to determine when a special review use (SRU) application may be necessary. If an SRU application is necessary, adequacy of water and sewer utilities shall be administratively reviewed by Town staff, and applicant shall fully comply with Chapter 13 of this Code.

(Ord. 209 Art. II §2, 1981; Ord. 263 §1, 1985; Ord. 382 §1, 1994; Ord. 435 §1, 1996; Ord. 569 §1, 2003; Ord. 570 §1, 2003; Ord. 621 §1, 2006; Ord. 634 §3, 2007; Ord. 645 §5, 2008; Ord. 650 §2, 2008; Ord. 680 §3, 2010; Ord. 720 §3, 2013; Ord. 722 §2, 2013; Ord. 739 §4, 2016; Ord. 746 §1, 2017; Ord. 750 §4, 2017; Ord. 784 §2, 2018; Ord. 785 §2, 2018; Ord. 791 §2, 2018; Ord. 804 §3, 2020; Res. 2021-06 §5, 2021; Ord. 819 §3, 2021)

Sec. 16-33. - Yard and bulk requirements.

<b>Yard and Bulk Items</b>	<b>F</b>	<b>MR</b>	<b>LDR</b>	<b>MDR</b>	<b>HDR</b>	<b>NC</b>	<b>CBD</b>	<b>GC</b>	<b>I</b>	<b>P</b>
Minimum lot area per lot and per dwelling unit (sq. ft.)	5 acres <sup>3</sup>	1 acre	16,000	8,000	4,000	4,000 <sup>4</sup>	0	8,000	8,000	0
Minimum lot width (ft.)	330	150	100	70	40	40	0	40	40	0
Maximum lot coverage (% of lot area)	10	15	20	30	40	40	N/A	40	40	100
Minimum setback from a street for all uses (ft.) <sup>1</sup>	50	30	30	25	20	25	0	25	25	0
Minimum front yard setback for all uses (ft.) <sup>1</sup>	50	30	30	25	20	25	0	25	25	0
Minimum side yard setback from an interior lot line										
Principal uses (ft.)	30	20	15	10	5	5	5	10	10	0
Accessory uses (ft.)	10	10	10	5	5	5	0 or 10	5	5	0
Minimum rear yard setback										
Principal uses (ft.)	50	40	40	25	15	15	15	15	15	0
Accessory uses (ft.)	10	10	10	5	5	5	10	5	5	0
<i>Structure Criteria</i>										
Maximum building height <sup>2</sup>										
Principal uses (ft.)	35	35	35	35	35	35	35	35	35	35
Accessory uses (ft.)	25	25	25	20	20	20	20	20	20	25

<sup>1</sup> Or, in the case of a principal structure only, an established setback line.

<sup>2</sup> Measured to the uppermost point of the roof. See Section 16-6(9).

<sup>3</sup> One acre equals 43,560 square feet.

<sup>4</sup> Minimum lot area per dwelling unit may be reduced to 2,000 sq. ft. upon approval of the Board of Trustees in the Neighborhood Commercial District through the Planned Unit Development provisions of this Chapter. See Article IV, Section 16-88.

(Ord. 209 Art. II §3, 1981; Ord. 246 §§2, 3, 1983; Ord. 327, 1991; Ord. 645 §6, 2008; Ord. 650 §3A, 2008; Res. 2021-06 §6, 2021)

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Sec. 16-34. - Commercial uses on East First Street.

On East First Street between Colorado Highway 119 and Snyder Street, all street level store fronts, including at least thirty percent (30%) of the use abutting the street, shall be used for retail uses only. Any levels other than the street level shall be used for residential, commercial and/or office uses.

(Ord. 622, 2006; Res. 2021-06 §18, 2021)

**Editor's note—** Res. 2021-06 §18, adopted April 6, 2021, amended and renumbered former § 16-95 as § 16-34.

Secs. 16-35—16-50. - Reserved.

ARTICLE III - Special Review Uses

Sec. 16-51. - Purpose.

Although each zoning district is primarily intended for a predominant type of use (such as dwellings in residential districts), there are a number of uses which may or may not be appropriate in a particular district depending upon, for example, the location, nature of the proposed use, character of surrounding development, traffic capacities of adjacent streets and potential environmental effects. These factors may dictate that the circumstances of development should be individually reviewed. It is the purpose of this Article to provide review of such uses so that the Town is assured that such uses are compatible with their locations and surrounding land uses and will further the purposes of the Article and the Comprehensive Plan.

(Ord. 209 Art. III §1, 1981; Ord. 645 §7, 2008; Res. 2021-06 §7, 2021)

Sec. 16-52. - Application.

- (a) An application for approval of a special review use may be filed by a person having an interest in the property for which the special review use is requested, with the written consent of the owner, and shall be made on a form provided by the Town. The application must be submitted electronically, along with two (2) full size copies and

include the following:

(1) A complete site plan illustrating:

- a. Adjacent land uses and location of adjacent structures, including all adjacent natural features that will be impacted by the use.
- b. Boundary and size of site.
- c. Building location, height and setbacks.
- d. Off-street parking and loading areas.
- e. Points of ingress and egress.
- f. Service and refuse areas.
- g. Signs and exterior lighting.
- h. Fencing, landscaping and screening.
- i. Compliance with performance standards.
- j. Anticipated utility requirements.
- k. North arrow reference.

(2) A time schedule for development.

(3) Explanation of how the project furthers the purposes of the Comprehensive Plan.

(4) Other information the applicant believes will support the application.

- (b) The applicant shall furnish a list of the names and addresses of owners of property located within three hundred (300) feet of the subject site.
- (c) Upon review of the application, the Planning Commission may determine that additional information is critical to its evaluation of the application. The applicant shall be responsible for furnishing such additional information if so requested.
- (d) The applicant shall pay a nonrefundable special review use application fee set forth in Section 4-151 to the Town upon submission of the application to cover processing costs of the Town. In addition to the fee, a deposit in an amount determined by the Town to be sufficient to cover costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the Town and to pay on a monthly basis all costs incurred by the Town in processing the application shall be filed with the Town at the time the application is filed. The Town Clerk shall send the applicant a monthly statement of costs incurred by the Town. Said costs shall be paid in full prior to final consideration of the application by the Board of Trustees. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. Any amount of the deposit not expended will be refunded by the Town within forty-five (45) days after the applicant's withdrawal of the application, the Town's final action on the application, or the effective date of the ordinance approving the application.
- (e) The Board of Zoning Adjustment shall determine all uses which are not specifically listed in Section 16-32(c).

Sec. 16-53. - Coordination with planned unit development plan approval.

If the proposed special review use is submitted as part of a planned unit development plan, the provisions of this Article shall be met through approval of the planned unit development plan. Whichever restrictions are more restrictive or impose higher standards or requirements shall govern.

(Ord. 209 Art. III §3, 1981; Ord. 645 §9, 2008; Res. 2021-06 §9, 2021)

Sec. 16-54. - Processing of application.

- (a) The applicant shall submit the complete application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the application to the Planning Commission along with documentation of all issues discussed and any proposed agreements suggested up to that point.
- (b) Within thirty (30) days of receipt of the application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting on a street.
- (c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either recommend approval of the application, with or without conditions, or denial of the application to the Board of Trustees.
- (d) Within thirty (30) days of receipt of the Planning Commission recommendation, the Board of Trustees shall approve the application with or without conditions, or deny the application.
- (e) An approved special review use shall not be conducted until the Zoning Administrator has issued a special review use certificate. The certificate shall be issued only after the applicant has entered into an agreement with the Town specifying that all conditions imposed by the Board of Trustees will be completed and that the use and improvements will be in accordance with the approved application site plan and development schedule. The agreement shall be recorded in the office of the County Clerk and Recorder.

(Ord. 209 Art. III §4, 1981; Ord. 645 §10, 2008; Ord. 725 §11, 2013; Res. 2021-06 §10, 2021)

Sec. 16-55. - Approval criteria and conditions.

- (a) A special review use application shall be approved only if the Board of Trustees finds that the application:
  - (1) Is eligible for a special review under Section 16-32 of this Chapter;
  - (2) Is generally compatible with adjacent land uses;
  - (3) Meets all requirements of Section 16-52 above, is in compliance with this Chapter and minimizes potential adverse impact of the special review use on adjacent properties and traffic flow;
  - (4) Is consistent with the Comprehensive Plan; and
  - (5) The Town has the capacity to serve the proposed use with water, sewer, fire and police protection.
- (b)

In considering an application for a special review use, the Board of Trustees may impose conditions on the application to ensure compliance with Subsection (a) above.

- (c) All provisions of a special review use shall be recorded in a development agreement. Such agreement shall not be final until the agreement is approved by the Board of Trustees and fully executed by all parties.

(Ord. 209 Art. III §5, 1981; Ord. 382 §4, 1994)

Sec. 16-56. - Reserved.

**Editor's note—** Res. 2021-06 § 11, adopted April 6, 2021, repealed former § 16-56, which pertained to approved site plans part of zoning map; expiration, and derived from Ord. 209 Art. III §6, adopted in 1981; and Ord. 435 §1, adopted in 1996.

Sec. 16-57. - Alterations of special review uses.

- (a) No special review use or site or nonconforming use or site which would have required a special review use may be altered unless such alteration is approved in accordance with the procedures applicable to approval of a special review use as set out in this Article.
- (b) Upon transfer of ownership within the same use, the new owner must agree to and be bound by all provisions documented in the development agreement before the SRU certificate is transferred.

(Ord. 209 Art. III §7, 1981; Ord. 382 §3, 1994; Ord. 645 §11, 2008; Res. 2021-06 §12, 2021)

Sec. 16-58. - Reserved.

**Editor's note—** Res. 2021-06 § 11, adopted April 6, 2021, repealed former § 16-58, which pertained to special review uses existing prior to effective date, and derived from Ord. 209 Art. III §8, adopted in 1981; and Ord. 645 §12, adopted in 2008.

Sec. 16-59. - Court appeals.

Any person applying to the courts for a review of any decision made under the terms of this Article shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings.

(Ord. 209 Art. III §9, 1981)

Sec. 16-60. - Designation of additional special review uses.

- (a) In addition to those areas designated as special review uses in Section 16-32, any commercial, industrial or public and quasi-public uses conducted in structures with a floor area of eight thousand (8,000) square feet or larger, or any commercial mixed use with over four (4) residential units, are hereby designated as special review uses.
- (b) Other special review uses include any extension of a structure beyond the roof line which exceeds the building height limit for the zoning district, including but not limited to chimneys, tanks, church spires, belfries, monuments, fire and hose towers, observation towers, transmission towers, flagpoles, commercial radio and television towers, masts, aerials, cooling towers, elevator shafts, ranch and farmer accessory uses and other similar projects.

(Ord. 382 §5, 1994; Ord. 435 §1, 1996; Ord. 645 §13, 2008; Ord. 784 §3, 2018; Res. 2021-06 §13, 2021)

- (a) Upon the Town receiving a written complaint alleging that one (1) or more terms or conditions of a special review use permit or special review use agreement have been or are being violated, or that a special review use is being operated in a manner that violates this Code, or upon request by the Board of Trustees, the Zoning Administrator shall promptly investigate the alleged violation. To conduct his or her investigation, the Zoning Administrator shall have all powers provided by this Code, including but not limited to those set forth in Section 16-271.
- (b) If the Zoning Administrator concludes there is cause to believe a violation of one (1) or more terms or conditions of a special review use agreement or a special review use permit or this Code have been violated, then the matter shall be set for a "show cause" hearing before the Board of Trustees. As used in this Section, cause shall be defined as a reasonable belief based on articulable facts.
- (c) Notice shall be provided by the Town Clerk to the holder of the special review use permit of the "show cause" hearing, advising him or her of the date, time and place of the hearing and specifying the terms and conditions or Code provisions alleged to have been violated. Such notice shall be hand-delivered or mailed by certified mail, return receipt requested, to the holder of the special review use permit at the address indicated in the permit unless the holder of the special review use permit has previously advised the Town Clerk in writing of some other address at which he or she desires to be notified. The date for such hearing shall be no less than thirty (30) days after the date of the notice, unless there is an immediate threat to the public health, safety or welfare, in which case the hearing may be set forthwith.
- (d) At the "show cause" hearing, the Town shall bear the burden of establishing the violation of the terms or conditions or provisions in question by the holder of the special permit by a preponderance of the evidence.
- (e) If, as a result of such hearing, the Board of Trustees determines that the holder of the special review use permit has failed to comply with one (1) or more of the terms or conditions of the special review use permit or agreement or has operated in a manner that violates this Code, then the Board of Trustees shall have the following options, in the discretion of the Board of Trustees:
  - (1) Terminate the special review use permit and agreement, in which event the use of the property under the special review use permit shall cease.
  - (2) Suspend the special review use permit until the holder is again in compliance with the terms and conditions or provisions in question. No use shall be made of the property during such suspension.
  - (3) Modify the special review use agreement on such terms and conditions as the Board of Trustees deems appropriate, including but not limited to restricting the uses that may be made of the property or the portions of the property on which such uses may be made or adding additional terms or conditions to the agreement or permit.

(Ord. 575 §1, 2003; Ord. 591, 2004)

Secs. 16-62—16-70. - Reserved.

Sec. 16-71. - District boundaries.

Unless otherwise specified, district boundaries are lot lines or the centerline of streets, alleys, railroad rights-of-way or such lines extended.

(Ord. 209 Art. IV §1, 1981)

Sec. 16-72. - Accessory buildings and accessory uses.

- (a) Accessory building. An accessory building is a subordinate structure to the principal building that is:
  - (1) Located on the same lot as the principal building;
  - (2) Clearly incidental to the principal building;
  - (3) Subordinate in size to the principal building;
  - (4) Used only at the same time as the principal building is active and operational;
  - (5) Customary in connection with the principal building; and
  - (6) For accessory dwelling units, such accessory buildings must comply with the requirements of Section 16-98.
- (b) Accessory use. An accessory use is a subordinate use to the principal use that is:
  - (1) Located on the same lot as the principal use;
  - (2) Clearly incidental to the principal use;
  - (3) Customary in connection with the principal use; and
  - (4) A permitted use within the zone district for the lot.

(Ord. 209 Art. IV §2, 1981; Ord. 804 §4, 2020)

**Editor's note—** Ord. 804, § 4, adopted Jan. 7, 2020, changed the title of § 16-72 from "Accessory buildings and uses" to read as herein set out.

Sec. 16-73. - Exceptions to yard requirements.

The following exceptions to the front yard requirement for dwellings abutting local streets, not including collector or arterial streets, are authorized for a lot in any district:

- (1) If there are dwellings on both abutting lots with front yards of less than the required depth for the district, the front yard for the lot need not exceed the average front yard of the abutting dwellings.
- (2) If there is a dwelling on one (1) abutting lot with a front yard of less than the required depth for the district, the front yard for the lot need not exceed a depth one-half (½) way between the depth of the abutting lot and the required front yard depth.

(Ord. 209 Art. IV §3, 1981)

Sec. 16-74. - Projections from buildings.

Cornices, eaves, canopies, sunshades, gutters, chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features and other similar architectural features may project not more than three (3) feet into a required yard or into required open space as established by coverage standards.

(Ord. 209 Art. IV §5, 1981)

Sec. 16-75. - Principal buildings on same lot.

No part of a principal building shall be located closer than ten (10) feet to any other principal building on the same lot.

(Ord. 209 Art. IV §6, 1981)

Sec. 16-76. - Home occupations.

- (a) A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:
- (1) Such use shall be conducted entirely by members of the family occupying the dwelling and up to one (1) on-site employee.
  - (2) Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.
  - (3) The total area used for such purposes shall not exceed one-half ( $\frac{1}{2}$ ) the floor area of the user's dwelling unit; accessory structures and attached garages may not be considered under this provision.
  - (4) There shall be no exterior advertising other than identification of the home occupation. Such identification sign shall not exceed six (6) square feet and shall comply with all other requirements of this Code. Any other method of advertising shall not solicit or direct persons to the address.
  - (5) There shall be no offensive impacts in violation of this Code, such as noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.
  - (6) There shall be no exterior storage on the premises of material, customer property or equipment used as a part of the home occupation.
  - (7) Off-street parking shall be provided to accommodate the parking needs of the home occupation; home occupations shall not generate traffic which significantly affects the residential character of an area and shall not generate more trips per day (TPD) than the standard for a single-family dwelling unit (SFDU) - ten (10) trips per day is the average TPD for a SFDU.
  - (8) The structure with the home occupation is in the F, MR, LDR, MDR or HDR zone.
  - (9) The home occupation shall not include:
    - a. A use prohibited in the zone district.
    - b. An animal hospital.
    - c. A restaurant.
    - d. A group home.
    - e. An auto repair shop.

- f. A nursing home/convalescent home.
  - g. A barber shop/salon.
  - h. An excavating or heavy equipment rental.
  - i. A mortuary.
  - j. A use which requires a special review or a conditional use permit in the zone district.
- (10) In the event that there is a requested home occupation that is not clearly permitted or prohibited, the Planning Commission shall review and recommend and the Board of Trustees shall finally determine whether the particular home occupation is consistent with this Section for classification as a home occupation.
- (11) The person operating the home occupation shall comply with the requirements of Chapter 6, Article 1 of this Code.
- (b) Prior to enforcement of this Section through the Municipal Court, the alleged violator shall receive notice as follows:
- (1) A written statement to the Zoning Administrator by a citizen explaining what provisions of this Section the property owner is allegedly violating; and
  - (2) If the Zoning Administrator determines that there is a violation of this Section, the Zoning Administrator shall provide a written warning to the property owner and the occupant by certified mail and by posting on the door of the property of the violation and that the violator has thirty (30) days to bring the home occupation into compliance or discontinue the home occupation.

(Ord. 209 Art. IV §7, 1981; Ord. 435 §1, 1996; Ord. 454 §1, 1997; Ord. 645 §14; Ord. 725 §12, 2013; Ord. 804 §5, 2020; Res. 2021-06 §14, 2021)

#### Sec. 16-77. - Temporary uses.

The following uses of land are permitted in each zoning district (unless restricted to particular zoning districts) subject to the applicable regulations of the district in which the use is permitted, and to the specific regulations and time limits which follow:

- (1) Christmas tree sales in any nonresidential district for a period not to exceed forty-five (45) days. Display of Christmas trees need not comply with the yard and setback requirements of this Chapter, provided that no tree shall be displayed within a vision clearance area.
- (2) Contractors' office quarters and equipment sheds accessory to a construction project, to continue only during the duration of such project, but not exceeding six (6) months and subject to renewal under the discretion of the Zoning Administrator.
- (3) Real estate offices incidental to new housing developments to continue only until the sale or lease of all lots in the development, but not exceeding one (1) year and subject to renewal under the discretion of the Zoning Administrator.

(Ord. 209 Art. IV §8, 1981; Ord. 220 §2, 1982)

#### Sec. 16-78. - Performance standards.

- (a) Smoke. No use shall be permitted in any district unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to smoke emission.
- (b) Particulate matter. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to emission of particulate matter.
- (c) Dust, odor, gas, fumes, glare or vibration. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to emission of dust, odor, gas, fumes, glare or vibration.
- (d) Radiation hazards and electrical disturbances. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to radiation control.
- (e) Noise. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to noise.
- (f) Water pollution. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to water pollution.
- (g) Public nuisance from marijuana establishments. The Town has a zero impact, zero tolerance policy regarding public nuisance from the operations of marijuana establishments. (See Section 7-37 of this Code.)

(Ord. 209 Art. IV §9, 1981; Ord. 720 §3, 2013)

#### Sec. 16-79. - Exterior lighting.

Any light used for the illumination of parking areas, off-street loading areas or any other purpose must be arranged in such a manner as to meet the following conditions:

- (1) Lights must be shielded and directed downward so that the beams, rays of light or indirect radiance will not shine into surrounding areas or buildings;
- (2) Neither the direct nor the reflected light from any light source may shine onto a roadway or create a traffic hazard to operators of motor vehicles on public thoroughfares;
- (3) No beacon lights or blinking, flashing or fluttering lights or other illuminated device which has a changing light intensity, brightness or color shall be permitted in any district.

(Ord. 209 Art. IV §10, 1981; Ord. 645 §15, 2008; Res. 2021-06 §15, 2021)

#### Sec. 16-80. - Vision clearance areas.

- (a) A vision clearance area shall contain no plantings, walls, structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height, measured from the top of the curb or existing grade unless said structure or obstructions are more than eighty percent (80%) open.
- (b) The minimum distance establishing the size of the vision clearance area shall be thirty (30) feet, except that at intersections including an alley, the minimum distance shall be fifteen (15) feet.
- (c) Vision clearance areas shall not be required in a Public district nor in the area designated as the Central Business District.

Sec. 16-81. - Tailing ponds.

- (a) Tailing ponds shall be so located as to leave at least a twenty-five-foot-wide open space area between the base of the containing dam and the edge of the closest stream.
- (b) Tailing ponds shall not be filled higher than the highest level of the adjacent property at the property line.
- (c) Tailing ponds shall conform in design, and construction and operation to all applicable state statutes.
- (d) Upon abandonment, tailing ponds shall be planted with native grasses, shrubs and trees.

(Ord. 209 Art. IV §12, 1981)

Sec. 16-82. - Reserved.

**Editor's note—** Ord. 804, § 6, adopted Jan. 7, 2020, repealed former § 16-82 which pertained to short-term rental, and derived from Ord. 798, §3, adopted in 2019.

Sec. 16-83. - Swimming pools.

A swimming pool may be permitted in any district as an accessory use subject to the following additional requirements:

- (1) Every swimming pool must be completely surrounded by a fence or wall not less than forty-two (42) inches in height with no openings large enough to permit children to pass through other than gates or doors that can be fastened to protect against entry. A dwelling house or accessory building may be used as part of such required enclosure.
- (2) All gates or doors opening through such enclosures must be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use.
- (3) The property owner has entered into an agreement with the Town regarding the discharge of water from the pool to the sewer system of the Town and addressing the volume of water that may be placed in or discharged from the pool during any twenty-four-hour period. The agreement shall provide sufficient protection to the Town so that the pool does not overextend the water or sewer system of the Town.

(Ord. 209 Art. IV §14, 1981; Ord. 435 §1, 1996)

Sec. 16-84. - Drive-in facilities.

- (a) Any use permitted in a zoning district which intends to conduct a portion or all of its business with persons desiring to remain in their automobiles, or which allows products to be consumed on the premises outside the principal building, and which is not subject to the special review provisions of Article III or is not a part of a planned unit development under Article VI must submit a site plan including screening to be reviewed and approved by the Planning Commission.
- (b) In reviewing and approving the site plan for such a use, the Planning Commission must be satisfied that the traffic circulation on and adjacent to the site is arranged so that internal and external pedestrian and vehicular movements are compatible and traffic hazards are minimized.

Sec. 16-85. - Salvage yards.

Salvage yards shall be screened from view by natural terrain, dense foliage and/or adequate fencing that complies with Subsection 16-89(b).

(Ord. 209 Art. IV §17, 1981; Ord. 645 §16, 2008; Res. 2021-06 §16, 2021)

Sec. 16-86. - Recreational vehicles.

The following regulations shall apply in all residential districts to the storage and use of travel trailers, tent trailers, pick-up campers on coaches, motorized dwellings, boats and boat trailers, snow vehicles, cycle trailers, utility trailers and vans, horse trailers and vans, and similar vehicular equipment:

- (1) Such vehicular equipment shall not be stored or parked closer than eighteen (18) inches to any proposed or existing public sidewalk and in no instance shall it project into the public right-of-way.
- (2) Any such vehicular equipment which exceeds thirty (30) inches in height shall not be parked in a vision clearance area.
- (3) Travel trailers, tent trailers, pick-up campers or coaches, motorized dwellings and/or vans shall not be used for living or housekeeping purposes except when located in an approved mobile home park or in a campground providing adequate sanitary facilities, and no business shall be conducted within such equipment parked or stored unless the Zoning Administrator has given approval.
- (4) Travel trailers, tent trailers, detached pick-up campers or coaches, boats and boat trailers, cycle trailers, utility trailers and vans, horse trailers and vans which are parked and stored out-of-doors shall be adequately blocked and/or tied down or otherwise secured so that such vehicles do not roll off the lot and are not otherwise moved about by high winds.
- (5) No vehicular equipment regulated by this Section shall be stored out-of-doors on a residential lot unless it is in condition for safe and effective performance of the functions for which it was intended.

(Ord. 209 Art. IV §17, 1981)

Sec. 16-87. - Mobile homes.

Mobile homes shall be located only in mobile home parks and as otherwise specified in Article V of this Chapter.

(Ord. 209 Art. IV §18, 1981)

Sec. 16-88. - Density increase.

The minimum lot area per dwelling unit stated in Section 16-33 of this Chapter for the NC District may be decreased to two thousand (2,000) square feet upon approval of the Board of Trustees if the applicant has met the following:

- (1) The project has been processed as a planned unit development;
- (2) The project site is at least eight thousand (8,000) square feet in size;

- (3) At least twenty-five percent (25%) of the project site is landscaped open space (excluding parking);
- (4) The Town may require project site planning, including landscaping and building design by certified professionals; and
- (5) The applicant has paid the additional costs incurred by the Town for extraordinary review of the application, including the services of outside contractors.

(Ord. 246 §4, 1983; Ord. 645 §17, 2008; Res. 2021-06 §17, 2021)

Sec. 16-89. - Fences.

- (a) It shall be unlawful for any person to construct or erect any fence within the limits of the Town exceeding six (6) feet in height except as specifically stated herein.
- (b) A fence exceeding six (6) feet in height may be constructed or erected only for the purpose of screening legally existing junk yards, outdoor storage yards and other legally existing uses involving the outside storage of machinery, equipment, material and automobiles. However, no such fence shall exceed eight (8) feet in height. Upon approval by the Board of Trustees, municipal facilities and certain public facilities may exceed height restrictions for safety or land use reasons, but in no circumstance should said fences exceed heights allowed in Section 16-33 of this Chapter, under Structure Criteria.
- (c) It shall be unlawful for any person to construct or erect any fence exceeding four (4) feet in height within fifteen (15) feet of any lot line bordering upon any street or road, or within the Central Business District.
- (d) It shall be unlawful for any person to construct or erect any fence in the Central Business District of a material that is of a combustible, environmentally unsafe or toxic or hazardous material of any kind.
- (e) It shall be unlawful for any person to construct or erect any fence exceeding three (3) feet in height within one hundred (100) feet of the center of any intersection of two (2) or more streets or roads.
- (f) Any fence erected or constructed hereafter which exceeds the heights set forth above shall constitute a public nuisance.
- (g) For the purpose of this Section, the height of the fence shall be measured from grade to the top of the highest point of the fence. Grade shall be determined on that portion of the property on which each portion of the fence is to be constructed or erected, as said grade exists on the date of the ordinance codified herein, or as such grade exists on the date a permit for construction is applied for, whichever grade is lower.
- (h) Any person violating any provision of this Section shall be charged with a civil infraction and may be punished by a fine up to one thousand dollars (\$1,000.00) per day.
- (i) Each twenty-four-hour period during which a violation of this Section occurs shall be a separate violation.
- (j) In addition to other remedies, the Board of Trustees may enforce the provisions of this Section by seeking injunctive relief and abatement in a court of competent jurisdiction to compel removal of any fence erected in violation of this Section.

(Ord. 342, 1992; Ord. 600 §1, 2005; Ord. 795 §2, 2019; Ord. 803 §16, 2019)

Sec. 16-90. - Wireless facilities.

Any applicant to erect wireless facilities within the Town shall address the following site selection and design criteria as part of its application. Any such application shall be reviewed by the Town following the same procedure as applicable for a special review use. Small cell CMRS facilities, however, shall be permitted as uses by right in all zone districts, subject to the process and standards described in Section 16-92A.

(Ord. 453 §2, 1997; Ord. 751 §2, 2017)

#### Sec. 16-91. - Site selection criteria.

Site selection criteria are listed as a means of directing a site applicant to evaluate existing conditions at and adjacent to a subject site. It is the applicant's responsibility to address these criteria in a project description narrative.

- (1) Screening potential of existing vegetation, structures and topographic feature.
- (2) Compatibility with adjacent land uses.
- (3) Opportunities to mitigate visual impact.
- (4) Availability of suitable existing structures for antenna mounting.
- (5) No telecommunications facility owner or lessee or employee thereof shall act to exclude or attempt to exclude any other telecommunications service provider from the same location. A telecommunications facility owner or lessee or employee thereof shall cooperate in good faith to achieve co-location of antennas with other telecommunications service providers.
- (6) Co-location of CMRS facilities with existing facilities structures or buildings is strongly encouraged. If co-location is not proposed, the applicant must present a justification why this is so.
- (7) Availability of utilities and access.
- (8) No antenna owner or lessee shall fail to comply with current applicable Federal Communications Commission regulations prohibiting localized interference with reception of television and radio broadcasts.
- (9) No CMRS facility may be located on a single-family detached, duplex, triplex or fourplex building.

(Ord. 453 §2, 1997)

#### Sec. 16-92. - Wireless facility design criteria.

All siting must be accompanied by a site development plan (SDP) as required in the Town's zoning ordinance. Landscaping requirements of the Nederland Design Policies in Section III, Commercial, Office, Retail and Industrial uses, will apply to any leasehold site area that contains a CMRS facility and its associated accessory uses. Building- or roof-mounted facilities need not meet the landscaping requirements unless the accessory equipment storage shelter is located external to the building.

- (1) CMRS facilities shall be designed to be compatible with surrounding buildings and/or uses in the area of those planned for the area. This may be accomplished through the use of compatible architectural elements such as color, materials, texture, scale of facilities in relation to the surrounding development and character of the area. CMRS facilities shall be integrated, through their location and design, into the natural setting and structural environment of the area.

- (2) CMRS facilities shall preserve or enhance the existing character of the topography and vegetation. Existing vegetation, if any, and if suitable with natural features should be preserved or improved.
- (3) Roof- and building-mounted antennas shall be completely screened and/or compatibly colored to complement the building to which they are attached.
- (4) Structures or cabinets sheltering accessory equipment on the same site shall be compatible or blend with surrounding built or natural environment.
- (5) A variety of screening techniques should be considered depending on site conditions. Techniques include, but are not limited to: landscaping, berming, screening and fencing where appropriate.
- (6) The height of any support structure for a freestanding, microcell, repeater or antenna CMRS facility shall conform to the height limit of the subject zone district. Support structures for antennas of a CMRS facility needing to exceed the height of the subject zone district must obtain a special exception use permit as part of the SDP approval.
- (7) Whenever an antenna is attached to a building roof, the height of the antenna shall not be more than fifteen (15) feet over the height of the building. If the building is constructed to the height limit of the applicable zone district, an additional fifteen (15) feet of antenna height is permissible.
- (8) Microcell and repeater CMRS facilities may have no more than four (4) whip or panel antennas per facility, one (1) microwave antenna a maximum of three (3) feet in diameter, eighteen (18) square feet of exposed panel antenna surface area and fifteen (15) feet of whip antenna length.
- (9) CMRS facilities shall meet the following minimum setbacks from all property lines, whichever is the greatest:
  - a. The setback for a principal building within the applicable zone district;
  - b. Twenty-five percent (25%) of the facility height, including antennas; or
  - c. The facility height, including antennas, adjacent to residential uses and/or residentially zoned property.

(Ord. 453 §2, 1997)

Sec. 16-92A. - Standards for small cell facilities and networks.

- (a) Applicable requirements: Small cell facilities and small cell networks shall comply in all respects with the requirements of Sections 16-90, 16-91 and 16-92 applicable to all wireless and CMRS facilities, with the following exceptions:
  - (1) Setback requirements;
  - (2) Design requirements; and
  - (3) Location requirements.
- (b) Location: Small cell facilities are permitted in Town rights-of-way, upon facilities in these rights-of-way and on public easements owned by the Town under the following priority:
  - (1) First, on a Town-owned utility pole, if any, which shall be removed and replaced with a pole designed to contain all antennae and equipment within the pole to conceal any ground-based support equipment and ownership of which pole is conveyed to the Town.
  - (2) Second, a Town-owned utility pole with attachment of the small cell facilities in a configuration approved by the Town.

- (3) Third, on a third-party owned utility pole, (with the consent of the owner thereof), with attachment of the small cell facilities in a configuration approved by the Town.
  - (4) Fourth, on a traffic signal pole or mast arm in a configuration approved by the Town, or in the case of a CDOT facility, by CDOT.
  - (5) Fifth, on a freestanding or ground-mounted facility which meets the definition of and requirements for an alternative tower structure in a location and configuration approved by the Town.
- (c) Height: All small cell facilities shall not exceed two (2) feet above the light pole, traffic signal or other facility or structure to which they are attached, or the maximum height in the relevant zone district, whichever is less. When new utility poles are proposed as an alternative tower, their height shall be similar to existing utility/light poles in the vicinity.
- (d) Spacing: No small cell facility shall be located within one thousand (1,000) feet of any other such facility.
- (e) Design: Small cell facilities shall be designed to blend with and be camouflaged in relation to the structure upon which they are located (e.g.: painted to match the structure or same material and color as adjacent utility poles). to the greatest degree possible, support equipment shall be located underground.
- (f) Relocation and removal: All facilities in Town right-of-way or easements shall be removed and/or relocated at the applicant's expense in the event the Town's use of the right-of-way or easement precludes the continued presence of such facilities.
- (g) Permitting: All small cell CMRS facilities and networks shall be reviewed pursuant to the procedures set forth in the Municipal Code. Networks shall also make application for a permit for work in the right-of-way. The Town may accept applications for a small cell network, provided each small cell facility shall be separately reviewed. The Town may take up to ninety (90) days to process a complete application.
- (h) Indemnification: The operator of a small cell facility which is permitted to locate on a Town right-of-way or easement or on a Town-owned utility pole, traffic signal or other structure owned by the Town, or within a Town-owned right-of-way or easement, shall, as a condition of permit approval, indemnify the Town from and against all liability and claims arising as a result of that location or attachment, including repair and replacement of damaged poles and equipment, in a form approved by the Town Attorney.
- (i) Bonding: All permits for location of small cell facilities on real property not owned by the small cell permittee shall include as a condition of approval a bond, in form approved by the Town Attorney, to guarantee payment for any damages to the real property and removal of the facility upon its abandonment.
- (j) Permit expiration: A permit for a small cell facility shall expire nine (9) months after approval unless construction of the permitted structure has been initiated.

(Ord. 751 §3, 2017)

Sec. 16-93. - Recognition of lot splits created prior to 1972.

Parcels of property meeting all six (6) of the requirements below shall be recognized as legal lots as defined in Sections 16-6 and 17-4 of this Code:

- (1) The parcel to be recognized as a lot was created prior to 1972 from a lot prior to 1972;
- (2)

The portions of the lot as originally platted are not owned by the same person or entity at any time after February 10, 1998;

- (3) The size of each portion of the existing lot meets the minimum lot size requirements for the zoning district in which the lot is located;
- (4) There are no improvements constructed over any of the platted lot lines or created division lines;
- (5) The recognition of the divisions of the lot does not deprive any one (1) of the portions of the lot of access to a public street; and
- (6) Any utilities serving any improvements on the lot are in easements for the benefit of the property served by the utilities.

(Ord. 474 §1, 1998)

Sec. 16-94. - Variances for lot splits created prior to 1972 which do not meet minimum lot size requirement for zoning district.

- (a) Upon application of a property owner, the Board of Zoning Adjustment may grant a variance to allow building on a lot that has been illegally split that does not meet all of the criteria of Section 16-93 above only under all of the following circumstances:
  - (1) The property owner submits an application on a form provided by the Town that contains at a minimum the information required by Subsection 16-52(a) and the footprint of the building sought to be constructed on the property; and
  - (2) The property is to be used only for a single-family dwelling.
- (b) The Board of Zoning Adjustment may issue a variance allowing construction of the single-family dwelling as submitted in the application if it finds all of the following factors exist:
  - (1) All of the criteria for a variance contained in Paragraph 16-232(a)(1) are found to exist;
  - (2) The parcel that is the subject of the application meets all of the criteria of Section 16-93 of this Code except Paragraph (3); and
  - (3) The residence to be constructed and all appurtenances thereto, including the driveway, can be constructed in compliance with all applicable standards of the Town, including, but not limited to, design standards, yard and bulk requirements, accessibility, utility and excavation requirements and driveway standards.
- (c) Any variance granted pursuant to this Section shall expire within one (1) year of the date of issuance, unless the property owner has obtained a building permit within such year period, and diligently pursues issuance of a certificate of occupancy.

(Ord. 482 §1, 1998)

Sec. 16-95. - Reserved.

**Editor's note—** Res. 2021-06 §18, adopted April 6, 2021, redesignated the provisions of former § 16-95 as a new § 16-34.

Sec. 16-96. - Small wind turbines.

- (a) Small wind turbines are permitted as a special review use in those zone districts designated by the use group table set forth in Subsection 16-32(c) of this Chapter. The requirements set forth in this Section are in addition to, and not in lieu of, those special review use requirements set forth in Article III of this Chapter. Applications for a small

wind turbine tower shall be processed in accordance with Article III.

- (b) Setbacks. Small wind turbines shall meet the following minimum setbacks from all property lines, whichever is the greatest:
  - (1) The setback for a principal building within the applicable zone district; or
  - (2) Twenty-five percent (25%) of the overall wind turbine height, measured at the highest-reaching point of any part of the turbine.
- (c) Exemptions from setbacks. A small wind turbine may be exempt from the setback requirements of Subsection (b) above when the adjacent property upon which also is located a wind turbine that is participating in a unified wind energy project or study with the applicant, as evidenced by a written instrument, such as a lease or access/easement agreement.
- (d) Distance from environmental areas. Small wind turbines shall be located a minimum of two thousand five hundred (2,500) feet from all important bird areas, as identified by the local Audubon Society, and a minimum of one thousand five hundred (1,500) feet from all state-identified wetlands. Distance shall be measured in a straight line, regardless of topographical features, from the base of the small wind turbine to the nearest boundary of such area or wetland. These minimum distances may be altered to be greater or lesser at the discretion of the Board of Trustees, based on topography, land cover, land uses and any other factors that the Board of Trustees reasonably determines influences the flight patterns of resident birds.
- (e) Sound level. A small wind turbine shall not exceed fifty (50) decibels, except during short-term events such as severe wind storms and utility outages. Sound shall be measured in accordance with Section 10-265 of this Code.
- (f) Visual impacts. Small wind turbines will necessarily have visual impact on surrounding properties and the community due to the height necessary for such facilities to access wind resources. The intent of this Subsection is to reduce visual impacts without restricting the applicant's access to wind resources.
  - (1) Color and surface treatment of the turbine shall minimize visual disruption to surrounding properties, such as flicker and reflection, through techniques such as using nonreflective colors and colors that blend with the surrounding environment.
  - (2) The turbine and any associated structures shall, to the extent reasonably feasible, use materials, colors, textures, screening and landscaping that will blend the structures into the natural setting and existing environment.
  - (3) Where wind characteristics permit, small wind turbines shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast apparent from any public access.
  - (4) The tower shall not significantly impair a scenic vista or scenic corridor as identified in the Comprehensive Plan.
  - (5) A small wind turbine shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind turbine.
  - (6) A small wind turbine shall not significantly obstruct the predominant view of the surrounding neighborhood. For purposes of this Paragraph, *predominant view* means the scenic view of the landscape as seen from a residence or business, or the accessory area of a residence or business, such as a deck, garden or family

gathering area.

- (g) Height restrictions. The overall height of a small wind turbine, as measured at the highest-reaching point of any part of the turbine, shall not exceed sixty (60) feet. The minimum distance from ground level to the lowest-reaching point of any moving part of the small wind turbine shall be fifteen (15) feet.
- (h) Submittal requirements. In addition to the requirements of Section 16-52 of this Chapter, an application to locate a small wind turbine shall include the following:
  - (1) Small wind turbine system specifications and drawings, including manufacturer and model, rotor diameter, tower height and tower type: freestanding or guyed, all elevation views or a photo or three-dimensional rendering from a certified engineer or qualified, by recognized agencies, as meeting established standards and recommended business practices, and/or determined by the American Wind Energy Association's (AWEA) Small Wind Turbine Committee as commercially available with multiple publicly accessible operational installations in the U.S.
  - (2) Mechanical wind brake required.

(Ord. 680 §4, 2010)

Sec. 16-97. - Chicken hens.

As an accessory use to a residential use in all zone districts, chicken hens are permitted as pet animals, subject to the following standards:

- (1) The chicken hens must be provided with a covered predator-resistant chicken house that is constructed of materials complementary to existing structures on the lot and properly ventilated and designed to be easily accessed, cleaned and maintained. The chicken house must have an attached outdoor enclosure area (chicken run) which, together with the area of the house, provides a minimum of four (4) square feet per chicken. The combined total area of the chicken house and the chicken run may not exceed two hundred (200) square feet. Chicken houses shall be a maximum of seven (7) feet tall, measured to the highest point of the structure.
- (2) Neither a chicken house nor a chicken run may be located less than six (6) feet from any other structure nor less than ten (10) feet from any abutting property line.
- (3) Chicken houses and runs must be regularly maintained in a manner to control dust, odor and waste and to prevent such areas from constituting a public nuisance or health hazard. The accumulation of organic material furnishing food for flies is prohibited. All manure and waste products shall be adequately composted or regularly collected and kept in tightly covered predator-, rodent- and insect-resistant receptacles and disposed of at least once a week in a manner approved by the Town Administrator or his or her designee.
- (4) No person may own or keep a rooster or other type of fowl, other than a chicken hen, in any zone district.
- (5) The breeding, selling and trading of chicken hens and their offspring as a commercial enterprise is prohibited. The keeping of chicken hens permitted by this Section is as an accessory use to a principal residential use, not as a home occupation or other commercial purpose.
- (6) A chicken hen permit is required to keep chicken hens, in accordance with Chapter 6 of this Code.

Sec. 16-98. - Accessory dwelling unit, residential.

- (a) Accessory dwelling units: Detached and integrated accessory dwelling units are permitted as accessory to a single-family dwelling unit subject to the following requirements and approval of a permit application:
  - (1) General accessory dwelling unit standards. The following standards apply to detached and integrated accessory dwelling unit:
    - a. Primary residence requirement. Either the principal dwelling unit or accessory dwelling unit on the parcel or lot must be owner-occupied.
    - b. Unity of ownership: The fee ownership of the principal dwelling and accessory dwelling unit shall not be separated.
    - c. An accessory dwelling unit shall comply with the locally adopted building code and all other applicable local, state and federal regulations.
    - d. Short-term rental: Short-term rental of an accessory unit and short-term rental of a principal dwelling unit on a lot or parcel with an accessory unit are prohibited except as specifically authorized in Chapter 6, Article V of this Code.
    - e. No more than one (1) accessory dwelling unit shall be located on any lot.
    - f. Accessory dwelling units must be served with municipal water and municipal sanitary sewer or septic as is applicable.
  - (2) Accessory dwelling unit-detached. In addition to the general accessory dwelling unit standards in paragraph (a)(1) of this section, the following standards shall apply to detached accessory dwelling units:
    - a. Maximum height shall not exceed the maximums as set forth in Section 16-33, and the accessory dwelling unit-detached shall not exceed the height of the principal building.
    - b. Maximum total area: The total area of a detached accessory dwelling unit shall not exceed 800 gross square feet.
    - c. Setbacks: The accessory dwelling unit shall meet the setbacks of an accessory use and all other yard and bulk requirements set forth in Section 16-33 of this Code. Maximum lot coverage and maximum floor area ratios shall not be exceeded,
    - d. Maximum number of bedroom: There shall be a maximum of two bedrooms within an accessory dwelling unit,
  - (3) Accessory dwelling unit—integrated. In addition to the general accessory dwelling unit standards in paragraph (a)(1) of this section, the following standards shall apply to the integrated accessory dwelling units:
    - a. Maximum total area: There shall be no limitation to gross square footage.
    - b. Exterior access: An integrated accessory dwelling unit shall have a separate exterior access. This requirement may be met with one airlock type entry to the principal dwelling structure if separate access to the accessory dwelling exists following the initial outside entry of the principal dwelling structure.
- (b) Accessory dwelling unit permit applications.
  - (1)

All applicants shall apply on forms provided by the Zoning Administrator and shall contain the following information:

- a. A statement of current ownership.
- b. A statement of primary residence as documented by the occupant's: (1) driver's license or Colorado state identification card; and (2) voter registration; motor vehicle registration; or designated residence for tax purposes. An applicant for an accessory dwelling unit may have only one (1) primary residence for purposes of this section.
- c. A legal description and survey of the property.
- d. A site plan that depicts the principal dwelling unit and the accessory dwelling unit.
- e. A demonstration of compliance with the criteria [of] this subsection.
- f. A parking plan.
- g. A demonstration of compliance with the provisions of Chapter 13 of the Code as it relates to sewer and water utilities and fees.
- h. A demonstration of approved, inspected septic for all bedrooms, if applicable.
- i. Payment of the application fee as set forth in Section 4-151 of this Code.

(2) Review of application.

- a. Approval: The Zoning Administrator reviews the application for substantial compliance with the requirements in this section. Upon approval of the application, the Zoning Administrator will issue a permit.
- b. The Zoning Administrator may impose conditions of approval on a permit necessary to protect public health, safety, and welfare and or assure compliance with applicable ADU standards and requirements.
- c. The written decision of the Zoning Administrator shall be issued within thirty (30) days of a complete application.
- d. Denial: The Zoning Administrator shall deny an application for failure to substantially comply with the requirements in this section.
- e. Review: Any person aggrieved by the final decision of the Zoning Administrator may seek review to the Planning Commission. The issue before the Planning Commission will be whether the Zoning Administrator exceeded his or her authority in denying the permit.

(3) An owner or the owners of a lot or parcel with an accessory unit and the principal dwelling unit that were legally established and constructed with a certificate of occupancy on or before January 7, 2020, shall register with the Zoning Administrator and submit payment of the registration fee.

(4) Transfer: An accessory dwelling unit permit may be transferred to the new owner by application to the Zoning Administrator as set forth in Section 16-98(b).

(c) Administration and enforcement. It shall be the duty of the Zoning Administrator to administer and enforce the provisions of this Section.

(Ord. 804 §7, 2020)

**Editor's note—** Ord. 804, § 7, adopted Jan. 7, 2020, repealed § 16-98 in its entirety and enacted new provisions to read as herein set out. Former § 16-98 pertained to accessory dwelling units, and derived from Ord. 785, §1, adopted in 2018.

## ARTICLE V - Mobile Homes

### Sec. 16-121. - Definition.

For the purposes of this Article, *mobile home* shall mean any unit designed for occupancy which has been constructed at a location other than the location upon which it is proposed to be situated, and which is designed for conveyance upon the public streets or highways, including but not limited to those structures commonly referred to as trailers, mobile homes and doublewides.

(Ord. 98 §1, 1964; Ord. 148 §1, 1977)

### Sec. 16-122. - Trailers prohibited outside trailer courts.

- (a) It shall be unlawful for any person to use or maintain any trailer, with or without wheels, as a residence, office, store or manufactory within the Town limits; provided, however, that such trailers may be maintained in a trailer court or camp equipped with proper sanitary and other facilities for the use of the inhabitants of such trailers and maintained for the use of four (4) or more such trailers except as provided in Subsection (b) below, and provided further that persons using and maintaining such trailers in the Town limits on or before May 12, 1964, shall be permitted to so use and maintain such trailers at the place where now located.
- (b) A temporary construction residential trailer may be allowed to be placed on a lot during construction of a single-family dwelling unit for up to ninety (90) days at the determination of the Board of Trustees with the following conditions:
  - (1) Proper water and sewer plant investment fees shall be paid prior to the trailer being placed on the lot;
  - (2) A building permit must be approved and paid prior to the trailer being placed on the lot;
  - (3) The trailer may be no larger than twenty-five (25) feet long, must hook up to sewer or septic, and must be placed with a minimum setback of five (5) feet from any property line; and
  - (4) An extension of the ninety-day limit may be granted by the Board of Trustees upon a finding that construction activity has been expeditiously attempted.

(Ord. 98 §2, 1964; Ord. 244 §1, 1983; Ord. 645 §18, 2008; Res. 2021-06 §19, 2021)

### Sec. 16-123. - Mobile homes prohibited outside mobile home courts authorized by town.

- (a) It shall be unlawful for any person to use or maintain any mobile home, with or without wheels and other tires necessary for conveyance over the public streets and highways, as a residence, office, store, manufactory or other building, within the Town; provided, however, that such mobile homes may be maintained in approved mobile home courts or mobile home camps equipped with proper sanitary and other facilities for the use of the inhabitants of such mobile homes, provided that such courts or camps are authorized by the Board of Trustees, except as provided in Subsection (b) below; provided further that persons using and maintaining such mobile homes in the

Town limits on or before May 12, 1964, shall be permitted to so use and maintain mobile homes at the place where now located. A mobile home shall be considered a nonconforming building to which Article VII of this Chapter applies if legally located prior to the effective date of this Code.

- (b) A temporary construction residential mobile home may be allowed to be placed on a lot during construction of a single-family dwelling unit for up to ninety (90) days at the determination of the Board of Trustees with the following conditions:
  - (1) Proper water and sewer plant investment fees shall be paid prior to the trailer being placed on the lot;
  - (2) A building permit must be approved and paid prior to the trailer being placed on the lot;
  - (3) The trailer may be no larger than twenty-five (25) feet long, must hook up to sewer or septic or provide adequate sewage removal and must be placed with a minimum setback of five (5) feet from any property line; and
  - (4) An extension of the ninety-day limit may be granted by the Board of Trustees upon a finding that construction activity has been expeditiously attempted.

(Ord. 148 §2, 1977; Ord. 220 §1, 1982; Ord. 244 §2, 1983; Ord. 435 §1, 1996; Ord. 645 §19, 2008; Res. 2021-06 §20, 2021)

#### Sec. 16-124. - Penalty.

Any person violating any of the provisions of this Article shall, on conviction, be fined as set forth in Section 1-72 of this Code.

(Ord. 98 §3, 1964; Ord. 148 §4, 1977; Ord. 435 §1, 1996)

#### Secs. 16-125—16-150. - Reserved.

### ARTICLE VI - Planned Unit Development

#### Sec. 16-151. - Purpose.

The purpose of this Article is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provisions of streets and utilities; and to preserve the natural and scenic features of open areas.

(Ord. 209 Art. V §1, 1981)

#### Sec. 16-152. - Scope.

- (a) Single-family residential development proposals exceeding six (6) units on lots of contiguous ownership, all multi-family above four (4) dwelling units or mobile home residential development proposals on a parcel or parcels totaling one (1) acre or more in size and all commercial, industrial, public and quasi-public development proposals on a parcel or parcels totaling one (1) acre or more in size shall be processed in accordance with the planned unit development procedures of this Article.
- (b)

The yard and bulk requirements stated in Article II shall not apply to planned unit developments, except that, if a PUD is proposed for an area currently zoned for residential use, the minimum lot area of the current zoning district will be utilized in determining residential density. These requirements shall be controlled by the criteria and standards of this Article and as shown on the approved planned unit development plan.

- (c) Uses permitted in a planned unit development shall be approved only after such uses are found, after review, to not be in conflict with the surrounding neighborhood and to conform to the Comprehensive Plan.
- (d) A zoning change is required for planned unit developments and the area included in each approved planned unit development shall be indicated on the zoning map.
- (e) The Town shall determine appropriate uses, densities and yard and bulk requirements for each planned unit development based on (i) the criteria set forth above, (ii) the impact of the proposed development on traffic flow, utilities, schools and Town resources and (iii) the preservation of the natural scenic features of surrounding areas.

(Ord. 209 Art. V §2, 1981; Ord. 246 §5, 1983; Ord. 382 §6, 1994; Ord. 645 §20, 2008; Ord. 746 §2, 2017; Res. 2021-06 §21, 2021)

#### Sec. 16-153. - Coordination with subdivision regulations.

It is the intent of this Article that subdivision review under the subdivision regulations be carried out simultaneously with the review of a planned unit development under this Article.

(Ord. 209 Art. V §3, 1981)

#### Sec. 16-154. - Preliminary application.

- (a) A preliminary application for approval of a planned unit development may be filed by a person having an interest in the property for which the planned unit development is requested and shall be made on a form provided by the Town. The application must include three (3) hard copies and one (1) PDF copy, adequate for review by Town staff of the following:
  - (1) A preliminary development plan illustrating:
    - a. Adjacent land uses;
    - b. Boundary and size of site;
    - c. Existing topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if the land is too flat for contours) and five (5) feet if the slope is greater than ten percent (10%);
    - d. Proposed land uses and their respective acreage;
    - e. The character of the proposed development and the proposed number of dwelling units, if applicable;
    - f. The location of proposed streets and bicycle/pedestrian paths;
    - g. The location and size of proposed public and semi-public uses, both dedicated and other; and
    - h. Areas of potential hazard such as one-hundred-year floodplain, rock slides, subsidence or other similar hazards and mineral areas of economically feasible extraction value.
  - (2) A written statement including:

- a. An explanation of the character of the planned unit development and the manner in which it has been planned to take advantage of the planned unit development regulations;
  - b. A statement of the present ownership and legal description of all the land included within the planned unit development; and
  - c. A general indication of the anticipated development schedule.
- (3) Other information the applicant believes will support the preliminary application.
- (b) The applicant shall furnish a list of the names and addresses of owners of property located within three hundred (300) feet of the subject site.
  - (c) Upon review of the application, the Planning Commission may determine that additional information is critical to its evaluation of the application. The applicant shall be responsible for furnishing such additional information if so requested.
  - (d) The applicant shall pay a nonrefundable preliminary planned unit development application fee set forth in Section 4-151 to the Town upon submission of the application to cover processing costs of the Town. In addition to the fee, a deposit in an amount determined by the Town to be sufficient to cover costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the Town and to pay on a monthly basis all costs incurred by the Town in processing the application shall be filed with the Town at the time the application is filed. The Town Clerk shall send the applicant a monthly statement of costs incurred by the Town. Said costs shall be paid in full prior to final consideration of the preliminary application. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. Any amount of the deposit not expended will be refunded by the Town within forty-five (45) days after the applicant's withdrawal of the application, the Town's final action on the application, or the effective date of the ordinance approving the application.

(Ord. 209 Art. V §4, 1981; Ord. 382 §7, 1994; Ord. 552 §2, 2001; Ord. 794 §1, 2018; Res. 2021-06 §22, 2021)

#### Sec. 16-155. - Final application.

- (a) The final application shall be filed within one (1) year of approval of the preliminary application unless the applicant and Planning Commission mutually agree, in writing, to an extension of the filing deadline. The application shall be made on a form provided by the Town and shall include three (3) hard copies and one (1) PDF copy, adequate for review by Town staff, the following:
  - (1) A final plan illustrating:
    - a. Boundary, overall size and a legal description of the site;
    - b. Proposed topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if the land is too flat for contours) and five (5) feet if the slope is greater than ten percent (10%);
    - c. The proposed land uses and their respective acreage;
    - d. The location and size or building envelopes of all buildings, structures and improvements;
    - e. The architectural character of all buildings and structures including their maximum height;

- f. The density and type of dwellings, if applicable;
  - g. The internal vehicular circulation system including arterial collector and local street design, right-of-way widths, curb cuts, turning movement and access control;
  - h. Pedestrian and bicycle circulation system;
  - i. Off-street parking areas, loading areas and service areas, including refuse disposal;
  - j. Areas which are to be dedicated for public use or reserved as common open space;
  - k. The location and design of proposed signs and exterior lighting plan;
  - l. Areas of known hazard such as one-hundred-year floodplain, rock slides, subsidence or other similar hazards and mineral areas of potentially economically feasible extraction value;
  - m. A landscape plan illustrating size, type and location of plant materials and an irrigation plan, if applicable;
  - n. Anticipated utility requirements; and
  - o. Development phasing.
- (2) A written statement including:
- a. An explanation of the character of the planned unit development and the manner in which it has been planned to take advantage of the planned unit development regulations;
  - b. A statement of the present ownership and legal description of all the land included within the planned unit development; and
  - c. A brief statement describing the environmental impact of the planned unit development with specific reference to the performance standards identified in this Chapter.
- (b) The applicant shall pay a nonrefundable final planned unit development application fee to the Town upon submission of the application to cover processing costs of the Town. Said fee shall be equal to the zoning amendment fee. In addition to the fee, a deposit in an amount determined by the Town to be sufficient to cover costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the Town and to pay on a monthly basis all costs incurred by the Town in processing the application shall be filed with the Town at the time the application is filed. The Town Clerk shall send the applicant a monthly statement of costs incurred by the Town. Said costs shall be paid in full prior to final consideration of the final plat. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. Any amount of the deposit not expended will be refunded by the Town within forty-five (45) days after the applicant's withdrawal of the application, the Town's final action on the application, or the effective date of the ordinance approving the application.

(Ord. 209 Art. V §5, 1981; Ord. 246 §6, 1983; Ord. 382 §8, 1994; Ord. 794 §2, 2018; Res. 2021-06 §23, 2021)

Sec. 16-156. - Processing of preliminary application.

- (a) The applicant shall submit the complete preliminary application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the preliminary application to the Planning Commission.
- (b)

Within sixty (60) days of receipt of the preliminary application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first-class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting on a street.

- (c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either recommend approval, approval with conditions, or denial of the application to the Board of Trustees.
- (d) Upon receipt of the Planning Commission recommendation, the Board of Trustees shall act on the recommendation after holding a public hearing. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing.
- (e) Approval of the preliminary application shall be valid for one (1) year. A one-year extension of approval time may be granted by the Planning Commission upon written request by the applicant.

(Ord. 209 Art. V §6, 1981; Ord. 793 §1, 2018; Res. 2021-06 §24, 2021)

Sec. 16-157. - Processing of final application.

- (a) All or any portion of an approved preliminary application may be submitted for final application approval. In the case of a partial submission, the approval of the remaining portion of the preliminary application shall automatically gain an extension of one (1) year.
- (b) The applicant shall submit the completed final application to the Zoning Administrator. Upon finding the application is complete, the Zoning Administrator shall submit the final application to the Planning Commission.
- (c) Within sixty (60) days of receipt of the final application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first-class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting a street.
- (d) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either approve the application, with or without conditions, or deny the application and recommend the same to the Board of Trustees.
- (e) Within sixty (60) days of receipt of the Planning Commission recommendation, the Board of Trustees shall approve the application, with or without conditions, or deny the application.
- (f) No improvements for an approved planned unit development plan shall be constructed until the Zoning Administrator has issued a planned unit development certificate. The certificate shall be issued only after the applicant has entered into an agreement with the Town specifying that all conditions imposed by the Board of Trustees will be completed and that the use and improvements will be in accordance with the approved final application. The agreement shall be recorded in the office of the County Clerk and Recorder.

(Ord. 209 Art. V §7, 1981; Ord. 435 §1, 1996; Ord. 793 §2, 2018)

Sec. 16-158. - Approval criteria and conditions.

- (a) A planned unit development application shall be approved only if the Board of Trustees finds that:
  - (1) The application is generally compatible with adjacent land uses;
  - (2) The application is consistent with the Comprehensive Plan;
  - (3) The Town has the capacity to serve the proposed use with water, sewer, fire and police protections;
  - (4) Reserved;
  - (5) The planned unit development utilizes the natural character of the land, includes compatible land uses, provides for fire and police protection, off-street parking, vehicular, pedestrian and bicycle circulation and outdoor recreation; is of overall compatible architectural design; achieves adequate screening, buffering and aesthetic landscaping; avoids development of areas of potential hazard; ensures compliance with the performance standards; and meets all other provisions of this Chapter.
- (b) In considering an application for a planned unit development, the Board of Trustees may impose conditions on the final application to ensure compliance with this Article.
- (c) All provisions of a planned unit development shall be recorded in a development agreement. Such agreement shall not be final until the agreement is approved by the Board of Trustees and fully executed by all parties.

(Ord. 209 Art. V §8, 1981; Ord. 382 §9, 1994; Ord. 645 §21, 2008; Res. 2021-06 §25, 2021)

Sec. 16-159. - Approved plans to be made part of zoning map.

All approved planned unit development plans, including modifications and conditions, shall be endorsed by the Board of Trustees and made a permanent part of the zoning map.

(Ord. 209 Art. V §9, 1981)

Sec. 16-160. - Alterations of approved planned unit development plans.

No approved planned unit development plan shall be altered unless the final development plan is amended and approved in accordance with the procedures applicable to the approval of a final application as set out in this Article, except that minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final development program was approved.

(Ord. 209 Art. V §10, 1981)

Sec. 16-161. - Court appeals.

Any person applying to the courts for a review of any decision made under the terms of this Article shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings.

(Ord. 209 Art. V §11, 1981)

Secs. 16-162—16-180. - Reserved.

## Sec. 16-181. - Continuation of nonconforming uses or structures.

- (a) A nonconforming nonresidential use may be continued; provided, however, that, if a nonconforming nonresidential use is discontinued for a period of one (1) year, regardless of intent to resume active operations, the structure or tract of land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use.
- (b) A nonconforming structure may continue to be occupied; provided, however, that, if a nonconforming structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it shall be restored only to a conforming structure. If a nonconforming structure is damaged less than seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it may be repaired or restored, provided that any such repair or restoration is started within twelve (12) months and is completed within eighteen (18) months from the date of partial destruction.
- (c) If a nonconforming structure is moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.
- (d) A nonconforming residential use in a conforming structure that has been damaged or destroyed in excess of seventy-five percent (75%) of its actual building valuation, as determined by the records of the Boulder County Assessor, may be continued if the structure is repaired or restored under the following conditions:
  - (1) The damage or destruction was not caused directly or indirectly by an intentional act of the owner of the property or the structure or any agent or representative of such owner as determined by the appropriate governmental agency; and
  - (2) Restoration of the structure is commenced within six (6) months after the date on which the structure was destroyed and completed within eighteen (18) months after the date on which the restoration was commenced.

(Ord. 209 Art. VI §1, 1981; Ord. 382 §10, 1994; Ord. 455 §2, 1997; Ord. 709 §1, 2012)

## Sec. 16-182. - Change of nonconforming use.

A nonconforming use may be changed only to a conforming use.

(Ord. 209 Art. VI §2, 1981; Ord. 455 §3, 1997; Ord. 709 §1, 2012)

## Sec. 16-183. - Expansion or enlargement of nonconforming use or structure.

- (a) A nonconforming use shall not be expanded unless the expanded use conforms with the provisions of this Chapter.
- (b) A nonconforming structure may be altered or expanded provided that all new construction is compliant with this Chapter and the provisions of Chapter 18 of this Code.
- (c) A nonconforming use shall not be extended throughout any part of a building which was arranged or designed for such use prior to the enactment of this Chapter.

- (d) If a nonconforming use ceases for a period of twelve (12) months, such use shall not thereafter be reestablished and future use shall be in conformity with the provisions of the current zoning regulations. Single-family residential units in all zoning districts are exempt from this provision when used as a residence only.
- (e) The hours of operation, lighting, traffic flows, parking lighting, noise and similar characteristics of a nonconforming use shall not be altered to adversely impact adjacent properties.

(Ord. 209 Art. VI §3, 1981; Ord. 382 §11, 1994; Ord. 709 §1, 2012)

Sec. 16-184. - Nonconforming lots of record.

- (a) In any district, principal and customary accessory buildings may be erected on any legally existing single lot of record which existed prior to the effective date of the ordinance codified herein. Such lot must have been in separate ownership and not of continuous frontage with other lots under the same ownership. This provision shall apply even though such lot fails to meet the requirements of the district in which it is located for area, width or both area and width; provided however, that the requirements of the district for minimum yard dimensions shall be met unless a variance to said requirements has been granted by the Board of Zoning Adjustment.
- (b) If two (2) or more legally existing lots, or combinations of legally existing lots and portions of lots with continuous frontage in single ownership, are of record prior to the effective date of the ordinance codified herein, and part or all of said lots do not meet the requirements of the district in which they are located as to area, width or both minimum area and width, for the purposes of this Chapter, the lands shall be considered to be an undivided parcel. No portion of said parcel shall be sold or used in a manner which diminishes compliance with the lot width and area requirements established by this Chapter unless a variance permitting such lots to be considered and regulated as nonconforming lots of record in separate ownership is granted by the Board of Zoning Adjustment.
- (c) Provisions of Subsection (b) above shall not apply to lots in the Mountain Residential (MR) Zoning District, provided that each lot which is created by the nonapplication of said Section is at least twenty thousand (20,000) square feet in area.

(Ord. 209 Art. VI §4, 1981; Ord. 288 §1, 1988; Ord. 709 §1, 2012)

Sec. 16-185. - Construction on nonconforming lots.

- (a) A conforming structure existing on a nonconforming lot may continue to be occupied; provided, however, that if a nonconforming structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it may be repaired or restored under the following conditions:
  - (1) The damage or destruction was not caused directly or indirectly by an intentional act of the owner of the property or the structure or any agent or representative of such owner as determined by the appropriate governmental agency;
  - (2) Restoration of the structure is commenced within six (6) months after the date on which the structure was destroyed and completed within eighteen (18) months after the date on which the restoration was commenced; and
  - (3)

A building permit is obtained for the work to be performed, and all work is performed in accordance with all applicable ordinances, rules, regulations and laws.

- (b) A structure on a nonconforming lot may be altered or expanded provided that all new construction is compliant with this Chapter and the provisions of Chapter 18 of this Code.

(Ord. 455 §4, 1997; Ord. 709 §1, 2012)

Secs. 16-186—16-199. - Reserved.

## ARTICLE VIII - Off-Street Parking and Loading

Sec. 16-200. - Purpose.

The intent of this chapter is to prescribe provisions, criteria and standards for off-street parking and loading areas. The town recognizes that inadequate off-street parking and loading areas may lead to traffic congestion, parking violations in adjacent streets, loss of economic opportunities, as well as unauthorized parking in adjacent lots. Excessive parking and loading areas may waste money and valuable space for development or open space, and increase the potential for drainage problems. This chapter seeks to balance the public and the private needs for off-street parking and loading areas.

(Ord. 645 §22, 2008; Res. 2021-06 §26, 2021)

Sec. 16-201. - General requirements.

- (a) At the time of erection of a new structure or at the time of enlargement or change of use of an existing structure, off-street parking spaces and loading areas shall be as provided in this Article.
- (b) Where square feet are specified, the area measured shall be the floor area primary to the functioning of the particular use of property and shall exclude stairwells; elevator shafts; hallways; ornamental balconies; space occupied by heating, air-conditioning or other utility equipment; and space devoted to off-street parking or loading.
- (c) The number of employees of a new or expanding business shall be estimated in a manner approved by the Planning Commission, and the number of employees of an established business shall be determined from an examination of employment information presented by the applicants.
- (d) Loading areas shall be of adequate size and design to facilitate all loading activities off a public right-of-way.
- (e) Shared off-street parking. When there are opportunities to support parking demand through shared off-street parking for compatible uses (such as a movie theater and an office building), a parking study and shared parking agreements shall be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements. Shared parking agreement, as used in this Section, means an agreement that is recorded against the real property that is used in whole or in part to provide the parking spaces that are required pursuant to Section 16-202 below (the "parking property"), which agreement limits the use of the parking property to parking for the land development activity that is generating the need for the required parking spaces, until such time as the owner provides other real property for the required parking spaces that meets the requirements of this Chapter or makes

a payment to the Commercial Parking Fund pursuant to Section 16-211 of this Article. The shared parking agreement shall be in the form of the standard parking agreement provided by the Town and shall be approved by the Town Attorney prior to recording.

- (f) Snow storage area required. Snow storage areas shall be provided for all parking lots. The amount of snow storage area shall be equal to or exceed ten percent (10%) of the total area of required parking spaces. Snow storage areas shall be located so as to not drain onto adjacent properties. Such areas may utilize excess parking spaces above the number required.
- (g) Any existing use which does not comply with the off-street parking requirements of this Article shall be considered a nonconforming use.
- (h) No bicycle parking spaces are required in the F, MR, LDR, MDR, HDR and NC districts. In all other zoning districts, at least three (3) bicycle parking spaces or ten percent (10%) of the required off-street parking spaces, whichever is greater, are required.

(Ord. 209 Art. VII §1, 1981; Ord. 422 §§1, 2, 3, 1996; Ord. 645 §23, 2008; Ord. 666 §2, 2008; Res. 2021-06 §27, 2021)

Sec. 16-202. - Parking standards designated for each use.

The year-round accessible off-street parking space requirements for each use shall be as listed below. *Space*, as used in this Section, shall mean an off-street parking space. In the CBD, applicants shall meet their off-street parking requirement by either providing parking behind or under the building or by making a payment into the Commercial Parking Fund for each nonprovided space.

<b>Use</b>	<b>Required Parking (<i>must be outside of rights-of-way</i>)</b>
Single-family detached	2 spaces per unit
Multi-family (including studio apartments)	1 space per bedroom, with an extra space per every 4 units for other purposes

*All of the Following Uses Require 1 Parking Space Per Two Employees on Duty:*

Hotels/motels/boarding houses/hostels	1 space per bedroom
Nursing home or hospital	1 space per 10 beds
Places of public assembly:	
Church	1 per 4 seats

Library	1 per 400 sq. ft.
Preschool/day care/kindergarten/elementary school or intermediate school	1 drop-off space per 10 students or a drop-off lane
High school/vocational or commercial school	1 per 4 students in attendance
Commercial amusements:	
Stadium, arena, theatre, auditorium, conference center, meeting room, entertainment center	1 space per 4 seats
Bowling alley	4 spaces per alley
Commercial: retail	1 per 300 sq. ft.
Commercial: service or repair shops or a retail store handling exclusively bulky merchandise such as automobiles and furniture	1 per 300 sq. ft.
Offices, including medical/dental offices and clinics	1 per 300 sq. ft.
Eating and drinking establishments	1 per 4 seats
Mortuaries	1 per 4 seats
Industrial: storage, wholesale, manufacturing	To be determined through the SRU or PUD process
Multi-use/mixed use	To be determined through the SRU or PUD process using this table as a guideline

(Ord. 645 §24, 2008; Res. 2021-06 §28, 2021)

Sec. 16-203. - Maintenance restrictions.

- (a) The provision and maintenance of off-street parking and loading spaces is a continuing obligation of the property owner.
- (b) No building permit or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.
- (c)

The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Article.

- (d) Should the owner or occupant of any lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be unlawful and a violation of this Article to begin or maintain such altered use until such time as the increased off-street parking or loading requirements are complied with.

(Ord. 209 Art. VII §3, 1981)

Sec. 16-204. - Reserved.

Sec. 16-205. - Board of trustees may increase or reduce number of required parking spaces.

- (a) The Board of Trustees may increase or decrease the required number of off-street parking spaces in consideration of the following factors:
- (1) Probable number of cars owned by occupants of dwellings in the planned unit development;
  - (2) Parking needs of any nondwelling uses;
  - (3) Varying time periods of use; and
  - (4) Whatever joint use of common parking areas is proposed.
- (b) Regardless of a reduction in off-street parking spaces by the Board of Trustees, adequate space and site design shall be provided to accommodate the standard number of spaces for the proposed use.

(Ord. 209 Art. VII §6, 1981)

Sec. 16-206. - Location of spaces.

Required parking spaces shall be located not farther than three hundred (300) feet from the building or use they are required to serve, measured in a straight line from the building.

(Ord. 209 Art. VII §7, 1981)

Sec. 16-207. - Parking spaces not to be used for storage.

Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles, materials or refuse containers or for the parking of trucks used in conducting the business or use.

(Ord. 209 Art. VII §8, 1981; Ord. 645 §26, 2008; Res. 2021-06 §30, 2021)

Sec. 16-208. - Setbacks.

Except as provided in Subparagraph 16-202(1)a, required parking in loading spaces shall be set back five (5) feet from the front lot line to achieve access definition through the use of driveways and landscaping.

(Ord. 209 Art. VII §9, 1981; Ord. 246 §7, 1983)

A plan, drawn to scale, indicating how the off-street parking and loading requirements, excluding single dwelling unit areas, are to be fulfilled shall accompany an application for a building permit. The plan shall show all elements necessary to indicate that the requirement is being fulfilled, including the following:

- (1) Delineation of individual parking and loading spaces;
- (2) Circulation area necessary to serve spaces;
- (3) Access to streets and property to be served;
- (4) Grading, drainage, surfacing and subgrading details; and
- (5) Other pertinent details.

(Ord. 209 Art. VII §10, 1981)

Sec. 16-210. - Design standards.

Parking lots containing more than twenty (20) spaces shall be designated as special review uses. Adequate drainage facilities shall be provided. Curb or wheel stops may be provided.

(Ord. 209 Art. VII §11, 1981; Ord. 698 §1, 2011)

Sec. 16-211. - Payments to commercial parking fund.

In lieu of meeting the minimum off-street parking requirements set forth in this Article, an applicant may agree to contribute to the Commercial Parking Fund by payment of the cost per off-street parking space established by the Town for each off-street space not provided by the applicant. In the event that the building existed at the location on March 5, 1996, the applicant shall be required to provide off-street parking for the new use in excess of the required spaces that have been required by the former use of the building.

(Ord. 422 §8, 1996; Ord. 666 §3, 2008; Res. 2021-06 §31, 2021)

Secs. 16-212—16-230. - Reserved.

ARTICLE IX - Board of Zoning Adjustment

Sec. 16-231. - Organization.

- (a) There is hereby created a Board of Zoning Adjustment, to be known as "The Board of Zoning Adjustment of the Town of Nederland, Colorado," hereinafter referred to in this Article as "Board."
- (b) The membership of the Board shall consist of five (5) qualified electors of the Town. One (1) member may be a member of the Planning Commission and all shall be residents of the Town. The terms of office shall be for five (5) years, with terms to expire on June 1. To initiate staggered terms, the two (2) terms of the Board which expire June 1, 1995, shall be filled for four- and five-year terms respectively. Two (2) of the terms to expire June 1, 1996, shall

be extended to June 1997 and June 1998, respectively. All terms thereafter shall be five-year terms. It is the intent of the Board of Trustees to encourage diversity of participation on the Board of Zoning Adjustment by avoiding overlapping of membership between the Board and other boards and commissions of the Town.

- (c) The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under this Chapter, or to affect any variation in this Chapter. Every decision of such Board shall be subject, however, to review by certiorari by the District Court. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.

(Ord. 209 Art. VIII §1, 1981; Ord. 299 §3, 1988; Ord. 386 §1, 1994; Ord. 406 §1, 1995; Ord. 645 §28, 2008; Ord. 725 §13, 2013; Res. 2021-06 §32, 2021)

Sec. 16-232. - Powers of board.

(a) The Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of this Chapter. It shall also hear and decide all matters referred to it and the following matters as required under this Chapter:

- (1) Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter. The Board has the power to vary or modify the application of the regulations or provisions of this Chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, provided that the Board finds that all of the following criteria have been satisfied:
- a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;
  - b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Chapter;
  - c. That such unnecessary hardship has not been created by the applicant;
  - d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property; and
  - e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Chapter's provisions which are in question.

(2) Hear and decide such other matters as the Board of Trustees may by ordinance provide.

- (b) Where feasible, the Board may vary or modify the application of this Chapter for the purpose of considering access to sunlight and wind for renewable energy devices and achieving sustainability criteria adopted by the Board of Trustees.
- (c) Under no circumstances shall the Board grant a variance that would have the effect of increasing the density of use than would otherwise apply to the parcel.

(Ord. 209 Art. VIII §2, 1981; Ord. 435 §1, 1996; Ord. 548 §1, 2001; Ord. 706 §1, 2012)

In addition to any requirements the Board may adopt by rule, the Board shall conduct hearings and make decisions in accordance with the following requirements:

- (1) Applications and notices of appeal to the Board shall be submitted to the Zoning Administrator. Upon receipt of the application or notice of appeal, along with an application fee as set forth in the Town's fee schedule, the Zoning Administrator shall at once transmit to the Board all the papers constituting the basis or record upon which the application or notice of appeal was based. Appeals from decisions of any administrative official charged with the enforcement of this Chapter shall be taken within thirty (30) days of such order, requirement, decision or determination.
- (2) The Board shall set a reasonable hearing date, notify all involved parties (which in the case of a variance application shall include owners of property adjacent to the lot for which a variance is requested) of the hearing date by first class mail, and hear the application. Upon hearing, any party may appear in person or by agent or attorney.
- (3) Within a reasonable time from the hearing, the Board shall render its written decision. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken.
- (4) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been 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 or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Trustees or by the District Court on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

(Ord. 209 Art. VIII §3, 1981; Ord. 645 §29, 2008; Ord. 665 §3, 2008; Res. 2021-06 §33, 2021)

Sec. 16-234. - Alternate members.

The Board of Trustees may appoint up to three (3) alternate Board of Zoning Adjustment members to sit as a member of the Board only in the event that a permanent member cannot hear an appeal or a variance request because of an absence or conflict of interest. In no event shall the number of Board members and alternates hearing any appeal or variance exceed five (5). The term of an alternate shall be two (2) years. The Board of Trustee liaison to the Board may serve as one (1) of the three (3) alternate members if so designated by the Board of Trustees, in which event his or her term shall coincide with his or her term on the Board of Trustees.

(Ord. 477 §1, 1998; Ord. 697 §1, 2011)

Secs. 16-235—16-250. - Reserved.

Sec. 16-251. - General.

The Board of Trustees may, from time to time, on its own motion, on application of any person of interest, or on application of the Planning Commission or Board of Zoning Adjustment, amend, supplement or repeal the regulations and provisions of this Chapter.

(Ord. 209 Art. IX §1, 1981)

Sec. 16-252. - Application.

- (a) An application for amendment of this Chapter not involving the rezoning of land shall be made on a form provided by the Town and shall include:
  - (1) The specific amendment being requested;
  - (2) The reasons for the amendment request; and
  - (3) Other information the applicant believes will support the application.
- (b) An application for amendment of this Chapter involving the rezoning of land shall be made on a form provided by the Town and shall include:
  - (1) A map delineating said parcel, the requested zoning and the zoning of the adjacent properties;
  - (2) The legal description of property for which amendment is requested;
  - (3) The reasons for the rezoning request;
  - (4) Other information the applicant believes will support the application;
  - (5) A list of the names and addresses of owners of property located within three hundred (300) feet of the subject site; and
  - (6) Payment of a nonrefundable zoning amendment application fee to the Town upon submission of the application to cover processing costs of the Town. Said fee is set forth in Section 4-151. In addition to the fee, the applicant shall pay for all actual costs incurred by the Town in reviewing and processing the application. A deposit in an amount determined by the Town to be sufficient to cover costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application and an executed agreement by which the applicant agrees to replenish the deposit when requested by the Town and to pay on a monthly basis all costs incurred by the Town in processing the application shall be filed with the Town at the time the application is filed. The Town Clerk shall send the applicant a monthly statement of costs incurred by the Town. Said costs shall be paid in full prior to final consideration of the application by the Planning Commission. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. Any amount of the deposit not expended will be refunded by the Town within forty-five (45) days after the applicant's withdrawal of the application, the Town's final action on the application, or the effective date of the ordinance approving the application.

Sec. 16-253. - Processing of application.

- (a) The applicant shall submit the complete application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the application to the Planning Commission.
- (b) Within thirty (30) days of receipt of the application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, if the application involves the rezoning of land, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting on a street. The applicant shall be responsible for obtaining the correct names and addresses of the adjacent property owners at the expense of the applicant.
- (c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either recommend approval of the application, with or without modifications, or denial of the application to the Board of Trustees.
- (d) Upon receipt of the Planning Commission recommendation, the Board of Trustees shall act on the recommendation.

(Ord. 209 Art. IX §3, 1981; Ord. 435 §1, 1996; Ord. 725 §14, 2013)

Sec. 16-254. - Exception; general revision.

When said zoning map is in any way to be changed or amended incidental to or as a part of a general revision of the Zoning Code or Comprehensive Plan, whether such revision is made by repeal of the existing Chapter and enactment of a new Zoning Code or otherwise, said notice in this Article by posting and mailing shall not be required.

(Ord. 209 Art. IX §4, 1981)

Sec. 16-255. - Policy and standards for zoning changes.

- (a) For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the rezoning of land is to be discouraged. Rezonings should only be considered if:
  - (1) The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Comprehensive Plan;
  - (2) The area for which rezoning is requested has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area;
  - (3) The proposed rezoning is necessary in order to provide land for a community-related use which was not anticipated at the time of the adoption of the Comprehensive Plan, and such rezoning will be consistent with the policies and goals of the Comprehensive Plan.
- (b) This declaration of policy for rezoning shall not control a rezoning of newly annexed land.

(Ord. 209 Art. IX §5, 1981)

Sec. 16-256. - Minimum size of parcel.

No amendment changing the zoning classification of any lot, parcel or tract of land shall be adopted unless such lot, parcel or tract has seventy-five (75) feet of frontage on a public street, has seven thousand five hundred (7,500) square feet of area, or abuts on a lot, parcel or tract of land that has the same zoning classification as that which is proposed for the property which is the subject of the proposed amendment.

(Ord. 209 Art. IX §6, 1981)

Sec. 16-257. - Approval of amendment to zoning map.

In granting amendment to the zoning map, upon application by a property owner, the Board of Trustees may require the dedication of additional street right-of-way where an officially adopted street plan indicates a need for increased width or where the nature of the proposed development warrants increased street width, and the Board of Trustees may require permanent screen strips or other devices to minimize conflict with residential land use.

(Ord. 209 Art. IX §7, 1981)

Sec. 16-258. - Records of amendments.

The Zoning Administrator shall maintain a record of amendments to the text and map of this Chapter in a form convenient for use of the public.

(Ord. 209 Art. IX §8, 1981)

Secs. 16-259—16-270. - Reserved.

## ARTICLE XI - Enforcement, Penalty and Liability

Sec. 16-271. - Enforcement.

- (a) There is hereby created an office known as Zoning Administrator who shall be responsible to administer and enforce all zoning laws of the Town. He or she shall have all responsibilities and powers conferred upon the Zoning Administrator under this Chapter.
- (b) In the event that the Zoning Administrator and Building Official positions are not assigned to the same individual, issuance of building permits and certificates of occupancy by the Building Official shall require approval by the Zoning Administrator prior to issuance.
- (c) The Zoning Administrator is hereby empowered to cause any building, other structure or tract of land to be inspected and examined, and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provisions of this Chapter. Additionally, the Building Official is hereby empowered to withhold or revoke a permit or issue a stop work order for any building being constructed in violation of any provisions of this Chapter.
- (d)

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

(Ord. 209 Art. X §1, 1981)

Sec. 16-272. - Violations.

- (a) If the Zoning Administrator finds or if any person files with him or her a complaint in writing alleging that any of the provisions of this Chapter are being violated, he or she shall immediately investigate, and when necessary give written notice to the person responsible to cease such violations forthwith.
- (b) Written notice may be delivered in person or by certified mail to the violator or to any person in charge of property where the violation is occurring.
- (c) If the violation which is the subject of the notice delivered by the Zoning Administrator is not remedied within a reasonable time, to be determined by said official, action may be brought against the party or parties in violation pursuant to this Chapter.
- (d) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Chapter, the Zoning Administrator and the Town Attorney may institute any appropriate action or proceedings to prevent such unlawful erection, construction, maintenance or use to restrict, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
- (e) The granting of any permit under this Chapter shall not authorize the holder of the permit to construct or use his or her property in such a manner as to violate any provision of any other ordinance of the Town or any law of the State.

(Ord. 209 Art. X §2, 1981; Ord. 382 §13, 1994)

Sec. 16-273. - Penalty.

The following penalties, set forth in full herein, shall apply to this Chapter:

- (1) It is unlawful for any person to violate any of the provisions stated or adopted in this Chapter.
- (2) Every person convicted of a violation of any provision stated or adopted in this Chapter shall be punished as set forth in Section 1-72 of this Code.

(Ord. 209 Art. X §3, 1981; Ord. 382 §14 1994; Ord. 435 §1, 1996)

Sec. 16-274. - Liability for damages.

This Chapter shall not be construed to hold the Town responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a building permit as herein provided.

(Ord. 209 Art. X §4, 1981)

## Sec. 16-291. - Purpose and intent.

The purpose and intent of this Article is to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Town and to establish reasonable and uniform regulations to prevent the deleterious location and design of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Article to condone or legitimize the distribution of obscene material.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

## Sec. 16-292. - Definitions.

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

*Adult arcade* means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image- or virtual reality-producing machines, for viewing by five (5) or fewer persons per machine at any one (1) time, are used regularly to show films, motion pictures, video cassettes, slides or other photographic, digital or electronic reproductions describing, simulating or depicting specified sexual activities or specified anatomical areas.

*Adult bookstore, adult novelty store or adult video store* means a commercial establishment that, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, however produced, that depict or describe specified sexual activities or specified anatomical areas; or
- b. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

*Adult cabaret* means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment that features:

- a. Persons who appear nude or in a state of nudity or semi-nudity; or
- b. Live performances that are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

*Adult motel* means a hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other media productions, however produced, which are characterized by the depiction or description of

specified sexual activities or specified anatomical areas, and which commercial establishment has a sign visible from the public right-of-way which advertises the availability of this adult type of media production.

*Adult motion picture theater* means a commercial establishment that is distinguished or characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides or similar photographic reproductions, on more than one hundred (100) days per year, that have an "X" rating or that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

*Adult theater* means a theater, concert hall, auditorium or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of specified anatomical areas or by specified sexual activities.

*Employee* means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

*Establishment of a sexually oriented business* means and includes any of the following:

- a. The opening or commencement of any such business as a new business;
- b. The conversion of an existing business into a sexually oriented business;
- c. The addition of a different sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of a sexually oriented business.

*Foyer* means an architectural element of a building that consists of an entry hall or vestibule that is completely enclosed and contains one (1) door to provide access to areas outside of the building and a separate door to provide access to areas inside of the building.

*Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a sexually oriented business license.

*Licensing Officer* means the Town Clerk or his or her designee.

*Manager* means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

*Nude model studio* means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

*Nudity or state of nudity* means:

- a. The appearance of human bare buttocks, anus, male genitals, female genitals or the areola or nipple of the female breast; or
- b. A state of dress which fails opaque and fully to cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

*Operator* means and includes the owner, license holder, custodian, manager, operator or person in charge of any licensed premises.

*Peep booth* means a room, semi-enclosure or other similar area located within a licensed premises wherein a person may view representations of specified anatomical areas or specified sexual activities.

*Person* means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

*Premises* or *licensed premises* means any premises that require a sexually oriented business license and that are classified as a sexually oriented business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business.

*Principal business purpose* means as to any establishment, having as a substantial or significant portion of its stock in trade the items listed in Subparagraphs a. and b. of the definition of adult bookstore, adult novelty store or adult video store above and having on the premises at least thirty percent (30%) of the establishment's display space occupied by the display of the items described therein.

*Principal owner* means any person owning, directly or beneficially:

- a. Any membership or partnership interest in a limited liability company or limited liability partnership if such person has any legal control or authority over the management or operation of the entity; or
- b. In the case of any other legal entity, five percent (5%) or more of the ownership interests in the entity, except for shareholders, but including such shareholders who are corporate officers or directors or who otherwise have any legal control or authority over the management or operation of the entity.

*Public park* means an area of land owned by a governmental entity and intended to be used for recreational purposes, but not including any such land that contains no improvements and is intended only for open space purposes and not including any such land that is intended for use only for pathway purposes.

*Semi-nude* or *semi-nudity* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breasts, as well as portions of the body covered by supporting straps or devices, which supporting straps or devices are used to support or enable the wearing of such clothing.

*Sexually oriented business* means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio or other commercial establishment that has, as a substantial or significant portion of its stock in trade the items listed in Subparagraphs a. and b. of the definition of adult bookstore, adult novelty store or adult video store and having on the premises at least thirty percent (30%) of the establishment's display space occupied by the display of the items described therein. A commercial establishment may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas. The term commercial establishment includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships. The definition of sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

*Specified anatomical areas*, as used herein, means and includes any of the following:

- a. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, that are not completely and opaquely covered; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal acts* means sexual crimes against children, sexual abuse, sexual assault or crimes connected with another sexually oriented business, including but not limited to distribution of obscenity, prostitution or pandering.

*Specified sexual activities* means and includes any of the following:

- a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- c. Masturbation, actual or simulated;
- d. Human genitals in a state of sexual stimulation, arousal or tumescence; or
- e. Excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a. through d. of this definition.

*Transfer of ownership or control of a sexually oriented business* means and includes any of the following:

- a. The sale, lease or sublease of the business;
- b. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- c. The establishment of a trust, management arrangement, gift or other similar legal device that transfers ownership or control of the business, including a transfer by bequest or operation of law.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-293. - Interior lighting regulations.

- (a) The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- (b) It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-294. - Locations of sexually oriented businesses and design of same.

- (a) It shall be unlawful to operate or cause to be operated a sexually oriented business outside of the industrial zone.
- (b) It shall be unlawful to operate or cause to be operated a sexually oriented business within the industrial zone within two hundred (200) feet of:
  - (1) Any church.
  - (2) Any school meeting all requirements of the compulsory education laws of the State.

- (3) An existing dwelling.
  - (4) A public park.
  - (5) A licensed child care facility.
- (c) It shall be unlawful to cause or permit the operation, establishment or maintenance of a sexually oriented business within one hundred (100) feet of any other sexually oriented business.
  - (d) All exterior windows in a sexually oriented business shall be opaque to such an extent that interior objects viewed from outside shall be so obscure as to be unidentifiable. Exterior windows in sexually oriented businesses shall not be used for any display or sign except for a sign that complies with the requirements of Section 16-303 of this Article.
  - (e) All doors for ingress and egress to a sexually oriented business, except emergency exits used only for emergency purposes, shall be located on the front of the sexually oriented business. For purposes of this Subsection, the front of a sexually oriented business shall be deemed to be that facade of the building that faces the front lot line of the lot or parcel on which the business is located. Every sexually oriented business shall have a foyer at every point of ingress or egress, except for emergency exits. In the case of a sexually oriented business having more than one (1) front lot line, the sexually oriented business shall be oriented such that the front of the business faces away from the nearest of any of the land uses listed in Subsection (b) above.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-295. - Measurement of distances.

- (a) The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business or, in the case of a sexually oriented business operating within a condominium estate or leasehold estate, from the closest airspace boundary of such condominium estate or from the closest wall of such leasehold estate.
- (b) The distance between any sexually oriented business and any church, school, dwelling, public park or child care facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the sexually oriented business to the nearest property line of the premises of a church, school, dwelling, public park or child care facility. If the premises where the sexually oriented business is conducted are comprised of a condominium estate or leasehold estate, such distance shall be measured in a straight line, without regard to intervening structures or objects, from the nearest airspace boundary of the condominium estate or the nearest wall of the leasehold estate used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school, dwelling, public park or child care facility.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-296. - Stage required in adult cabaret and adult theater.

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the sexually oriented business license. Entertainers shall perform only upon a stage. The stage shall be fixed and immovable and located inside the building in which the adult use operates. No seating for the

audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-297. - Conduct in sexually oriented businesses.

- (a) No licensee, manager or employee mingling with the patrons of a sexually oriented business or serving food or drinks shall be in a state of nudity or intoxication. It is a defense to any prosecution for a violation of this Subsection that an employee of a sexually oriented business exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room that is accessible only to employees.
- (b) No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the genitals, pubic region, buttocks, anus or breasts of any person.
- (c) Any physical contact between a patron and employees is strictly prohibited.
- (d) Commission of any specified sexual activity or any specified criminal act as defined in this Article, as well as permitting the commission of such acts and activities, is strictly prohibited.
- (e) Display of specified anatomical areas, as defined in this Article, as well as permitting the display of such areas, is strictly prohibited.

(Ord. 632 §1, 2007; Ord. 634 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-298. - Unlawful acts.

It shall be unlawful for a licensee, manager or employee to violate any of the requirements of this Chapter or knowingly to permit any patron to violate the requirements of this Article.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-299. - Exemptions.

The provisions of this Article regulating nude model studios do not apply to:

- (1) A college, junior college or university supported entirely or partly by taxation;
- (2) A private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
- (3) A business located in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one (1) nude model is on the premises at any one (1) time.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-300. - Regulation of peep booths.

It shall be unlawful for any person to operate or cause to be operated a sexually oriented business with peep booths.

Sec. 16-301. - Hours of operation.

It shall be unlawful for a sexually oriented business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons upon the licensed premises from 2:00 a.m. to 8:00 a.m.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-302. - Minimum age.

- (a) Except for such employees as may be permitted by law, it shall be unlawful for any person under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that operates pursuant to a type A sexually oriented business license. It shall be unlawful for any person under the age of eighteen (18) years to be upon the premises of a sexually oriented business.
- (b) It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of twenty-one (21) years, except for such employees as may be permitted by law, to be upon the premises of a sexually oriented business operated pursuant to a type A sexually oriented business license. It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of a sexually oriented business.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Sec. 16-303. - Signs for sexually oriented businesses.

In addition to complying with all other sign regulations of this Code, a sexually oriented business shall display a sign, clearly visible and legible at the entrance to the business, that gives notice of the adult nature of the sexually oriented business and of the fact that the premises is off limits to minors or those under the age of twenty-one (21) years, as the case may be. No sign for a sexually oriented business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities.

(Ord. 632 §1, 2007; Ord. 648 §4, 2008)

Secs. 16-304—16-320. - Reserved.

CHAPTER 17 - Subdivisions

*Footnotes:*

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***Editor's note—*** Ord. 820 §1, adopted Jan. 4, 2021, repealed Ch. 17 in its entirety and enacted a new Ch. 17 to read as herein set out.  
Former Ch. 17, §§ 17-1—17-7, 17-21—17-30, 17-51—17-59, 17-71—17-73, 17-91—17-95, pertained to similar subject matter and derived from Ord. 238 §1, adopted in 1983; Ord. 282 §1, adopted in 1987; Ord. 435 §1, adopted in 1996; Ord. 448 §§1, 2, adopted in 1998; Ord. 503 §1, adopted in 1999; Ord. 572 §1, adopted in 2003; Ord. 578 §§ 1, 3, adopted in 2003; Ord. 583 §§1, 3, adopted in 2003; Ord. 665 §4, adopted in 2008; Ord. 725 §§15—19, adopted in 2013.

Sec. 17-1. - Title.

Chapter 17 shall be referred to as the Town of Nederland Subdivision Regulations or Subdivision Regulations.

( Ord. 820 §1, 2021)

Sec. 17-2. - Authority.

The Town of Nederland Subdivision Regulations are enacted in accordance with the authority conferred by Articles 16 and 23 of Title 31, Article 20 of Title 29, and Article 67 of Title 24 of the Colorado Revised Statutes, as amended.

( Ord. 820 §1, 2021)

Sec. 17-3. - Purpose.

This Chapter is designed and enacted with the following intentions:

- (a) Intent and goals. These regulations are generally intended to: (a) reduce environmental impacts of development; (b) ensure efficient traffic circulation, adequate improvements, sufficient open space and to assist the orderly, efficient and integrated development of the Town; (c) provide for the proper arrangement of streets and ensure proper distribution of population; (d) coordinate the need for public services with governmental improvements and programs (e) ensure adequate and convenient utilities, emergency access, drainage, recreation and light and air; (f) safeguard the interests of the public and subdivider and provide consumer protection for the purchaser; (g) minimize impacts to surrounding mountain views; and (h) regulate other matters as Town may deem necessary in order to protect the best interests of the public.
- (b) Special character considered. These Subdivision Regulations were prepared with reasonable consideration, among other things, of the largely residential and environmentally sensitive characteristics of the Town and with a regard for the preservation of these characteristics when authorizing and permitting the subdivision and use of property.
- (c) Specific purposes. These regulations are further intended to serve the following specific purposes:
  - (1) To inform each subdivider of the standards and criteria by which development proposals will be evaluated, and to provide information as to the type and extent of improvements required.
  - (2) To provide for the subdivision of property in the future without conflict with development on adjacent land.
  - (3) To protect and conserve the value of land throughout the municipality and the value of buildings and improvements on the land.
  - (4) To ensure that subdivision of property is in compliance with the Town's zoning ordinances, to achieve a harmonious, convenient, workable relationship among land uses, consistent with town development objectives.
  - (5) To guide public and private policy and action in order to provide adequate and efficient transportation, water, sewage, schools, parks, playgrounds, recreation, fire protection, and other public requirements and facilities and generally to provide that public facilities will have sufficient capacity to serve the proposed

subdivision.

- (6) To provide for accurate legal descriptions of newly subdivided land and to establish reasonable and desirable construction design standards and procedures.
- (7) To prevent the pollution of air, streams and ponds, to assure adequacy of drainage facilities, to safeguard the water table and to encourage the wise use and management of natural resources throughout the Town in order to preserve the integrity, stability and beauty of the community and the value of the land.

(Ord. 820 §1, 2021)

Sec. 17-4. - Applicability, exemptions, and limitations.

- (a) Applicability. These regulations are applicable to the following described property:
  - (1) Property located within the legal boundaries of the Town of Nederland;
  - (2) Privately owned property proposed for annexation to the Town of Nederland except to the extent specifically provided by any annexation agreement enacted by ordinance; and
  - (3) Property located outside of the legal boundaries of the Town of Nederland and described in a Town-adopted intergovernmental agreement that requires application of these Subdivision Regulations to the subdivision of property.
- (b) Exemptions. These Subdivision Regulations shall not apply to the following:
  - (1) A division of land to heirs through an estate proceeding conducted in accordance with law;
  - (2) A division of land by virtue of the foreclosure of a deed of trust in accordance with law;
  - (3) The division of land which creates an interest or interests in oil, gas or minerals which are presently or hereafter severed from the surface ownership of real property.
  - (4) Any property owned by or leased to the Town of Nederland where the Town is an applicant for subdivision approval, unless the Board of Trustees elects to subdivide the property in accordance with all or any portion of this Chapter;
  - (5) A division of land solely for purposes of enabling right-of-way dedication or the creation of a public trail to be owned or controlled by the Town of Nederland;
- (c) Limitations. This Chapter is not intended to modify, abrogate, amend or annul the following:
  - (1) Any currently valid subdivision approvals or permits related to the use of land issued by the Town of Nederland prior to the effective date of these Subdivision Regulations;
  - (2) Any currently valid subdivision approvals or permits related to the use of land issued by Boulder County while the property was subject to the County's subdivision jurisdiction;
  - (3) Any lawfully created easement;
  - (4) Any privately imposed covenant, condition, or restriction on the use of property provided that the covenant, condition, or restriction is more restrictive than the requirements of these Subdivision Regulations and does not conflict with any provision of these Subdivision Regulations; and
  - (5) Any vested property right lawfully established in accordance with federal or state law prior to the effective date of these Subdivision Regulations subject to the terms and conditions of any agreement or approval pertaining

to such vested right.

( Ord. 820 §1, 2021)

Sec. 17-5. - Administrative interpretations.

- (a) In consultation with the Planning Commission and Town Attorney, the Town Administrator is authorized to issue written administrative interpretations applicable to one (1) or more properties or similarly situated properties concerning the requirements and application of these Subdivision Regulations. An administrative interpretation shall not grant any form of subdivision approval and shall not modify, waive, or amend a non-ambiguous provision of these Subdivision Regulations. Such interpretation shall be limited to clarifying, restating, or assisting in identifying the proper application of these Subdivision Regulations in order to enable an applicant or applicants to conform to the requirements of these Regulations. All general administrative interpretations shall be collected and retained by the Town Administrator and made available for public inspection. Following issuance of an administrative interpretation, the Town Administrator shall provide a copy of the interpretation to both the Planning Commission and the Board of Trustees.
- (b) Any person aggrieved by a written administrative interpretation of the Town Administrator may appeal such interpretation to the Board of Trustees. Prior to scheduling an appeal before the Board, the aggrieved party shall contact the Town Administrator to schedule an opportunity to appear before the Planning Commission and present argument and evidence as to why the Administrator's administrative interpretation fails to reasonably conform with the purpose, language, or intent of these Subdivision Regulations. The Town Administrator shall also provide to the Planning Commission argument and evidence supporting the Administrator's interpretation. The Planning Commission shall render a decision based solely upon the argument and evidence presented whether the interpretation reasonably conforms with the purpose, language, or intent of these Subdivision Regulations. The Planning Commission's decision shall be presented to the Board of Trustees, together with the record made before the Planning Commission, and the Board shall administratively consider and render a decision to uphold, amend, or nullify the Town Administrator's administrative interpretation. All actions to appeal an administrative decision shall be administrative in nature and decisions of the Board of Trustees shall be final and not subject to further appeal.

( Ord. 820 §1, 2021)

Sec. 17-6. - Violation and enforcement.

- (a) General violation. It shall be unlawful for any person to subdivide land in violation of this Chapter.
- (b) False information. It is unlawful for any person to intentionally or knowingly submit a false statement as part of an application for subdivision approval, exemption or exception.
- (c) Unlawful sale of land. Pursuant to C.R.S. § 31-23-216, no owner or agent of the owner of any land located within a subdivision may transfer or sell, agree to sell or negotiate to sell any land by reference to or exhibition of or by use of a plat of a subdivision before said plat has been approved as a final plat by the Town and recorded or filed in the office of the Boulder County clerk and recorder. Any violation of this restriction shall be accompanied by a penalty of one hundred dollars (\$100.00) and attorney fees for collection, payable to the Town for each lot or parcel so transferred or sold, or agreed or negotiated to be sold. The description of such lot or parcel by metes and bounds

in the instrument of transfer or other document used in the process of selling or transferring shall not except the transaction from such penalties or from the remedies provided in this section. The Town may enjoin such transfer or sale or agreement by action for injunction brought in any court of competent jurisdiction and may recover the penalty by civil action in any court of competent jurisdiction.

- (d) Prohibited construction. No structure shall be constructed, or building permit issued for a structure, on any parcel of land except where such structure is to be constructed upon a parcel which meets the requirements of this Chapter. The lot lines, common walls, individual units, condominium units established in such development or parcel shall not be changed or altered by conveyance of a part thereof, nor shall any part of the same be joined with a part of any other for conveyance or construction or converted to condominiums or time sharing unless and until written application, and other required materials, has been made to and approved in writing by the Board.
- (e) Violation of express condition of subdivision approval. It shall be unlawful and a violation of these Subdivision Regulations for any person to fail to substantially satisfy or to breach a condition or requirement expressly imposed upon any approval of any application pursuant to these Subdivision Regulations.
- (f) Violation of subdivision agreement. It shall be unlawful and a violation of these Subdivision Regulations for any person to fail to substantially satisfy or to breach a condition or requirement expressly imposed upon any approval of any written contract or agreement associated with a subdivision between the Town and the person.
- (g) Continuing offense. A violation of these Subdivision Regulations shall be deemed a violation for each and every day or portion thereof during which any violation of the provisions of this Chapter are committed, continued, or permitted.
- (h) Enforcement. The provisions of these Subdivision Regulations may be enforced at the direction of the Town Administrator or Board of Trustees by use of any of the following methods either individually or in combination:
  - (1) Judicial proceeding including but not limited to actions for declaratory judgment, abatement, damages;
  - (2) Withholding of construction or building permit(s) for all or any improvement within the subdivision or improvement proposed to serve the subdivision;
  - (3) Refuse to accept, continue to process, or to approve, any application pertaining to the property subject to an enforcement action;
  - (4) Withholding or revoking certificate(s) of occupancy for any structure within the subdivision;
  - (5) To the greatest extent permitted by law, revocation or suspension of any license, permit, or certificate issued to any property or applicant;
  - (6) Inspection and ordering the removal or abatement of violations;
  - (7) Issuance of a stop work order mandating the temporary suspension of any development activity within or associated with the subdivision;
  - (8) Assessment of costs and expenses (including but not limited to costs and expenses for administrative actions, publication, attorney's fees and court costs) incurred by the Town in enforcement of these Subdivision Regulations and the imposition of a lien for such costs and expenses against all or any portion of the property within the subdivision; and
  - (9)

Demand for payment and the receipt and use of funds held by any person or financial institution which were deposited to secure the performance of the obligation or duty imposed by these Subdivision Regulations or a written contract or an agreement associated with a subdivision between the Town and the person.

- (i) Entry upon property for enforcement authorized. Whenever necessary to perform an inspection to enforce any provision contained within this Chapter or any condition or requirement of a permit or other land use approval issued pursuant to this Chapter, or whenever there is reasonable cause to believe that a violation of this Chapter or any permit or any other land use approval issued pursuant to this Chapter exists in any building or upon any real property within the jurisdiction of the Town, the Town Administrator, or designee, or a police officer may, upon presentation of proper credentials, enter such building or real property at all reasonable times to inspect the same or to perform any duty imposed upon him or her by the Nederland Municipal Code; provided, that if such building or real property is unoccupied, the authorized official shall first make a reasonable effort to locate the owner or other persons who have charge or control of the building or of the real property and request entry. If the entry is refused, or the owner cannot be located, the Town Administrator, the Administrator's designee, or any police officer, is authorized to obtain a search warrant pursuant to Rule 241(b)(2) of the Colorado Municipal Court Rules of Procedure in order to conduct and complete the inspection.
- (j) Costs and fees. The Town is authorized to collect its costs or fees for enforcement of this Chapter against any person violating any provision of this Chapter. Assessment of costs or fees shall be made by notice and demand letter signed by the Town Administrator which letter shall identify the reasons for the assessment, the amount of such costs and fees, and a demand to pay the costs and fees by a date certain not less than ten (10) days following the person's receipt of the letter. In the event the costs or fees are not timely paid, the Town may certify such costs and fees to the County Treasurer for collection against the property subject to the Chapter in the same manner as taxes under C.R.S. §§ 31-20-105 and 106.
- (k) Remedies not exclusive. The remedies provided by this Chapter shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Ord. 820 §1, 2021)

#### Sec. 17-7. - Major activity notice.

Pursuant to C.R.S. § 31-23-225, as amended, when a subdivision or commercial or industrial activity is proposed which will cover five (5) or more acres of land, the Town shall send notice to the state geologist and the Boulder County Board of County Commissioners of the proposal prior to approval of any zoning change, subdivision or building permit application associated with such proposed activity. Such notice shall be in a standard form, shall be promulgated as a rule and regulation prescribed by the Colorado Land Use Commission and shall contain such information as the Land Use Commission prescribes.

(Ord. 820 §1, 2021)

#### Sec. 17-8. - Approval required for recordation.

All plats of a subdivision of land within the Town shall be filed and recorded only after having been approved and signed by the Board.

Sec. 17-9. - Application and consultant review fees.

- (a) Application fees. Application fees for Town staff processing, including but not limited to setting public hearings; coordination with consultants; and other administrative tasks shall be paid directly to the Town in amounts set forth by resolution in a fee schedule adopted by the Board of Trustees.
- (b) Consultant review fees. In addition to an application fee, an applicant shall pay one hundred (100) percent of the costs of review incurred by the Town's consultants that are directly related to the Town's review, inspection, drafting, and consideration of the application. Consultants retained by the Town may include planning, engineering, legal, water and other land use professionals.
- (c) Procedure for payment of application and review fees. At the time a subdivision application is first submitted to the Town, and prior to any review by the Town staff, the applicant shall pay to the Town the estimated fees necessary to cover the application processing and review costs. The applicant shall make an initial deposit ("initial deposit") in an amount as set forth in the Town's fee schedule. As costs of review are incurred and billed to the Town, the Town shall draw upon the initial deposit for payments to the appropriate consultants. At such time that the costs charged against the initial deposit exceed eighty (80) percent or more of the initial deposit, and within ten (10) days of the applicant's receipt of notice by the Town, the applicant shall supplement the initial deposit by making an additional deposit with the Town of an amount equal to at least fifty (50) percent of the amount of the initial deposit. The Town may reduce the amount of, or may waive, the applicant's making of an additional deposit where the Town Administrator finds that the estimated or anticipated additional costs of review will not likely exceed the remaining balance held in the initial deposit. Upon the Town's final determination of the application, the Town shall refund any unused deposit amount.
- (d) Full payment a condition for approval. Notwithstanding the absence of any express condition of approval of an application for subdivision approval, the payment in full of all fees and charges associated with an application shall be a standard condition for the effectiveness of any subdivision application.
- (e) Application termination. The Town shall terminate review of an application when the initial deposit falls below the required minimum deposit amount and will recommence such review only upon receipt of the required additional amount.

(Ord. 820 §1, 2021)

Sec. 17-10. - Definitions.

The definitions contained in Section 16-6 of the Town Zoning Code are hereby adopted by reference. The following additional definitions apply to the application of these Subdivision Regulations:

*Accepted, roads and streets:* When used in regard to roads and streets, shall mean written acceptance of the road or street by the Town Engineer.

*Adjacent:* When used with respect to a lot or property ownership, shall mean all properties with a common point or line to the subject property and the property which would have a common point or line with the subject property if a public vehicular right-of-way separating the properties were not there.

***Applicant:*** A person, partnership, joint venture, association, corporation, person in a representative or agent capacity, or other legal entity or legal representative seeking approval of an application submitted to the Town in accordance with these Subdivision Regulations. An "applicant" is synonymous with "subdivider" and may include the owner, subdivider, developer, builder, or other person or entity engaged in the subdivision or development of property.

***As built plan:*** The final development plan that reflects the constructed subdivision.

***Bike path:*** A corridor for use by bicycles and pedestrians, prohibited for use by motorized vehicles.

***Block:*** An area of land within a subdivision which is entirely bounded by streets, highways, natural boundaries or the exterior boundary or boundaries of the subdivision.

***Building connection sewer:*** A sewer within a public street or right-of-way, proposed to connect any parcel, lot, or part of a lot with a main line sewer.

***Building sewer:*** A sewer, wholly within private property, proposed to connect any building to a building connection.

***Bylaws:*** Shall refer to the bylaws of the unit owners' association or corporation.

***Condominium project:*** The entire parcel of real property, including all structures thereon, to be divided into two (2) or more units for the purpose of constructing condominium units.

***Condominium unit:*** An individual air space unit together with the interest in the common elements appurtenant to such unit.

***Condominiums:*** A building containing condominium units which means an individual air space unit (any enclosed room or rooms occupying all or part of a floor or floors in a building of one (1) or more floors to be used for residential, professional, or commercial purposes which has access to a public street) together with the interest in the common elements appurtenant to said unit.

***Contractor:*** The individual, partnership, corporation, joint venture, or other legal entity performing the work. In the case of work being performed under permit issued by the Town, the permittee shall be construed to be the contractor.

***Culvert:*** A ditch, drain or conduit, not incorporated in a closed system that carries drainage water under a driveway, roadway, railroad, pedestrian walk or public way, or other type of overhead structure.

***Declaration:*** An instrument recorded pursuant to the statutes of the State and which defines the character, duration, rights, obligations, and limitations of condominium ownership. The declaration shall include all restrictions, limitations and specifications, which may be required by the Planning Commission or Board; and the procedure for amendments of the declaration that requires approval of the Town.

***Dedication:*** A grant by the owner of a right to use land to the public in general, involving a legally recorded transfer of property rights, and an acceptance of the dedicated property by the Town.

***Documentation of ownership, liens, and encumbrances:*** Documentary evidence acceptable to the Town reasonably establishing: (1) that the applicant(s) is/are either the fee owner(s) of the entire property proposed for subdivision or that the applicant possesses the legal authority to subdivide the property on behalf of the fee owner(s); and (2) the full names and mailing addresses of all other interest holders in the property. Documentation of ownership, liens and encumbrances shall include all of the following:

- (a) A written ownership and encumbrances report or title commitment prepared by a title company and dated not more than sixty (60) days from the date of the application submission to the Town;
- (b) Written authorization by the owner, acceptable to the Town Attorney, that establishes the applicant's full authority to perform all actions required by these subdivision regulations and to subdivide the property on behalf of an owner;
- (c) A listing of the owners of any surface, subsurface, or above surface rights, easements or other interests in the land including the names and addresses of such owners, together with the book or film, page and reception number of each owner as recorded in the office of the county clerk and recorder; and
- (d) A listing of all liens and encumbrances against the subject property with the book or film, page and reception number of each lien or encumbrance as recorded in the office of the Boulder County clerk and recorder including the names and addresses of all such lienholders.

*Drainage:* Surface water runoff or the removal of surface water or ground water from land by drains, grading or other means, which include runoff controls to minimize erosion and sedimentation during and after construction or development.

*Final approval:* Approval by the Board or Planning Commission of the final plat.

*Individual air space unit:* Consists of any enclosed room or rooms occupying all or part of a floor or floors of a building of one (1) or more floors to be used for residential, professional, commercial or industrial purposes, which has access to a public street.

*Inspector:* An authorized representative of the Town Engineer, assigned to make any or all necessary inspections of materials furnished and work performed by the contractor.

*Outlot:* A described and identified unit of land illustrated or depicted as an "outlot" on a Town-approved plat. Except to the extent expressly and specifically stated on the plat, an outlot is not a lot or building site, is not part of the plat and not approved for any use whatsoever by the plat. Use and development of an outlot requires approval of a minor subdivision plat, final plat, lot consolidation, or plat amendment, as applicable.

*Owner:* A person holding or vested with ownership of a fee simple interest in real property and, by virtue of such ownership, possesses the legal right to convey, grant or dedicate such property, or to otherwise bind future owners of such property through execution of a subdivision plat or other instrument affecting the property. Such term shall include a person acting on behalf of the owner by virtue of a fully executed and effective written power-of-attorney or other city-approved authorization.

*Plans:* The drawings, profiles, cross sections, working drawings, and supplemental drawings, or reproductions thereof, approved by the Town Engineer or building official, which show the location, character, dimensions, or details of the work.

*Plat, final:* A map, drawing or chart upon which the subdivider presents proposals for the physical development of subdivision, and which the subdivider submits for approval and intends to record in final form.

*Preliminary plan:* The preliminary drawings described in these regulations indicating the proposed manner or layout of the subdivision to be submitted to the Board for approval.

*Project documents:* Defined in accordance with the statutes of the State.

*Right-of-way:* The width between property lines of a street.

*Same ownership:* Ownership by the same person, corporation, firm, entity, partnership, or unincorporated association or ownership by different corporations, firms, partnerships, entities, or unincorporated associations, in which a stockholder, partner, associate, or a member of such family owns an interest in each corporation, firm, partnership, entity or unincorporated association.

*Service connection:* All or any portion of the conduit, cable, or duct, including meter, between a utility distribution line and an individual consumer.

*Sewer:* Any conduit intended for the reception and transmission of sewage and fluid industrial waste.

*Soil stability analysis:* A study conducted to determine the status of the soil on a property.

*Special provisions:* Any written provisions, which supplement or modify these specifications.

*Specifications:* Standard specifications, reference specifications, special provisions, and specifications in supplemental agreements between the contractor and the Town.

*Standard plans:* Details of standard structures, devices, or instructions referred to on the plans or in specifications by title or number.

*Storm sewer:* Any conduit and appurtenances intended for the reception and transfer of stormwater.

*Street, private:* Any street maintained by the town for purposes of vehicular or pedestrian use.

*Street, public:* The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

*Subdivider:* 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 defined herein, including any agent of the subdivider.

*Subdivision or subdivided land:* A tract of land which is divided into two (2) or more lots, tracts, parcels, sites, separate interests (including leasehold interests), interests in common, or other division for the purpose, whether immediate or future, of transfer of ownership, or for building or other development, or for street use by reference to such subdivision or recorded plat thereof. A minor subdivision is defined in Section 17-31 of the Nederland Municipal Code. A major subdivision is defined in Section 17-42 of the Nederland Municipal Code.

*Supervision:* Where used to indicate supervision by the Engineer, shall mean the performance of obligations, and the exercise of rights, specifically imposed upon and granted to the Town in becoming a party to the contract except as specifically stated herein, supervision by the Town shall not mean active and direct superintendence of details of the work.

*Surety:* Any individual, firm or corporation, bound with and for the contractor for the acceptable performance, execution, and completion of the work, and for the satisfaction of all obligations incurred.

*Utility:* Tracks, overhead or underground wires, pipelines, conduits, ditches, ducts or structures, sewers or storm drains owned, operated, or maintained in or across a public right-of-way or private easement.

( Ord. 820 §1, 2021)

## ARTICLE II - Subdivision Processes

Sec. 17-21. - Forms of subdivision approvals.

The Town of Nederland authorizes the following forms of subdivision approvals:

- Minor Subdivision (Article III)
- Major Subdivision (Article IV)
- Plat Amendment (Article V)
- Plat Vacation (Article VI)
- Lot Consolidation (Article VII)
- Lot Line Adjustment (Article VIII)
- Plat Correction (Article IX)

( Ord. 820 §1, 2021 )

Secs. 17-22—17-30. - Reserved

## ARTICLE III - Minor Subdivision

Sec. 17-31. - Definition of minor subdivision.

"Minor subdivision" means the division of land including replat, that:

- (a) Results in no more than four (4) lots or outlots;
- (b) Does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard including, but not limited to, lot area, minimum frontage, building height, setback(s), street or private drive width, parking or access; and
- (c) Does not propose a plat amendment, lot line adjustment, lot consolidation as defined by these Subdivision Regulations.

( Ord. 820 §1, 2021 )

Sec. 17-32. - Minor subdivision review procedures.

The procedures applicable to the processing of an application of a minor subdivision are provided in the Table of Subdivision Processes set forth in Article 3 of this title.

Sec. 17-33. - Sufficiency of application.

All plans, reports, maps and other information required for any plan or plat must be complete, legible, and must be submitted by the deadlines established by these Subdivision Regulations or deadlines established during the review process. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.

(Ord. 820 §1, 2021)

Sec. 17-34. - Contents of minor plat application.

- (a) Contents of application. The applicant shall submit to the Town two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals. An application may be submitted for all or any logical portion of property described in an approved and valid preliminary plan. The following submittals, materials and information shall comprise a complete application for plat review:
- (1) A completed application in the form approved by the Town;
  - (2) Payment of all required application fees and any review fee deposit;
  - (3) Documentation of ownership, liens and encumbrances or, in the alternative where no dedication of property to the public is proposed by the plat, all of the following:
    - a. A copy of a recorded deed for all of the property described in the application evidencing that the applicant is the fee owner of the property;
    - b. A written, executed, and notarized statement of the applicant representing to the Town that he or she is the fee owner of the property; and
    - c. A certified copy of documentation from the Boulder County assessor or clerk and recorder evidencing that the applicant is the owner of record of the property.
  - (4) A list of the names and mailing addresses of all mineral owners and lessees of mineral owners as this information appears of record with the Boulder County clerk and recorder and assessor's office.
  - (5) A legal description of the property proposed to be subdivided prepared by a licensed registered Colorado land surveyor;
  - (6) A description of the overall development concept, purpose and function of the proposed subdivision. If the property is or will be residentially zoned, the description shall include representations concerning the proposed quality and styles of residential structures, anticipated sales price ranges, and amenities.
  - (7) A list of the names and mailing addresses, as this information appears of record with the Boulder County assessor's office, of all owners of adjacent property to the property proposed for subdivision;
- (b) Minor plat. The minor plat shall be drafted at a scale of one (1) inch to one hundred (100) feet by the use of permanent ink on a stable reproducible drafting medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. Maps of two (2) or more sheets shall be referenced to an index map placed on the first sheet. Other scales

may be authorized in writing by the Town Administrator for larger, lower-density developments provided that the necessary data can be clearly and accurately shown. Where the required data cannot be clearly shown on one (1) plan sheet, additional plan sheets of the same size with easily identifiable match lines may be used.

- (1) A title that prominently identifies the proposed name of the subdivision together with the phrase "Minor Plat";
- (2) Date of preparation, map scale and north arrow;
- (3) Name, address and telephone number of the applicant, land owner(s), planner, engineer and surveyor;
- (4) Total acreage and surveyed description of the area;
- (5) A general vicinity map of the subdivision illustrating the subdivision's location within the Town and showing major streets.
- (6) Primary boundary survey control points with monument descriptions; all parcel lines dimensioned with lengths; curve data including chord lengths and bearings; basis of bearings and relation to true meridian;
- (7) Tract boundary lines, road right-of-way lines, easements and other sites with accurate bearings and dimensions including chord lengths and bearings, central angles, arc lengths and radii of all curves;
- (8) Name and right-of-way width of each street. Right-of-way widths are to be shown at each leg of an intersection, at point of curvature and point of tangent, at dead-ends, and at angle points;
- (9) Locations, dimensions and purposes of all easements;
- (10) Number or letter to identify each lot, outlot and block. Lots and blocks shall be numbered. All outlots shall be lettered in alphabetical order;
- (11) An identification of the streets, alleys, easements, parks, open space, and any other public facilities shown on the plat to be dedicated to public use. No areas within the plat may be designated as areas of conditional, planned or future public acquisition. Dedications of public property not made on the final plat shall be made only by general warranty deed unless otherwise approved by the Board of Trustees;
- (12) Names of all adjoining subdivisions with dotted lines of abutting lots. If the adjoining land is unplatted, it should be shown as such;
- (13) A delineation of the extent of the one-hundred-year floodplain;
- (14) Topography at vertical intervals of five (5) feet where the average cross-slope of the subdivision is more than ten percent (10%) and at vertical intervals of two (2) feet where the average cross-slope of the subdivision is less than ten percent (10%). Elevation data shall be based on current United States Geological Survey datum and, the benchmarks used shall be identified on the plan;
- (15) Zoning classifications of property adjacent to the property proposed for subdivision;
- (16) Location and size of existing utilities within or adjacent to the tract to be subdivided, including water, sewer, electric, gas and phone lines (utilities may be illustrated on a separate map at a matching scale as used for the preliminary plan);
- (17) Location, alignment, profiles, and cut and fill slope intercepts for streets and driveways for subdivisions with any slope area(s) of ten percent (10%) or greater; and
- (18) Signature and seal of the registered land surveyor;

The applicant shall submit to the Town two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

( Ord. 820 §1, 2021)

Sec. 17-36. - Standard for approval of a minor subdivision.

Recommendation of approval or conditional approval of any minor plat by the Planning Commission, and any approval or conditional approval by the Board of Trustees shall require a finding that the applicant and the evidence presented to the commission or the Town established the following by competent and sufficient evidence:

- (a) The proposed subdivision meets or satisfies all applicable requirements of these Subdivision Regulations;
- (b) The proposed subdivision conforms to all applicable requirements for the zone district(s) in which the property is located, including, but not limited to, requirements for setbacks, height, floor and lot areas, and minimum lot sizes;
- (c) The proposed subdivision substantially conforms to all other applicable requirements of this Code, ordinances, and resolutions of the Town of Nederland;
- (d) The proposed subdivision provides adequate capacity of water and wastewater utilities for the entire subdivision and development. Adequate capacity of wastewater utilities may be met by a private septic system provided that the applicant meets the requirements of and complies with Chapter 13 of the Nederland Municipal Code;
- (e) The proposed subdivision substantially conforms to the goals and policies of the Nederland Comprehensive Plan to the extent that such goals and policies do not conflict with provisions or requirements of this Code and to the extent that such goals and policies set forth requirements which are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that such application or subdivision meets or fails to meet such goal or policy; and
- (f) The proposed subdivision (both during and following construction and development) will not result in an unreasonable increase in the peak rate of discharge, or result in a decrease in the quality of discharge, or result in any significant change in the direction or location of the point of discharge, of storm water or surface water flows upon any adjacent or neighboring property.

( Ord. 820 §1, 2021)

Sec. 17-37. - Conditions for approval.

The Board of Trustees may impose reasonable conditions upon any approval which are necessary to ensure continued conformance with these standards of approval, this Code, or which are necessary to protect the health, safety, and welfare of the Town and its residents.

( Ord. 820 §1, 2021)

## ARTICLE IV - Major Subdivision

### Sec. 17-40. - Definition of major subdivision.

A "major subdivision" is any division of land that is not defined as a "minor subdivision," a "lot consolidation," a "plat amendment," or a "plat vacation," as these terms are defined by these Subdivision Regulations.

( Ord. 820 §1, 2021)

### Sec. 17-41. - Major subdivision process generally.

(a) A major subdivision requires the processing and approval of two (2) separate plans or plats: preliminary plan and final plat. Full processing and approval by the Board of Trustees of all three (3) phases in accordance with this title constitutes approval of a "major subdivision."

- (1) Preliminary plan. The preliminary plan is the first step of the two-step major subdivision approval process. Preliminary plan approval requires public hearings held before the Planning Commission and the Board of Trustees. The preliminary plan process will review the feasibility and design characteristics of the proposal based on the standards set forth in these Subdivision Regulations and this Municipal Code. The preliminary plan process will also evaluate preliminary engineering design. The applicant must receive preliminary plan approval or conditional approval in order to proceed with the final plat application.
- (2) Final plat. The final plat is the last step in the two-step subdivision approval process. An applicant must have received preliminary plan approval or conditional approval and the approval must be valid at the time of submission of the final plat application in order to proceed with the final plat process. Final plat review requires public hearings before both the Planning Commission and the Board of Trustees. No major subdivision shall be deemed finally approved until the Board of Trustees approves or conditionally approves the final plat and the final plat is properly recorded in the office of the Boulder County clerk and recorder. The final plat process will review the final engineering plans, the development agreement, homeowners' association covenants, the final plat itself, and any other documents, reports or studies as may be necessary to ensure conformance with these Subdivision Regulations, the Zoning Ordinance and this Municipal Code.

( Ord. 820 §1, 2021)

### Sec. 17-42. - Major subdivision review procedures.

The procedures applicable to the processing of an application of a major subdivision are provided in Article 10 of these Subdivision Regulations.

( Ord. 820 §1, 2021)

### Sec. 17-43. - Sufficiency of applications.

All plans, reports, maps and other information required for any plan or plat must be complete, legible, and submitted by the deadlines established by these Subdivision Regulations or deadlines established during the review process. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.

(Ord. 820 §1, 2021)

Sec. 17-44. - Preliminary plan—Contents of application.

The applicant shall submit to the Town two (2) copies of all preliminary plan application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals. The following submittals, materials, and information shall comprise a complete application for preliminary plan review:

- (a) A completed application in the form approved by the Town;
- (b) Payment of all required application fees and any review fee deposit;
- (c) Documentation of ownership, liens and encumbrances;
- (d) A legal description of the property proposed to be subdivided prepared by a licensed registered Colorado land surveyor;
- (e) A list of the names and mailing addresses, as this information appears of record with the Boulder County assessor's office, of all owners of adjacent property to the property proposed for subdivision;
- (f) A list of the names and mailing addresses of all mineral owners and lessees of mineral owners as this information appears of record with the Boulder County clerk and recorder and assessor's office;
- (g) Preliminary plan. The preliminary plan shall be prepared at a scale of one-inch equals one hundred (100) feet and shall be prepared, drawn, signed and stamped by a currently registered Colorado land surveyor. The size of the map sheet shall be twenty-four (24) by thirty-six (36) inches. Other scales may be authorized in writing by the Town Administrator for larger, lower-density developments provided that the necessary data can be clearly and accurately shown. Where the required data cannot be clearly shown on one (1) plan sheet, additional plan sheets of the same size may be used with easily identifiable match lines. The preliminary plan shall include or illustrate:
  - (1) A general vicinity map of the subdivision illustrating the subdivision's location within the Town and showing major streets;
  - (2) A title that prominently identifies the proposed name of the subdivision together with the phrase "preliminary plan;"
  - (3) Topography at vertical intervals of five (5) feet where the average cross-slope of the subdivision is more than ten percent (10%) and at vertical intervals of two (2) feet where the average cross-slope of the subdivision is less than ten percent (10%). Elevation data shall be based on current United States Geological Survey datum and, the benchmarks used shall be identified on the plan;
  - (4) Date of preparation, map scale, north arrow and revision box;

- (5) Name, address and telephone number of the applicant, land owner(s), planner, engineer and surveyor;
- (6) Subdivision names and lot owners' names for property within any adjacent subdivision(s), unsubdivided tracts with owner's names, and all public lands with the agency name. The approximate location of lot lines within adjacent subdivision for lots adjacent to the proposed subdivision;
- (7) Zoning classifications of property adjacent to the property proposed for subdivision;
- (8) Proposed names of any new streets;
- (9) Location and principal dimensions of all existing streets, pedestrian ways, alleys, easements, irrigation ditches and laterals, both of record and apparent from inspection of the property within or adjacent to the proposed subdivision;
- (10) Location and size of existing utilities within or adjacent to the tract to be subdivided, including water, sewer, electric, gas and phone lines (utilities may be illustrated on a separate map at a matching scale as used for the preliminary plan);
- (11) Locations of streams, ditches, ponds, and other water features, including direction of flow, high water elevations, and the location and extent of those areas subject to inundation by the one-hundred-year frequency storm;
- (12) Location and description of significant existing and proposed vegetation and landscaping;
- (13) Location and dimensions of all proposed lots, blocks, and outlots. Lots and blocks shall be numbered. All outlots shall be lettered in alphabetical order;
- (14) Location, dimensions, and areas expressed in acres and as a percent of the total project area of all proposed streets, off-street parking areas, pedestrian ways, bike and equestrian ways, alleys, easements and other public ways, and building setback lines;
- (15) Location and dimensions in acreage and as a percent of the total of all property proposed to be set aside for park and/or open space purposes, or other private reservations;
- (16) Location and types of any existing structures;
- (17) Location, alignment, profiles, and cut and fill slope intercepts for streets and driveways for subdivisions with any slope area(s) of ten percent (10%) or greater; and
- (18) Location of proposed or required exterior lighting (streetlights, parking lots) and signs, including subdivision monument or entry signs.

(h) Written statement. A written statement addressing the following:

- (1) Any additional or supplemental information necessary to meet the content requirements of the preliminary plan in subsection (g) of this section that is not thoroughly shown on the preliminary plan;
- (2) A description of the overall development concept, purpose and function of the proposed subdivision. If the property is or will be residentially zoned, the description shall include representations concerning the proposed quality and styles of residential structures, anticipated sales price ranges, and amenities;
- (3) Environmental considerations, including but not limited to, unstable slopes/rockfall zones, related geologic factors, floodplains and wetlands, and alignment of structures and improvements to take into consideration climatic conditions and high groundwater areas;

(4)

Unique site characteristics not common to other properties, including any natural and manmade features and/or hazards that may affect the development;

- (5) A phasing plan and development schedule for the construction and/or installation of streets, utilities, buildings and landscaping;
  - (6) A supplement to the drainage plan describing how the applicant proposes to mitigate potential drainage, erosion and water retention or storage problems that may result from development; to maintain natural drainage channels, wherever possible, without encroachments in the natural channel area; and to comply with the floodplain regulations in Article IV of Chapter 18 of this Code.
  - (7) Statements explaining the nature of all easements and reservations, if any;
  - (8) A parks and open space plan documenting types of space (public, private, common areas), proposed uses, development in sequence with the phasing plan, and administrative and maintenance responsibilities;
  - (9) A general description of the purpose and nature of covenants, homeowners' association, or other contemplated private or contractual restrictions on the use, character and maintenance of the subdivision;
  - (10) If the subdivision will permit commercial, business, or industrial use, a description of the nature of the use, the trade area, and anticipated employment base shall be submitted in sufficient detail to demonstrate the economic viability of the proposed use.
- (i) Reports and studies. The following preliminary reports and studies shall be prepared by a qualified professional at the applicant's cost and submitted with the application:
- (1) Preliminary drainage report and grading plan. The drainage plan shall include a contour map marked to show existing drainage basins, flow patterns, concentration points, approximate runoff quantities and velocities and all existing natural and manmade features affecting site drainage and location of on-site and off-site surface water detention facilities and any easements for conveyance of surface water;
  - (2) Preliminary soils report;
  - (3) Preliminary utility plan for delivery of water, sewer and electric services to and throughout the property and demonstrating how the applicant proposes to underground the telephone and electric utility lines;
  - (4) Preliminary traffic impact analysis including an evaluation of the vehicular and pedestrian traffic patterns, together with estimated trips per day, for roads within the subdivision and for all routes leading from the subdivision and connecting to highway and arterial roads.
  - (5) Additional information. The applicant shall provide other information requested by the Planning Commission or Board of Trustees that may be necessary to adequately review the proposal for conformance with the applicable requirements.

(Ord. 820 §1, 2021)

Sec. 17-45. - Final plat—Contents of application.

- (a) Contents of application. The applicant shall submit to the Town two (2) copies of all final plat application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals. A final plat application

may be submitted for all or any logical portion of property described in an approved and valid preliminary plan. The following submittals, materials and information shall comprise a complete application for final plat review:

- (1) A completed application in the form approved by the Town;
  - (2) Payment of all required application fees and any review fee deposit;
  - (3) Documentation of ownership, liens and encumbrances;
  - (4) A legal description of the property proposed to be subdivided prepared by a licensed registered Colorado land surveyor;
  - (5) A list of the names and mailing addresses, as this information appears of record with the Boulder County assessor's office, of all owners of adjacent property to the property proposed for subdivision;
  - (6) A list of the names and mailing addresses of all mineral owners and lessees of mineral owners as this information appears of record with the Boulder County clerk and recorder and assessor's office.
- (b) Final plat. The final plat shall be drafted at a scale of one (1) inch to one hundred (100) feet by the use of permanent ink on a stable reproducible drafting medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. Maps of two (2) or more sheets shall be referenced to an index map placed on the first sheet. Other scales may be authorized in writing by the Town Administrator for larger, lower-density developments provided that the necessary data can be clearly and accurately shown. Where the required data cannot be clearly shown on one (1) plan sheet, additional plan sheets of the same size with easily identifiable match lines may be used.
- (1) A title that prominently identifies the proposed name of the subdivision together with the phrase "Final Plat";
  - (2) Date of preparation, map scale and north arrow;
  - (3) Name, address and telephone number of the applicant, land owner(s), planner, engineer and surveyor;
  - (4) Total acreage and surveyed description of the area;
  - (5) Primary boundary survey control points with monument descriptions; all parcel lines dimensioned with lengths; curve data including chord lengths and bearings; basis of bearings and relation to true meridian;
  - (6) Tract boundary lines, road right-of-way lines, easements and other sites with accurate bearings and dimensions including chord lengths and bearings, central angles, arc lengths and radii of all curves;
  - (7) Name and right-of-way width of each street. Right-of-way widths are to be shown at each leg of an intersection, at point of curvature and point of tangent, at dead-ends, and at angle points;
  - (8) Locations, dimensions and purposes of all easements;
  - (9) Number or letter to identify each lot, outlot and block. Lots and blocks shall be numbered. All outlots shall be lettered in alphabetical order;
  - (10) An identification of the streets, alleys, easements, parks, open space, and any other public facilities shown on the plat to be dedicated to public use. No areas within the plat may be designated as areas of conditional, planned or future public acquisition. Dedications of public property not made on the final plat shall be made only by general warranty deed unless otherwise approved by the Board of Trustees;
  - (11) Names of all adjoining subdivisions with dotted lines of abutting lots. If the adjoining land is unplatted, it should be shown as such;
  - (12) Signature and seal of the registered land surveyor;

- (13) A delineation of the extent of the one-hundred-year floodplain; and
- (14) All final plat approval certifications, plat language, and recording information in forms approved by the Town.

See Article XII.

- (c) The following final studies and reports, as may be required by the Town, shall be prepared by a qualified professional at the applicant's cost and submitted with the application:
  - (1) Final drainage report and grading plan;
  - (2) Final soils and geology report;
  - (3) Final utility plan for delivery of water, sewer and electric services to and throughout the property;
  - (4) Final traffic impact analysis including an evaluation of the vehicular and pedestrian traffic patterns, together with estimated trips per day, for roads within the subdivision and for all routes leading from the subdivision and connecting to highway and arterial roads.
- (d) Additional information required:
  - (1) One (1) copy of any agreements, conveyances, restrictions, or private covenants that will govern the use and maintenance of the subdivision and any common private open space or private subdivision amenity;
  - (2) Complete engineering plans and specifications sufficient to commence construction for all public facilities and improvements to be installed, including but not limited to:
    - a. Water and sewer improvements, including all sewer lift stations;
    - b. Streets and related improvements;
    - c. Bridges; and
    - d. Storm drainage, detention and erosion control improvements;
  - (3) One (1) copy of any agreement affecting the subdivision and public or private improvements made with ditch companies, railroad companies, utility providers, and state, county, or local governmental or quasi-governmental agencies;
  - (4) Written description of arrangements and financial institution commitments for providing financial guarantees and sureties for the timely completion of all public improvements;
  - (5) A preliminary or draft subdivision improvements agreement in the form required by these Subdivision Regulations and generally acceptable to both the subdivider and the Town Attorney and which is capable of finalizing upon the conclusion of the public hearing and approval or conditional approval of the final plat by the Board of Trustees.

(Ord. 820 §1, 2021)

Sec. 17-46. - Public sites and dedications.

- (a) Purpose. Parks, open space, recreational, and other municipal service facilities have been determined by the citizens of the Town of Nederland to be desirable and essential features of the Town. It has further been determined that land development inherently contributes to increases in the Town's population and the number of persons visiting the Town, thus, placing greater demands and pressures on existing parks, open space, recreational and other municipal service facilities. In order to protect and maintain community standards regarding the availability, quality and accessibility of parks, open space, recreational and other municipal facilities, the Board

of Trustees finds that it is necessary and appropriate to enact land development dedication requirements as provided for in this Section so as to ensure that new development pays a fair and equitable share of the cost of providing for new or expanded facilities necessitated by such development and to provide relief to current Town residents from having to bear the full costs of mitigating the impacts of such development.

- (b) Applicability. This section applies to subdivisions in the residential zone districts: mountain residential, low density residential, medium density residential, and high density residential. Each major subdivision shall include a dedication of twelve percent (12%) of the gross land area of the subdivision to the Town or other entity as determined by the Board of Trustees to be used for public parks and recreation areas, open space, or municipal purposes requiring land. Minor subdivisions may also be required upon the recommendation of the Planning Commission to include a public dedication of land of up to twelve percent (12%) if such subdivision will impose a burden upon public facilities. The Board of Trustees shall approve or disapprove any minor subdivision dedication. Land dedications as provided for in this section shall not be required where a dedication was previously obtained as a result of an earlier subdivision approval, except when the new subdivision imposes an increased incremental impact upon public facilities.
- (c) Form of dedication. All dedications of land as required under this section shall be dedicated in fee simple to the Town as a condition of subdivision approval. If the Board of Trustees determines that such a dedication is inappropriate or impractical as a result of the nature, location or geography of the subdivision, then a payment in-lieu corresponding to the value of such dedication shall be required.
- (d) Payment in lieu of dedication. Fee payments in lieu of land dedications shall be based on the amount of land which otherwise would be required to be dedicated. The Board of Trustees may accept property not within the development in lieu of or as partial payment toward a fee as required in this Section. The value of such other property shall be established by its market value as determined by a qualified appraiser approved jointly by the Town Administrator and the applicant.
  - (1) Payments in lieu of land dedication shall be due and payable at execution of the final subdivision plat and shall be specifically described in the subdivision agreement or development permit.
  - (2) Payments in lieu of dedication shall be held by the Town in a special interest-bearing account reserved solely for the acquisition and capital development of land which land shall be available for the full use and enjoyment of the residents of the subdivision.
  - (3) Payment in lieu fees pursuant to this section shall be returned, with any accrued interest, to the current owner of property for which a fee was paid if the fee has not been spent within ten (10) years from the date it was collected, unless the Board of Trustees shall have earmarked the fee for expenditure on a specific project, in which case the Board of Trustees may extend the time period by up to three (3) more years.
    - a. To obtain a refund the present owner must submit a request to the Town Administrator within one (1) year following the end of the tenth year from the date the fee payment was received.
    - b. For the purposes of this subsection, fees shall be deemed spent on the basis that the first fees collected shall be the first fees expended.

( Ord. 820 §1, 2021)

Recommendation of approval or conditional approval of any stage of a major plat by the Planning Commission, and any approval or conditional approval by the Board of Trustees, shall require a finding that the applicant and the evidence presented to the Planning Commission or the Board of Trustees established the following by competent and sufficient evidence:

- (a) For a final plat, a finding must be made that a preliminary plan for the subdivision was approved or conditionally approved by the Board of Trustees not more than twelve (12) months prior to the date of submission of an application for final plat approval or that the preliminary plan is currently valid and effective as the result of the approval of an extension of the effective date of the preliminary plan.
- (b) The proposed subdivision and development conform to all applicable requirements for the zone district(s) in which the property is located, including but not limited to, requirements for use, setbacks, height, floor and lot areas, and minimum lot sizes.
- (c) The proposed subdivision and development substantially conform to all other applicable requirements of the Town's Municipal Code, ordinances, and resolutions.
- (d) The proposed subdivision and development substantially conform to the goals and policies of the Nederland comprehensive plan to the extent that such goals and policies do not conflict with provisions or requirements of this Code and to the extent that such goals and policies set forth requirements which are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that such application or subdivision meets or fails to meet such goal or policy.
- (e) The application:
  - (1) For preliminary plan approval, meets or satisfies all applicable requirements of the Subdivision Regulations; or
  - (2) For final plat approval, is in substantial conformance with the approved preliminary plan and the final plat meets or satisfies all applicable requirements of the Subdivision Regulations;
- (f) Adequate capacity of water and wastewater utilities are currently available for the entire subdivision and development. Adequate capacity of wastewater utilities may be met by a private septic system provided that the applicant meets the requirements of and complies with Chapter 13 of the Nederland Municipal Code; and
- (g) The proposed subdivision (both during and following construction and development) will not result in an unreasonable increase in the peak rate of discharge, or result in a decrease in the quality of discharge, or result in any significant change in the direction or location of the point of discharge, of storm water or surface water flows upon any adjacent or neighboring property.

(Ord. 820 §1, 2021)

Sec. 17-48. - Conditions for approval.

The Board of Trustees may impose reasonable conditions upon any approval which are necessary to ensure continued conformance with these standards of approval, this Code, or which are necessary to protect the health, safety and welfare of the Town and its residents.

Sec. 17-49. - Effect of approval of preliminary plan.

Approval or conditional approval of a preliminary plan shall be valid for twelve (12) months following the date of approval or conditional approval by the Board of Trustees. Such period may be extended by the Board of Trustees for not more than six (6) additional months upon written request of an applicant only where the applicant establishes to the satisfaction of the Board that the applicant is reasonably pursuing completion of a final plat.

( Ord. 820 §1, 2021)

Sec. 17-50. - Effect of approval of final plat.

- (a) Recording of final plat. As soon as practicable following approval by the Town, the fully executed original of the final plat and any applicable subdivision improvements agreement shall be filed and recorded by the Town in the office of the Boulder County clerk and recorder at the applicant's expense.
- (b) No approval or conditional approval of a final plat and any applicable subdivision improvements agreement shall be deemed effective or finally approved until the final plat is recorded with the county clerk and recorder.
- (c) Unless otherwise expressly modified by an approved subdivision improvements agreement or other agreement between the owner and the Town, final approval or conditional approval of a final plat shall be valid for three (3) years following the date of plat recordation and, thereafter, during any period for which a legally recognized vested property right inures to the subdivision.

ARTICLE V - Plat Amendment

Sec. 17-51. - Definition of plat amendment.

A "plat amendment" is any form of amendment or modification of an approved and recorded minor plat or a final plat that:

- (a) Does not create any additional lot(s) or outlot(s);
- (b) Does not create or result in the creation of a lot or outlot that would violate or fail to conform to any applicable zoning or other standard, including but not limited to, lot area, minimum frontage, building height, setback(s), street or private drive width, parking, or access;
- (c) Does not reduce the amount of any dedicated or publicly-owned land, and in the opinion of the Town Administrator does not significantly alter or affect the subdivision's access, parking, or traffic circulation system; and
- (d) Either:
  - (1) Eliminates or relocates one (1) or more lot lines within the subdivision; and/or
  - (2) Modifies, amends, adds, or deletes a restriction, limitation, condition, or other obligation, right, or duty stated on the minor plat or final plat.

( Ord. 820 §1, 2021)

An application for plat amendment may be initiated by the owners of record of all lots and outlots within the area directly affected by the proposed amendment. The "area directly affected by the proposed amendment" means:

- (a) The properties that would be physically affected by an amendment to eliminate or relocate one (1) or more lot lines within the subdivision. Where a single lot line is eliminated or relocated, the "area directly affected by the proposed amendment" would customarily include the lots on each side of the lot line subject to elimination or relocation; and
- (b) All properties which are directly benefited by the restriction, limitation, condition, or other obligation, right, or duty stated on the minor plat or final plat. In many instances, all properties within the subdivision are affected by a restriction, limitation, condition, or other obligation, right, or duty stated on the minor plat or final plat.

( Ord. 820 §1, 2021)

Sec. 17-53. - Plat amendment review procedures.

The procedures applicable to the processing of an application of a plat amendment are provided in the Table of Subdivision Processes set forth in Section 17-102 of this Chapter.

( Ord. 820 §1, 2021)

Sec. 17-54. - Contents of plat amendment application.

The following submittal, materials, and information shall comprise a complete application for a plat amendment:

- (a) A completed application in the form approved by the Town;
- (b) Payment of all required application fees and any review fee deposit;
- (c) Documentation of ownership, liens and encumbrances;
- (d) A legal description of the property proposed for plat amendment prepared by a licensed registered Colorado land surveyor;
- (e) A list of the names and mailing addresses, as this information appears of record with the Boulder County assessor's office, of all owners of adjacent property to the area directly affected by the proposed amendment.
- (f) For a plat amendment that eliminates or relocates one (1) or more lot lines within the subdivision, an amended plat shall be submitted with the application.
  - (1) The amended plat shall be drafted at a scale of one (1) inch to one hundred (100) feet by the use of permanent ink on a stable reproducible drafting medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. Other scales may be authorized in writing by the Town Administrator for larger, lower-density developments provided that the necessary data can be clearly and accurately shown. Where the required data cannot be clearly shown on one (1) plan sheet, additional plan sheets of the same size may be used with easily identifiable match lines.
  - (2) A title that prominently identifies the name of the recorded subdivision together with the phrase "plat amendment";

- (3) Date of preparation, map scale and north arrow;
  - (4) Name, address and telephone number of the applicant, land owner(s), planner, engineer and surveyor;
  - (5) Total acreage and surveyed description of the lots and area subject to the proposed amendment;
  - (6) A clear illustration or description of the amendment proposed, using shading, crosshatching, highlighting, or other techniques to accurately illustrate the proposed amendment.
- (g) For a plat amendment that modifies, amends, adds or deletes a restriction, limitation, condition, or other obligation, right, or duty stated on the recorded plat, a written description clearly stating the proposed amendment in a form suitable for recordation with the office of the Boulder County clerk and recorder. The written description shall be subject to approval of the Town Attorney and, at a minimum, the written amendment shall include:
- (1) A title that prominently identifies the name of the recorded subdivision together with the phrase "Plat Amendment;"
  - (2) The county recording information (book and page or recordation number, as applicable) of the original subdivision plat, and the recording information and titles of any other prior amendments of the original plat; and
  - (3) Date of preparation, name, address, and telephone number of the applicant, land owner(s), and any professionals (planners, engineers, surveyors) assisting in the plat amendment.

(Ord. 820 §1, 2021)

Sec. 17-55. - Number of copies of plat application materials.

The applicant shall submit to the Town two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

(Ord. 820 §1, 2021)

Sec. 17-56. - Standards for approval of plat amendment.

Recommendation of approval or conditional approval of any stage of a plat amendment by the Planning Commission, and any approval or conditional approval by the Board of Trustees, shall require a finding that the applicant and the evidence presented to the commission or the board established the following by competent and sufficient evidence:

- (a) The proposed amendment meets or satisfies all applicable requirements of this title.
- (b) The proposed amendment conforms to all applicable requirements for the zone district(s) in which the property is located, including but not limited to, requirements for setbacks, height, floor and lot areas, and minimum lot sizes.
- (c) The proposed amendment substantially conforms to all other applicable requirements of the code and all regulations promulgated by the Town.
- (d)

The proposed subdivision substantially conforms to the goals and policies of the Nederland comprehensive plan, to the extent that such goals and policies do not conflict with provisions or requirements of the code and to the extent that such goals and policies set forth requirements which are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that such subdivision meets or fails to meet such goal or policy.

- (e) The proposed amendment would not cause significant hardship or inconvenience for adjacent or neighboring landowners or tenants.
- (f) The proposed amendment would not be likely to prove detrimental to the public health, safety or welfare of Town residents.

(Ord. 820 §1, 2021)

Sec. 17-57. - Conditions for approval.

The Board of Trustees may impose reasonable conditions upon any approval which are necessary to ensure continued conformance with these standards of approval, this Code, or which are necessary to protect the health, safety and welfare of the Town and its residents.

(Ord. 820 §1, 2021)

Sec. 17-58. - Effect of approval of plat amendment.

- (a) Recording of amended plats. Within ten (10) working days of notification of an approval by the Board of Trustees, all amended plats shall be filed and recorded in the office of the Town clerk and the Boulder County clerk and recorder at the applicant's expense.
- (b) No approval or conditional approval of a plat amendment shall be deemed effective or finally approved until the amended plat is recorded with the Boulder County clerk and recorder.

(Ord. 820 §1, 2021)

Secs. 17-59, 17-60. - Reserved.

ARTICLE VI - Plat Vacation

Sec. 17-61. - Definition of plat vacation.

A "plat vacation" is any termination, elimination and vacation of a previously approved and recorded minor plat or final plat so as to return all of the previously platted property to an unplatted and unsubdivided condition. A plat vacation is not a vacation of a public street or right-of-way. (For vacation of streets and rights-of-way, see C.R.S. § 43-2-301, et seq.)

(Ord. 820 §1, 2021)

Sec. 17-62. - Authority to seek vacation of plat.

An application for plat vacation may be initiated by:

- (a) The Board of Trustees, with or without a recommendation by the Planning Commission; or
- (b) All owners of record or duly authorized agent of any owner of record of all lots and outlots within the approved and recorded subdivision plat.

(Ord. 820 §1, 2021)

Sec. 17-63. - Plat vacation review procedures.

The procedures applicable to the processing of an application of a plat vacation are provided in [Section] 17-102 of these Subdivision Regulations.

(Ord. 820 §1, 2021)

Sec. 17-64. - Contents of plat vacation application.

All plat vacation applications shall meet the following submittal, materials, and information requirements:

- (a) Application in the form approved by the Town;
- (b) Payment of all required application fees and any review fee deposit;
- (c) Documentation of ownership, liens and encumbrances;
- (d) A legal description of the property proposed for plat vacation prepared by a licensed registered Colorado land surveyor;
- (e) A list of the names and mailing addresses, as this information appears on record with the Boulder County assessor's office, of all owners of property within the original subdivision plat that is subject to the proposed vacation, including all owners or beneficiaries of easements;
- (f) Notice of plat vacation. A written description unconditionally stating that the recorded subdivision plat is vacated and voided. The written description shall be in a form suitable for recordation with the office of the Boulder County clerk and recorder if the vacation is approved by the Town. The written description shall be subject to approval of the Town Attorney and, at a minimum, the written description shall include:
  - (1) A title that prominently identifies the name of the recorded subdivision together with the phrase "Plat Vacation and Termination;"
  - (2) The county recording information (book and page or recordation number as applicable) of the original subdivision plat, and the recording information and titles of any other prior amendments of the original plat;
  - (3) Date of preparation, name, address, and telephone number of the applicant, land owner(s), and any professionals (planners, engineers, surveyors) assisting in the plat vacation application.

(Ord. 820 §1, 2021)

Sec. 17-65. - Number of copies of plat application materials.

The applicant shall submit to the Town two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

Sec. 17-66. - Standards for approval of plat vacation.

Approval or conditional approval of any plat vacation by either the Planning Commission or the Board of Trustees shall require a finding that the applicant and the evidence presented to the commission or the Board of Trustees established the following:

- (a) Development of the property in accordance with the recorded subdivision plat will not permit efficient use of the platted property.
- (b) Development of the property in accordance with the recorded subdivision plat will not advance the goals and objectives of this Code or the Nederland comprehensive plan.
- (c) The proposed plat vacation would neither interfere with nor deny access via a public thoroughfare to existing structures within the recorded plat, adjoining properties, utility services or other improvements.
- (d) The proposed plat vacation would not cause undue hardship or inconvenience for any utility company, special district, neighboring landowner or tenant and that it would not be detrimental to the public health, safety or welfare of Town residents.
- (e) The proposed vacation substantially conforms to the goals and policies of the Nederland comprehensive plan to the extent that such goals and policies do not conflict with provisions or requirements of this Code and to the extent that such goals and policies set forth requirements which are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that such subdivision meets or fails to meet such goal or policy.

( Ord. 820 §1, 2021)

Sec. 17-67. - Conditions for approval.

The Board of Trustees may impose reasonable conditions upon any approval which are necessary to ensure continued conformance with these standards of approval, this Code, or which are necessary to protect the health, safety and welfare of the Town and its residents.

( Ord. 820 §1, 2021)

Sec. 17-68. - Effect of approval of plat vacation.

- (a) Within ten (10) working days of approval by the Board of Trustees, the notice of plat vacation shall be filed and recorded in the office of the Boulder County clerk and recorder at the applicant's expense.
- (b) No approval or conditional approval of a plat vacation shall be deemed effective or finally approved until the approved notice of plat vacation is recorded in the office of the Boulder County clerk and recorder.

( Ord. 820 §1, 2021)

Secs. 17-69, 17-70. - Reserved.

Sec. 17-71. - Purpose.

The purpose of this Article is to establish an administrative subdivision process applicable to proposals to consolidate and combine lawfully subdivided lots into one (1) or more building sites (otherwise known as a "lot consolidation"). This Article is intended to provide for the efficient processing of plats proposing lot consolidation without the need to undertake a formal public hearing process provided that all requirements of this Article are satisfied.

(Ord. 820 §1, 2021)

Sec. 17-72. - Definition of lot consolidation.

- (a) A "lot consolidation" is any proposal and application that is determined by the Town Administrator and the Planning Commission to meet all of the following criteria:
  - (1) The proposal affects property that was previously subdivided into legally recognized lots;
  - (2) The proposal would consolidate two (2) or more lots owned by the same applicant only;
  - (3) The proposal seeks to consolidate or combine two (2) or more contiguous and adjacent lots into a fewer number of lots by the elimination of one (1) or more lot lines located between the lots subject to the proposal;
  - (4) The proposal does not propose the relocation or reconfiguration of previously established lot lines;
  - (5) The proposal does not seek to consolidate or combine property into a lot that would be divided by a public or private road; and
  - (6) The proposal does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to, lot area, minimum frontage, building height, setback(s), public or private road or private drive standards, parking, or access; except that:
- (b) If the previously subdivided lots proposed for consolidation are lawfully recognized non-conforming lots due to a failure to conform to the applicable minimum lot area requirement for the zone district in which the lots are located, the lot consolidation must result in a reduction by at least fifty percent (50%) of the otherwise allowable density permitted for the previously subdivided lots.

(Ord. 820 §1, 2021)

Sec. 17-73. - Contents of lot consolidation application.

All lot consolidation applications shall meet all submittals, materials, and information requirements of a final plat contained in Section 17-45, as deemed applicable by the Town Administrator, except that the applicant shall provide or satisfy the following:

- (a) The title of the plat shall prominently identify the name of the recorded subdivision together with the phrase "Lot Consolidation."
- (b) Documentation of ownership, liens and encumbrances or, in the alternative, all of the following:
  - (1) A copy of a recorded deed for all of the property described in the application evidencing that the applicant

is the fee owner of the property;

- (2) A written, executed and notarized statement of the applicant representing to the Town that he or she is the fee owner of the property; and
  - (3) A certified copy of documentation from the Boulder County assessor or clerk and recorder evidencing that the applicant is the owner of record of the property.
- (c) The following certificate of approval shall be substituted for and replace the certificate of approval of the Board of Trustees:

APPROVED by the Town of Nederland Planning Commission and approved for recordation with the Boulder County Clerk and Recorder's Office pursuant to the Nederland Municipal Code this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

(Ord. 820 §1, 2021)

Sec. 17-74. - Number of copies of application materials.

The applicant shall submit to the Town Administrator two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

(Ord. 820 §1, 2021)

Sec. 17-75. - Sufficiency of application.

All plans, reports, maps and other information required for any plan or plat must be complete, legible, and must be submitted by the deadlines established by these Subdivision Regulations or deadlines established during the review process. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.

(Ord. 820 §1, 2021)

Sec. 17-76. - Lot consolidation review procedures.

All applications for lot consolidation shall be administratively reviewed by the Town Administrator and the Planning Commission without notice or a public hearing and may be finally approved by the Planning Commission in accordance with this Article VII. Following submission of a lot consolidation application and plat, the Town Administrator shall determine whether the application and plat are complete as required by these Subdivision Regulations. Following a determination that the application and plat are complete, the Town Administrator shall endeavor to reach a decision concerning the application's and plat's compliance with this Article VII within thirty (30) days of the date of submission of the completed application and lot consolidation plat unless such deadline is waived by the applicant. Following review and decision by the Town Administrator, the Administrator shall present the Administrator's decision to the Planning Commission for review and final approval in accordance with this Article VII.

Sec. 17-77. - Standards for approval.

An application and plat for a lot consolidation shall be reviewed by the Town Administrator and approved by the Planning Commission where the Commission finds:

- (a) The proposed subdivision meets the definition of a "lot consolidation" contained in this Article;
- (b) The lot consolidation plat meets all content requirements of this Article;
- (c) The proposed lot consolidation fully conforms to all applicable requirements for the zone district(s) in which the property is located including, but not limited to, minimum lot size requirements; except that, if the previously subdivided lots proposed for consolidation are lawfully recognized non-conforming lots due to a failure to conform to the applicable minimum lot area requirements, the lot consolidation results in a reduction of the density within the platted area of at least fifty percent (50%);
- (d) The proposed lot configuration and arrangement does not, in the opinion of the Planning Commission, create substantially unusable lot areas; and
- (e) The lot consolidation does not, in the opinion of the Planning Commission, substantially and adversely affect adjacent lots or raise significant issues of policy which are not addressed by the Nederland Comprehensive Plan or the Municipal Code.

( Ord. 820 §1, 2021)

Sec. 17-78. - Planning commission decision and appeal to board of trustees.

- (a) Upon a finding by the Planning Commission that the proposed lot consolidation meets the standards for approval, the Town Administrator shall cause a fully executed lot consolidation plat to be recorded with the Boulder County clerk and recorder at the applicant's expense.
- (b) The Planning Commission shall deny a lot consolidation application for failure to meet the requirements of Section 17-77. Any decision to deny an application shall be made in writing stating the specific reason for denial and the decision shall be promptly mailed or hand delivered to the applicant. The applicant may appeal a denial by the Planning Commission to the Board of Trustees by requesting an administrative appeal in writing delivered to the Town Administrator not more than ten (10) days following the date of the applicant's receipt of the written notice of denial. The Board of Trustees shall administratively consider an applicant's timely request for an appeal at a regular or special meeting. Following consideration of an appeal of the application and plat, the Board of Trustees may affirm the Planning Commission's decision of denial or, upon a finding that the application meets all the applicable standards set forth in Section 17-77, the Board of Trustees may reverse the Planning Commission's decision and order the Planning Commission to approve the lot consolidation plat and execute the plat in a manner suitable for recordation. In the event that the Board of Trustees orders the Planning Commission to approve the application and plat, the Town Administrator shall process and record the plat in accordance with subsection (a) of this section.

( Ord. 820 §1, 2021)

Sec. 17-79. - Conditions for approval.

The Planning Commission or Board of Trustees, as applicable, may impose reasonable conditions upon any approval of a plat consolidation that are necessary to ensure continued conformance with the standards of approval of this Code or these Subdivision Regulations.

( Ord. 820 §1, 2021)

Sec. 17-80. - Reserved.

## ARTICLE VIII - Lot Line Adjustment

Sec. 17-81. - Purpose.

The purpose of this Article is to establish an administrative subdivision process applicable to proposals to adjust or move lot lines of lawfully subdivided lots. This Article is intended to provide for the efficient processing of plats proposing lot line adjustments without the need to undertake a formal public hearing process provided that all requirements of this Article are satisfied.

( Ord. 820 §1, 2021)

Sec. 17-82. - Definition of lot line adjustment.

A "lot line adjustment" is any proposal and application that is determined by the Town Administrator to meet all of the following criteria:

- (a) The proposal affects property that was previously subdivided into legally recognized lots;
- (b) The proposal would relocate or move existing lot lines and does not create additional lots; and
- (c) The proposal does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard including, but not limited to, lot area, minimum frontage, building height, setback(s), public or private road or private drive standards, parking, or access.

( Ord. 820 §1, 2021)

Sec. 17-83. - Contents of lot line adjustment application.

All lot line adjustment applications shall meet all submittals, materials, and information requirements of a final plat contained in Section 17-45 of these Subdivision Regulations, as deemed applicable by the Town Administrator, except that the applicant shall provide or satisfy the following:

- (a) The title of the plat shall prominently identify the name of the recorded subdivision together with the phrase "Lot Line Adjustment Plat."
- (b) Documentation of ownership, liens and encumbrances or, in the alternative, all of the following:
  - (1)

A copy of a recorded deed for all of the property described in the application evidencing that the applicant is the fee owner of the property;

- (2) A written, executed, and notarized statement of the applicant representing to the Town of Nederland that he or she is the fee owner of the property; and
  - (3) A certified copy of documentation from the Boulder County assessor or clerk and recorder evidencing that the applicant is the owner of record of the property.
- (c) The following certificate of approval shall be substituted for and replace the certificate of approval of the Board of Trustees:

APPROVED by the Town of Nederland Planning Commission and approved for recordation with the Boulder County Clerk and Recorder's Office pursuant to the Nederland Municipal Code this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Ord. 820 §1, 2021)

Sec. 17-84. - Number of copies of application materials.

The applicant shall submit to the Town Administrator two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

(Ord. 820 §1, 2021)

Sec. 17-85. - Sufficiency of application.

All plans, reports, maps and other information required for any plan or plat must be complete, legible, and must be submitted by the deadlines established by these Subdivision Regulations or deadlines established during the review process. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.

(Ord. 820 §1, 2021)

Sec. 17-86. - Lot line adjustment review procedures.

All applications for lot line adjustment shall be administratively reviewed by the Town Administrator and the Planning Commission without notice or a public hearing and may be finally approved by the Planning Commission in accordance with this Article VIII. Following submission of a lot line adjustment application and plat, the Town Administrator shall determine whether the application and plat are complete as required by these Subdivision Regulations. Following a determination that the application and plat are complete, the Town Administrator shall endeavor to reach a decision concerning the application's and plat's compliance with this Article VIII within thirty (30) days of the date of submission of the completed application and plat unless such deadline is waived by the applicant. Following review and decision by the Town Administrator, the Administrator shall present the Administrator's decision to the Planning Commission for review and final approval in accordance with this Article VIII.

Sec. 17-87. - Standards for approval.

An application and plat for a lot line adjustment shall be administratively reviewed by the Town Administrator and approved by the Planning Commission where the Town Administrator and Commission find:

- (a) The proposed subdivision meets the definition of a "lot line adjustment" contained in this Article;
- (b) The lot line adjustment plat meets all content requirements of this Article;
- (c) The proposed lot line adjustment fully conforms to all applicable requirements for the zone district(s) in which the property is located including, but not limited to, minimum lot size requirements;
- (d) The proposed lot configuration and arrangement does not, in the opinion of the Town Administrator and Planning Commission, create substantially unusable lot areas; and
- (e) The lot line adjustment does not, in the opinion of the Planning Commission and Town Administrator, substantially and adversely affect adjacent lots or raise significant issues of policy which are not addressed by the Nederland comprehensive plan or the Nederland Municipal Code.

( Ord. 820 §1, 2021)

Sec. 17-88. - Planning commission decision and appeal to board of trustees.

- (a) Upon a finding by the Planning Commission that the proposed lot line adjustment meets the standards for approval, the Town Administrator shall cause a fully executed lot line adjustment plat to be recorded with the Boulder County clerk and recorder at the applicant's expense.
- (b) The Planning Commission shall deny a lot line adjustment application for failure to meet the requirements of Section 17-87 of this Article. Any decision to deny an application shall be made in writing stating the specific reasons for denial and the decision shall be promptly mailed or hand delivered to the applicant. The applicant may appeal a denial by the Planning Commission to the Board of Trustees by requesting an appeal in writing delivered to the Town Administrator not more than ten (10) days following the date of the applicant's receipt of the written notice of denial. The Board of Trustees shall administratively consider an applicant's timely request for an appeal at a regular or special meeting. Following consideration of the application and plat, the Board of Trustees may affirm the Planning Commission's decision or, upon a finding that the application meets all the applicable standards set forth in Section 17-87 of this Article, the Board of Trustees may reverse the Planning Commission's decision and order the Planning Commission to approve the lot line adjustment plat and execute the plat in a manner suitable for recordation. In the event that the Board of Trustees orders the Planning Commission to approve the application and plat, the Town Administrator shall process and record the plat in accordance with subsection (a) of this section.

( Ord. 820 §1, 2021)

Sec. 17-89. - Conditions for approval.

The Planning Commission or Board of Trustees, as applicable, may impose reasonable conditions upon any approval of a lot line adjustment that are necessary to ensure continued conformance with the standards of approval or the Nederland Municipal Code or these Subdivision Regulations.

(Ord. 820 §1, 2021)

Sec. 17-90. - Reserved.

## ARTICLE IX - Plat Correction

Sec. 17-91. - Purpose.

The purpose of this Article is to establish an administrative subdivision process applicable to proposals to correct an error in a previously approved subdivision plat. This Article is intended to provide for the efficient processing of corrections without the need to undertake a formal public hearing process provided that all requirements of this Article are satisfied.

(Ord. 820 §1, 2021)

Sec. 17-92. - Definition of plat correction.

A "plat correction" is any proposal and application that is determined by the Town Administrator to meet all of the following criteria:

- (a) The proposal seeks to correct an evident or obvious error in an approved and recorded plat (a plat associated with a minor subdivision, major subdivision, plat amendment, plat vacation, lot consolidation, or lot line adjustment) and, by way of examples only, the correction would revise a typographical or grammatical error in plat language, correct an error in a property legal description, delete or add language in a note or other text of a plat to bring the plat into conformance with these Subdivision Regulations or into conformance with a condition of subdivision approval;
- (b) The proposed correction does not relocate or move an existing lot line;
- (c) The proposed correction does not create one (1) or more additional lots; or
- (d) The proposed correction does not alter, amend, or change any public or private easement or any right, obligation, intent, or requirement associated with the plat.

(Ord. 820 §1, 2021)

Sec. 17-93. - Contents of plat correction application.

A plat correction application shall be in a form of one (1) of the following:

- (a) An eight and one-half (8½) by eleven (11) inch document suitable for recordation which clearly and concisely explains or details the correction, references the recordation information of the approved and recorded plat to be corrected together with a title of "Plat Correction to [name of plat to be recorded]" and bearing the signature

(and stamp, if appropriate) of the individual or business entity that prepared and signed the original plat; or

- (b) A reprint of the previously approved and recorded plat which reprinted plat contains the correction together with a new title "Plat Correction to [name of plat to be recorded]." The reprint shall be created by the same individual or business entity that prepared the original plat and all original plat certificates shall be re-signed and re-dated by the appropriate parties. Where parties are unavailable due to passage of time or sale of property within the subdivision, a Plat Amendment shall be the appropriate application to evidence a correction to a recorded subdivision plat.
- (c) Documentation of ownership, liens and encumbrances or, in the alternative, all of the following:
  - (1) A copy of a recorded deed for all of the property described in the application evidencing that the applicant is the fee owner of the property;
  - (2) A written, executed, and notarized statement of the applicant representing to the Town of Nederland that he or she is, or they are, the fee owner of all property within the plat to be corrected; and
  - (3) A certified copy of documentation from the Boulder County assessor or clerk and recorder evidencing that the applicant(s) is the owner of record of the property.
- (d) The following certificate of approval shall be substituted for and replace the certificate of approval of the Board of Trustees on any plat or upon any plat correction document submitted with the application:

APPROVED by the Town of Nederland Planning Commission and approved for recordation with the Boulder County Clerk and Recorder's Office pursuant to the Nederland Municipal Code this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

(Ord. 820 §1, 2021)

#### Sec. 17-94. - Number of copies of application materials.

The applicant shall submit to the Town Administrator two (2) copies of all application materials. The Town Administrator may request additional copies of documents larger than eight and one-half (8½) by eleven (11) inches where necessary to provide sufficient documentation for unanticipated referrals.

(Ord. 820 §1, 2021)

#### Sec. 17-95. - Sufficiency of application.

All plans, reports, maps and other information required for any plan or plat must be complete, legible, and must be submitted by the deadlines established by these Subdivision Regulations or deadlines established during the review process. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.

(Ord. 820 §1, 2021)

#### Sec. 17-96. - Plat correction review procedures.

All applications for plat correction shall be administratively reviewed by the Town Administrator and the Planning Commission without notice or a public hearing and may be finally approved by the Planning Commission in accordance with this Article X. Following submission of a plat correction application and supporting documents, the Town Administrator shall determine whether the application and plat are complete as required by these Subdivision Regulations. Following a determination that the application and supporting documents are complete, the Town Administrator shall endeavor to reach a decision concerning the application's and plat's compliance with the Subdivision Regulations within thirty (30) days of the date of submission of the completed application and plat correction unless such deadline is waived by the applicant. Following review and decision by the Town Administrator, the Administrator shall present the Administrator's decision to the Planning Commission for review and final approval in accordance with this Article X.

(Ord. 820 §1, 2021)

Sec. 17-97. - Standards for approval.

An application and plat correction shall be administratively reviewed by the Town Administrator and approved by the Planning Commission where the Town Administrator and Commission find:

- (a) The proposed subdivision meets the definition of a "plat correction" contained in this Article;
- (b) The proposed plat correction meets all content requirements of this Article;
- (c) The plat correction does not, in the opinion of the Planning Commission and Town Administrator, substantially and adversely affect adjacent lots or raise significant issues of policy which are not addressed by the Nederland comprehensive plan or the Nederland Municipal Code.

(Ord. 820 §1, 2021)

Sec. 17-98. - Planning commission decision and appeal to board of trustees.

- (a) Upon an administrative finding by the Planning Commission that the proposed plat correction meets the standards for approval, the Town Administrator shall cause a fully executed plat correction to be recorded with the Boulder County clerk and recorder at the applicant's expense.
- (b) The Planning Commission shall deny a plat correction application for failure to meet the requirements of Section 17-97 of this Article. Any decision to deny an application shall be made in writing stating the specific reasons for denial and the decision shall be promptly mailed or hand delivered to the applicant. The applicant may appeal a denial by the Planning Commission to the Board of Trustees by requesting an appeal in writing delivered to the Town Administrator not more than ten (10) days following the date of the applicant's receipt of the written notice of denial. The Board of Trustees shall administratively consider an applicant's timely request for an appeal at a regular or special meeting. Following consideration of the application and plat, the Board of Trustees may affirm the Planning Commission's decision or, upon a finding that the application meets all the applicable standards set forth in Section 17-97 of this Article, the Board of Trustees may reverse the Planning Commission's decision and order the Planning Commission to approve the plat correction and execute the documents or plat, as applicable, in

a manner suitable for recordation. In the event that the Board of Trustees orders the Planning Commission to approve the application and plat, the Town Administrator shall process and record the plat correction documents in accordance with subsection (a) of this section.

( Ord. 820 §1, 2021)

Sec. 17-99. - Conditions for approval.

The Planning Commission or Board of Trustees, as applicable, may impose reasonable conditions upon any approval of a plat correction that are necessary to ensure continued conformance with the standards of approval or the Nederland Municipal Code or these Subdivision Regulations.

( Ord. 820 §1, 2021)

Sec. 17-100. - Reserved.

## ARTICLE X - Application Review Procedures

Sec. 17-101. - Applicability and purpose.

This Article applies to each of the following subdivision processes described in this title and is entitled "Table of Subdivision Processes."

- Minor Subdivision (Article III)
- Major Subdivision (Article IV)
- Plat Amendment (Article V)
- Plat Vacation (Article VI)
- Lot Consolidation (Article VII)
- Lot Line Adjustment (Article VIII)
- Plat Correction (Article IX)

( Ord. 820 §1, 2021)

Sec. 17-102. - Table of subdivision processes.

R = Required	O = Optional at Subdivider's Request	N/A = Not Applicable
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	Pre-App Meeting	Application Contents	Application Completeness Determination	Referral Agencies	Notice of Hearing	Planning Commission/Board of Trustees:
					Public Hearings	Public Hearing
	<u>See Section 17-104</u>		<u>See Section 17-105</u>	<u>See Section 17-107</u>	<u>See Section 17-108</u>	
<b>Minor Subdivision</b>	R	<u>See Section 17-34</u>	R	Local Agencies	R Publication Mailing	R
<b>Major Subdivision</b>						
Preliminary Plan	R	<u>See Section 17-44</u>	R	Local Agencies	R Publication Mailing	R
Final Plat	O	<u>See Section 17-45</u>	R	All Agencies	R Publication Mailing	R
Plat Amendment	R	<u>See Section 17-54</u>	R	Local Agencies	R Publication Mailing	R
Plat Vacation	R	<u>See Section 17-64</u>	R	Local Agencies	R Publication Mailing	R

Lot Consolidation	R	See <u>Section</u> <u>17-73</u>	R	Local Agencies	R Publication Mailing	N/A  Administrative review
Lot Line Adjustment	R	See <u>Section</u> <u>17-83</u>	R	Local Agencies	R Publication Mailing	N/A  Administrative review
Plat Correction	R	See <u>Section</u> <u>17-93</u>	R	N/A	N/A	N/A  Administrative review  Applicant may appeal

( Ord. 820 §1, 2021)

Sec. 17-103. - Reserved.

Sec. 17-104. - Pre-application meeting.

Where an application requires a pre-application meeting in accordance with Section 17-102, the following process shall apply:

- (a) Prior to the formal submission of the application, the subdivider shall contact the Town Administrator in writing to schedule and request an informal meeting. Following receipt of a request, the pre-application meeting shall be set for a date within fifteen (15) days of the date of the applicant's written request. The Town Administrator shall advise the applicant of the date and time of the pre-application meeting.
- (b) The applicant shall attend the meeting at the designated date and time. The applicant shall be prepared to discuss the proposed application and the proposed development with the Town Administrator. The applicant shall be encouraged to present such plats, plans, diagrams, or other preliminary information sufficient to permit the conceptual review of the proposed application.
- (c) The purpose of the pre-application meeting shall be to assist the subdivider in understanding the Town's subdivision processes and to permit the Town Administrator to determine the applicable process and regulations for the proposed application. Upon request of the subdivider, the Town Administrator shall provide

to the subdivider a written determination concerning the appropriate procedure for the processing of the applicant's proposed application.

- (d) Where a pre-application meeting is required, no application shall be accepted or processed by the Town unless and until the pre-application meeting is held.

(Ord. 820 §1, 2021)

#### Sec. 17-105. - Completeness determination.

Where an application requires a completeness determination in accordance with Section 17-102, the following process shall apply:

- (a) Within twenty (20) days following receipt of an application, the Town Administrator shall administratively review the application and determine whether the application complies with the applicable application content requirements of these regulations.
- (b) All plans, reports, maps and other information required for any plan or plat must be complete and legible. A failure of the application to meet the requirements of these Subdivision Regulations or any applicable deadline shall delay the processing of the application until the application is sufficient and complete. The Town shall not process or schedule the processing of any application which is found to be incomplete.
- (c) In the event that the Town Administrator determines that the application complies with the applicable requirements, the Town Administrator shall schedule the application for review in accordance with Section 17-102 of this Article.
- (d) In the event the Town Administrator determines that the application is incomplete, the Town Administrator shall inform the applicant in writing of the deficiencies in the application. No further processing of an incomplete application shall be undertaken until the Town Administrator determines that the applicant has remedied the application's deficiencies.

(Ord. 820 §1, 2021)

#### Sec. 17-106. - Reserved.

#### Sec. 17-107. - Agency referrals.

Where an application requires agency referral in accordance with Section 17-102, the following process shall apply:

- (a) For purposes of any required agency referral to "local agencies" as required by Section 17-102, the phrase "local agencies" shall include:
  - (1) Fire District.
  - (2) Town Police Department.
  - (3) Town Public Works.
  - (4) Town Building Department.
  - (5) Town Attorney
  - (6) Electricity provider to the area.

- (7) School district.
  - (8) Telephone service provider.
  - (9) Any other county, regional, state or federal agencies that may be deemed by the Town Administrator as specially affected or interested; and
  - (10) For any subdivision action affecting five (5) or more acres of land, notice will also be provided to the Colorado Land Use Commission as required by C.R.S. § 31-23-225.
- (b) For purposes of any required agency referral to "all agencies" as required by Section 17-102, the phrase "all agencies" shall include:
- (1) All agencies identified as a "local agency" in subsection (a) of this section;
  - (2) Boulder County land use department;
  - (3) Colorado State Department of Transportation; and
  - (4) Any other county, regional, state or federal agency that may be deemed by the Town Administrator as specially affected or interested including but not limited to the Colorado State Engineer, Soil Conservation Service, Colorado Geological Service, Denver Regional Council of Governments, Colorado State Forest Service, and the Colorado Water Conservation Board.
- (c) A copy of each application shall be referred by Town staff to the appropriate agencies following a determination of application completeness by the Town Administrator. The purpose of all referrals is to define any conflict that the agencies or individuals may have with the proposal, and to allow for the possible resolution of conflicts through the processing of the application. Such agencies shall be expected to make recommendations and comments within twenty-one (21) days from the date of receipt of notification that the preliminary plan is available for review.
- (d) The lack of response from a referral agency to a request for referral comment shall be interpreted as "no comment" concerning the proposal and shall not be deemed a finding of acceptance or "no conflict." The absence of a timely agency comment shall not preclude the Planning Commission or Board of Trustees from later seeking agency comment on a specific issue raised during the review process or any hearing. Recommendations or comments made after the twenty-one-day period may, at the reviewing body's discretion, be considered in the review of the application.
- (e) Failure to forward a referral of an application to an agency as required by Section 17-102 shall not constitute a material deviation from the subdivision application review process and shall not void or invalidate any action taken by the Planning Commission or Board of Trustees. The requirement of agency referral shall be considered as a preferred, but discretionary, action by the Town.

(Ord. 820 §1, 2021)

#### Sec. 17-108. - Notice requirements.

All public notices of hearings required by these Subdivision Regulations shall include the date, time, place, and purpose of the hearing, a general description of the property affected, and any other information deemed appropriate by the Town clerk to apprise the public of the general nature of the action proposed. Notice shall be made when required in accordance with the requirements of Section 17-102 and may include notice by publication or mailing, or a combination of these methods. Errors

or inaccuracies in the notice shall not be deemed sufficient cause to postpone or invalidate a hearing except where such errors are substantive and material and are found to have reasonably mislead or misinformed the public as to the date, time, place or purpose of the hearing.

- (a) Notice by publication. Where notice by publication is required for any public hearing by Section 17-102, notice of the hearing shall be published in the Boulder County Daily Newspaper (or other official newspaper designated for publication of the Town of Nederland) at least fifteen (15) days before the date of the hearing. A single notice may combine the notice of the hearing dates of the Planning Commission and the Board of Trustees.
- (b) Notice by mailing.
  - (1) Where notice by mailing is required for any public hearing by Section 17-102, notice shall be deposited in the United States Mail first class postage prepaid or shall be delivered by another comparable service, including hand-delivery to the address. The deposit in the U.S. Mail or delivery by another comparable service shall be made at least seven (7) days before the date of the hearing. Failure of the addressee to receive notice shall not be deemed sufficient cause to require a postponement, re-mailing of notice, or invalidation of the hearing.
  - (2) Where notice by mailing is required for any public hearing, mailed notice shall be addressed to owners of adjacent property as their names appear in the real property records of the Boulder County assessor. For purposes of determining addressees for mailed notice, the Town may rely upon the ownership information provided by the applicant as part of the application.

(Ord. 820 §1, 2021)

#### Sec. 17-109. - Public hearings.

Where an application requires a public hearing before the Planning Commission or the Board of Trustees (the "reviewing body") in accordance with Section 17-102, the following process shall apply:

- (a) The Town clerk shall set the date and time of a public hearing to be held by the Planning Commission and the Board of Trustees. Notice of the public hearing shall be issued in accordance with Sections 17-102 and 17-108.
- (b) At the public hearing, the reviewing body shall review the application for conformance with the Subdivision Regulations and the applicable review standards for the application.
- (c) Any public hearing or other action of the reviewing body may be continued or postponed at any time to a specified date and time in order to permit preparation of additional information for further review by the reviewing body.
- (d) Following the conclusion of the public hearing, the Planning Commission shall decide that the application be recommended for approval, conditionally approved or denied. For any preliminary plan or final plat, the date upon which the plat shall be deemed submitted to the Planning Commission for purposes of C.R.S. § 31-23-215(1) shall be the date at which the public hearing is concluded.
- (e)

Within ten (10) days of taking its action, the Planning Commission shall forward its recommendation to Board of Trustees. Board of Trustees shall conduct a public hearing and shall, at the conclusion of the hearing, approve, approve with conditions, deny the application, or continue the matter to a date certain.

- (f) Notwithstanding the imposition by the reviewing body of an express of specific condition of approval, all approvals shall be conditioned upon the applicant's execution of the plat and any applicable agreement accompanying the plat, and payment in full of all fees and charges for the processing and recordation of the plat and agreement(s).
- (g) The applicant for any subdivision approval shall bear the burden of presenting sufficient competent evidence at the public hearing to support the standards for approval set forth by these Subdivision Regulations. Any decision by the reviewing body to recommend approval, approve or conditionally approve a subdivision plan, plat or other application shall be based upon a consideration of all evidence presented during the public hearing. Where evidence presented is contradictory, the reviewing body shall weigh such evidence and judge the credibility and sufficiency of the evidence prior to rendering a decision.

(Ord. 820 §1, 2021)

#### Sec. 17-110. - Recording of plat and supporting documentation.

Where the final decision by the Board of Trustees to approve or conditionally approve any subdivision application must be evidenced by the recordation of a plat or other documentation in accordance with these regulations, the following process shall apply:

- (a) Following approval or conditional approval of the application by the Board of Trustees, the applicant shall cause the fully executed plat or other documentation intended for recordation as part of the application approval to be delivered to the Town clerk in a form acceptable for recordation by the Boulder County clerk and recorder.
- (b) The Town clerk shall review the form of the plat or documentation for completeness of all required signatures and notarizations. Where the plat or other documentation is determined by the Town clerk to be complete and in the proper form for recordation, the Town clerk shall cause the plat or other documentation to be recorded in the office of the Boulder County clerk and recorder.
- (c) All costs of recordation shall be paid in advance by the applicant.

(Ord. 820 §1, 2021)

#### Sec. 17-111. - Variances.

- (a) An owner of property may request a variance or waiver of any standard or requirement imposed by these Subdivision Regulations for the owner's identifiable lot or property. The Board of Trustees may grant a variance where the owner establishes each of the following:
  - (1) Literal enforcement of the standard or requirement would place an unnecessary and unreasonable hardship upon the owner for the identifiable lot or property;
  - (2) The granting of the variance will not be materially detrimental to the public welfare or injurious to other property in the neighborhood and surrounding area; and

- (3) The proposed variance or waiver will not be adverse to the goals and policies of the Nederland comprehensive plan, to the extent that such goals and policies do not conflict with provisions or requirements of the Municipal Code and to the extent that such goals and policies set forth requirements which are sufficiently specific to permit the Planning Commission or Board of Trustees to decide that the application meets or fails to meet such goal or policy.
- (b) Owners seeking a variance or waiver for any standard or requirement shall submit a written request to the Town Administrator together with an explanation of justification to support the request. The Town Administrator shall review the request and supporting materials and provide a written opinion to the owner that the request will, or will not, be supported by the Town Administrator and the reasons for the Administrator's opinion. The owner may amend or revise the request and supporting materials within ten (10) days of the Town Administrator's opinion. The Town Administrator shall forward the request to the Planning Commission for administrative review and the Commission shall render a written recommendation to the Board of Trustees to approve, approve with conditions, or reject the request. The Commission's recommendation shall be forwarded to the Board of Trustees for the Board's administrative review and final administrative determination.
- (c) The Board of Trustees may impose reasonable conditions upon any approval of a variance necessary to ensure continued conformance with these Subdivision Regulations, the Municipal Code, or necessary to protect the health, safety and welfare of the Town and its residents.
- (d) Variances shall be approved only by written resolution of the Board of Trustees in a form approved by the Town Attorney.
- (e) Variances approved by resolution of the Board shall remain effective for three (3) years from the date of resolution approval or such other time as the Board may specify in the approving resolution. Extensions of the expiration of a variance may be requested by an owner and administratively approved by the Board (without Town Administrator or Planning Commission review) upon a finding by the Board of just cause.

(Ord. 820 §1, 2021)

## ARTICLE XI - Subdivision Improvements and Subdivision Agreements

### Sec. 17-112. - Assurance of completion and maintenance of improvements.

- (a) Improvements and performance guarantees:
- (1) Completion of improvements. All subdividers shall be required to complete all the street and other improvements as specified in the subdivision plan or as required in this Chapter, and to dedicate public improvements to the Town or other applicable public agencies, free and clear of all liens and encumbrances. The subdivider shall submit a certificate of title prior to conveying any land to the Town indicating all title restrictions. The subdivider may be required to complete the following improvements:
- a. Permanent survey monuments, range posts, and lot pins;
  - b. Streets and alleys (when platted) according to Town road standards;
  - c. Street name signs and all traffic-control signs;
  - d. Bridges, culverts, or open drainage channels;

- e. Street lights; and
  - f. Other public improvements as required by the Town.
- (2) Subdivision improvements agreement. Subsequent to preliminary plan approval, but prior to recording a final plat, the subdivider shall either install all required improvements or enter into an agreement with the Town which shall obligate the subdivider to install and construct all public (hereafter also includes quasi-public) improvements within and adjacent to the proposed subdivision as may be required under the provisions of this Chapter. If the subdivider chooses to enter into an agreement, it shall specify the following at a minimum:
- a. A description of all public improvements required.
  - b. An estimate of the cost of installing all public improvements.
  - c. The timing of public improvements in relation to the development of individual sites.
  - d. A description of all private improvements required by this Chapter, conditions of approval, or other pertinent Town regulations.
  - e. A performance guarantee that the improvements will be installed in accordance with the approved plans.

(b) Performance guarantees:

- (1) If the improvements are not installed prior to filing of the plat, the subdivider shall post a performance guarantee consisting of either a surety bond, cash bond or an acceptable irrevocable letter of credit drawn upon a Colorado bank. The performance guarantee shall be posted with the Town prior to the time of recording the plat, and shall be in an amount equal to one hundred twenty percent (120%) of the estimated costs of all remaining public improvements not already installed or paid for.
- (2) The performance guarantee described in Subsection (a)(3)e of this Section, shall be subject to review by and found satisfactory by the Town Attorney. The period within which required improvements must be completed shall be incorporated in the guarantee. Said guarantee shall remain in full force and effect until released by the Town.
- (3) The performance guarantee shall remain in effect and shall be renewed by the subdivider from time to time as necessary to assure continuous coverage until the performance guarantee is released by the Town.
- (4) Failure to complete subdivision. Where a performance guarantee has been posted and a subdivision improvements agreement signed, and all improvements required by the Town have not been installed as required by such agreement, the Town may thereupon declare the agreement to be in default and may utilize the funds available from the performance guarantee to complete the improvements within the subdivision.

(c) Release or reduction of performance guarantees:

- (1) The Town will not accept the required improvements, nor release a performance guarantee until the Town Engineer has indicated that all required improvements have been satisfactorily completed and until the subdivider's Engineer has certified to the Town Engineer, through submission of detailed as built plans of the subdivision, that all improvements are in accordance with the approved construction plans for the subdivision and are ready for dedication to the Town.
- (2) A performance guarantee may be reduced by the Town upon actual completion of public improvements and then only in the ratio that the public improvements completed bears to the total public improvements of the plan. In no event shall a performance guarantee be reduced below twenty (20) percent of the principal amount

until all improvements have been completed and accepted by the Town.

- (d) Maintenance of improvements and maintenance bonds.
  - (1) The subdivider shall be required to maintain public improvements in the subdivision and to provide for snow removal, street cleaning, drainage, and general maintenance on streets and sidewalks prior to acceptance by the Town. In the event the subdivider fails to comply, the town is authorized, through the Town Engineer, to perform the necessary work, without incurring any liability, and charge such work to the subdivider. Any such charges shall become a first and prior lien on the subdivision.
  - (2) The subdivider shall be required to file a maintenance bond with the Town in a form acceptable to the Town Attorney, prior to acceptance of any public improvements, in an amount equal to twenty (20) percent of the original cost of the public improvements, in order to assure the satisfactory maintenance of the required improvements for a period of two (2) years after the date of their acceptance by the Town. Such bond shall guarantee all public improvements constructed by the subdivider shall remain free from defect for the required two-year period.

(e) Issuance of permits:

- (1) Prior to the issuance of a building permit for any lot within the subdivision, the extent of street improvements shall be adequate for vehicular access by the prospective occupant and by Police and Fire and any other emergency equipment. At a minimum, the street shall be improved with a base course up to that portion of the street that provides direct access onto the lot for which a building permit is requested.
- (2) Prior to the issuance of a certificate of occupancy for any structure all public improvements required by the subdivision plan shall be completed. The Town may waive the requirements of this Section if in the opinion of the Administrator and/or Town Engineer the issuance of a certificate of occupancy will not create significant adverse impacts to the community, and the improvements remaining are satisfactorily guaranteed to be completed in a timely manner.

(Ord. 820 §1, 2021)

Sec. 17-113. - As built plans.

Finished plans of all public improvements as installed will be required before the Town will accept the improvements.

(Ord. 820 §1, 2021)

Sec. 17-114. - Failure to install improvements; rights relinquished.

If no improvements as outlined in this Chapter are installed within three (3) years of the date of Board of Trustees or Planning Commission approval, the subdivision approval and any associated plat shall be deemed void and invalidated without further action by the Town. In such case, the Town may file documentation with the Boulder County clerk and recorder evidencing the invalidation of the subdivision plat. All right to improve or develop the property on the part of the owner or subdivider shall thereby be relinquished.

(Ord. 820 §1, 2021)

Sec. 17-115. - Plans and specifications.

- (a) Plans and specifications are to be prepared based on appropriate traffic studies, soils reports, planning criteria, applicable standards, and requirements. All design work is to be prepared and signed by a professional engineer registered in the State. Plans are to be completed in sufficient detail to facilitate review.
- (b) All preliminary plans and final plats, where applicable, shall be designed in accordance with Chapter 11, Streets, Sidewalks and Public Property of the Municipal Code.
- (c) Where no standard exists, the Town Engineer may require adherence to professionally accepted standards such as standards and guidance provided by the American Association of State Highway and Transportation Officials (AASHTO).

(Ord. 820 §1, 2021)

Sec. 17-116. - Open space, trails, and other requirements.

New subdivisions may be required to provide open space areas, parks, trails, sidewalks, roadway improvements, and other improvements which are reasonably related and proportionate to the impacts of the proposed subdivision and necessary to mitigate those impacts. It is anticipated that such requirements will be included or previously negotiated during the zoning or rezoning process for the property. The Town may require and rely upon studies and reports to determine the extent of the mitigation necessary to address the impacts.

(Ord. 820 §1, 2021)

Secs. 17-117—17-120. - Reserved.

ARTICLE XII - Plat Certificates

Sec. 17-121. - Plat certificates.

The following certificates and notices, properly executed and in substantially the following form, shall be shown on the face of each final subdivision plat before it is recorded with the Boulder County clerk and recorder. Any substantive variation from the text of the certificates as shown must be approved by the Town Attorney. Any other certificates or notices that are deemed necessary for the purposes of the particular plat shall also be included at the time of its submission.

Note: The following plat notes must be customized to fit the facts of the particular plat (i.e., if the owner is not an entity, but are two (2) individuals, the reference to the type of the business entity must be deleted; "has laid out" must be changed to "have laid out"; and so forth).

- (a) The title format as required on all plats is as follows:

[Name of Type of Plat]

**SUBDIVISION NAME, FILING OR PHASE NUMBER LOT, BLOCK, TRACT**

Town of Nederland, County of Boulder, State of Colorado

The type of plat should appear first in the Title; Final or Amended Final, Duplex, Condominium Map.

(b) Certificates shall be as follows:

### **CERTIFICATION OF DEDICATION AND OWNERSHIP**

NOW ALL MEN BY THESE PRESENTS that being sole owner(s) in fee simple of all that real property situated at (insert property location) in the Town of Nederland, Boulder County, Colorado, described as follows: containing (insert number here) acres, more or less: have by these presents laid out, platted and subdivided the same into (insert number here) lots and (insert number here) blocks as shown on this final plat under the name and style of a subdivision in the Town of Nederland, Boulder County, Colorado; and does hereby accept the responsibility for the completion of required improvements; and does hereby dedicate and set apart all of the public roads and other public improvements and places as shown on the accompanying plat to the use of the public forever; and does hereby dedicate those portions of said real property which are indicated as easement on the accompanying plat as easements for the purpose shown hereon; and does hereby grant the right to install and maintain necessary structures to the entity responsible for providing the services for which the easements are established.

Executed this day of (insert date here), 20\_\_\_\_\_.

Owner: (If corporation)

Corporation name

Address

by (signature)

(type individual's name)

Title

(If individual)

(signature)

(type name)

Address

State of (Insert State name)

County of (Insert county name)

The foregoing Certificate of Dedication and Ownership was acknowledged before me this day of (insert date here), 20\_\_\_\_\_ by (insert name here).

My commission expires:

Witness my hand and seal.

Notary Public

Address:

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## **CERTIFICATION OF DEDICATION FOR MORTGAGE HOLDER OR DEED OF TRUST HOLDER**

KNOW ALL MEN BY THESE PRESENTS that being the holder of a mortgage or deed of trust on the real property situated at (insert property location) in the Town of Nederland, Boulder County, Colorado, described as follows: containing (insert number here) acres, more or less; as shown on this final plat under the name and style of a subdivision in the Town of Nederland, Boulder County, Colorado; agrees to the dedication and setting apart all of the public roads and other public improvements and places as shown on the accompanying plat to the use of the public forever; and does hereby agree to the dedication of these portions of said real property which are indicated as easement on the accompanying plat as easements for the purpose shown hereon; and does hereby agree to the granting of the right to install and maintain necessary structures to the entity responsible for providing the services for which the easements are established.

Executed this day of (insert date here), 20\_\_\_\_\_.

Owner: (If corporation)

Corporation name:

Address:

by (signature)

(type individual's name)

Title:

(If individual)

(signature)

(type name)

Address:

State of (Insert State name)

County of (Insert county name)

The foregoing Certificate of Dedication and Ownership was acknowledged before me this day of (insert date here), 20\_\_\_\_\_ by (insert name here).

My commission expires:

Witness my hand and seal.

Notary Public

Address:

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## **SURVEYOR'S CERTIFICATE**

(For all plats except condominium maps)

I do hereby certify that I am a registered Land Surveyor licensed under the laws of the State of Colorado, that this plat is true, correct and complete as laid out, platted, dedicated and shown hereon, that such plat was made from an accurate survey of said property by me and under my supervision and correctly shows the location and dimensions of the lots, easements and streets of said subdivision as the same are staked upon the ground in compliance with applicable regulations governing the subdivision of land.

In witness thereof I have set my hand and seal this day of (insert date here), 20\_\_\_\_\_.

(NAME)

COLORADO LAND SURVEYOR NO.

(For condominium maps)

I do hereby certify that I am a registered Land Surveyor licensed under the laws of the State of Colorado, that this condominium map is true, correct and complete as laid out, platted, dedicated and shown hereon, that such condominium map was made from an accurate survey of said property by me and under my supervision and correctly shows the horizontal and vertical location and dimensions of the condominiums, parcels, easements and streets of said condominium map as the same are staked upon the ground in compliance with applicable regulations governing the subdivision of land.

In witness thereof I have set my hand and seal this day of (insert date here), 20\_\_\_\_\_.

COLORADO LAND SURVEYOR NO. (Name)

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## **TITLE CERTIFICATE**

(Name of title company) does hereby certify that the title to all lands shown upon this plat have been examined and is vested in and that title to such lands is free and clear of all liens and encumbrances, except as follows:  
(Insert text here)

Dated this day of (insert date here), 20\_\_\_\_\_.

Title Company or Attorney's Name Address

By (Signature)

(printed name and title of officer or attorney)

---

## **CLERK AND RECORDER CERTIFICATE**

This plat was filed for record in the office of the Clerk and Recorder on this day of (insert date), 20\_\_\_\_\_, at (insert number) o'clock (insert A.M or P.M). Recorded under Reception No. (insert number) in Book (insert text) at Page (insert number).

Clerk and Recorder

Boulder County, Colorado

By

Deputy

---

## **BOARD OF TRUSTEES CERTIFICATE**

This plat approved by the Board of Trustees of the Town of Nederland, Colorado this day of (insert date here), 20\_\_\_\_\_, for filing with the Clerk and Recorder of Boulder County, Colorado and for the conveyance to the Town of Nederland of the public dedications shown hereon; subject to the provision that approval in no way obligates the Town of Nederland for maintenance of roads dedicated to the public until construction of improvements thereon shall have been completed in accordance with Town of Nederland specifications, and the Board of Trustees of the Town of Nederland has by a subsequent resolution agreed to undertake maintenance of the same. This approval does not guarantee that soil conditions, subsurface geology, ground water conditions, or flooding conditions of any lot shown hereon are such that a building permit or any other required permit will be issued. This approval is with the understanding that all expenses involving all improvements required shall be the responsibility of the subdivider and not the Town of Nederland.

ATTEST:

Town Clerk

Mayor

Town of Nederland, Colorado, Board of Trustees

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## **PLANNING COMMISSION CERTIFICATE**

This plat was approved by the Town of Nederland Planning Commission this day of (insert date here), 20\_\_\_\_\_.

ATTEST:

Town Clerk

Chairperson

**CERTIFICATE OF TAXES PAID**

I, the undersigned, do hereby certify that the entire amount of taxes due and payable as of the day of \_\_\_\_\_, 20\_\_\_\_\_ upon all parcels of real estate described on this plat are paid in full.

Dated this day of (insert date here), 20\_\_\_\_\_.

Treasurer of Boulder County

---

**CERTIFICATION OF OWNERSHIP**

KNOW ALL MEN BY THESE PRESENTS that being sole owner(s) in fee simple of all that real property situated in the Town of Nederland, Boulder County, Colorado, described as follows: containing (insert number) acres, more or less: have by these presents laid out, platted and subdivided the same into lots and blocks as shown on this final plat under the name and style of a subdivision in the Town of Nederland, Boulder County, Colorado; and does hereby accept the responsibility for the completion of required improvements.

Executed this day of (insert date here), 20\_\_\_\_\_.

Owner: (If corporation)

Corporation name

Address

by (signature)

(type individual's name)

Title

(If individual)

(signature)

(type name)

Address

State of (Insert State name)

County of ss (Insert county name)

The foregoing Certificate of Ownership was acknowledged before me this day of (insert date here), 20\_\_\_\_\_ by (insert name here).

My commission expires:

Witness my hand and seal.

Notary Public

Address:

(Ord. 820 §1, 2021)

## CHAPTER 18 - Building Regulations

### ARTICLE I - Primary Codes

#### *Footnotes:*

--- (1) ---

**Editor's note—** Ord. 823 §§1, 2, adopted Nov. 16, 2021, repealed and reenacted Art. I to read as herein set out. Former Art. I, §§ 18-1–18-7, pertained to similar subject matter, and derived from Ord. 420 §§7–9, adopted in 1996; Ord. 435 §1, adopted in 1996; Ord. 512 §1, adopted in 1999; Ord. 513 §1, adopted in 1999; Ord. 584 §1, adopted in 2003; Ord. 605 §1, adopted in 2005; Ord. 641 §2, adopted in 2007; Ord. 644 §§1, 2, adopted in 2007; Ord. 651 §1, adopted in 2008; Ord. 744 §§1–3, adopted in 2016; Ord. 803 §17, adopted in 2019; Ord. 817 §1, adopted in 2021; and Ord. 818 §§1, 2, adopted in 2021.

#### Sec. 18-1. - Adoption of primary codes.

- (a) The following codes (hereinafter the "primary codes") are adopted by reference, except as the same are specifically amended, and all shall have the same force and effect as if set forth herein in every particular. All secondary publications referenced in the primary codes or this Article, and which are on file in the office of the Town Clerk, are hereby referred to, adopted and made a part hereof as if fully set out in this Article:
- (1) The International Building Code, 2018 edition as published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (2) The International Residential Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (3) The International Mechanical Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (4) The International Plumbing Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (5) The International Fuel Gas Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (6) The National Electrical Code 2020 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169 ("NEC"), is hereby adopted by reference as if set forth herein. The subject matter of the adopted code includes provisions and standards considered necessary for safe electrical design, installation, and inspection to protect consumers and property from electrical hazards;
  - (7)

The International Energy Conservation Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;

- (8) The International Property Maintenance Code 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (9) The International Existing Building Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (10) ICC/ANSI 117.1 (2009), as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (11) The International Fire Code, 2018 edition as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001;
  - (12) The International Swimming Pool and Spa Code, 2018 edition, as published by the International Code Board of Trustees, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001.
- (b) The primary codes, as amended and adopted by the Town, shall regulate the erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, use, height, area, maintenance, design and quality of material of buildings and structures; and the installation, location, relocation, ventilating and cooling of refrigeration systems, incinerators and other miscellaneous heat-producing appliances within the Town.

(Ord. 823 §2, 2021)

Sec. 18-2. - Amendments to primary codes.

- (a) Any provision of the primary codes adopted by Section 18-1 of this Code to the contrary notwithstanding, wood-burning fireplaces, stoves and other similar devices shall be permitted within the Town.
- (b) The International Building Code is modified by the following amendments:
  - (1) Section 101.1 is hereby amended to read as follows:

**IBC SECTION 101.1. (TITLE)** is amended by the addition of the term "Town of Nederland" where indicated.
  - (2) Section 101.4.3 is amended to read as follows:

**IBC SECTION 101.4.3 (PLUMBING)** is amended by deletion of the last sentence.
  - (3) Reserved.
  - (4) Section 103 is amended to read in its entirety as follows:

## **SECTION 103**

### **BUILDING OFFICIAL**

**103.1 Appointment.** The Town Board of Trustees shall appoint the building official.

**103.2 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official. For the maintenance of existing properties, see the International Property Maintenance Code.

- (5) Section 105.1 is amended to read as follows:

**105.1 Required.** Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the Town and obtain the required permit.

- (6) Section 107.2.6 is amended by adding a new subsection 107.2.6.2, which shall read as follows:

**107.2.6.2 Site plans in hillside areas.** When a building site is located in a hillside area and, in the opinion of the building official, is located in an area subject to geologic hazards, the building official may require that a detailed site plan be submitted as a prerequisite to the issuance of a building permit. Such site plans, when required, shall be prepared by an architect or a civil engineer, and shall be based on an accurate topographic map prepared by a land surveyor. The site plans shall bear the seal and signature of the responsible architect or civil engineer, and the land surveyor. The topographic map shall encompass the building site and shall be drafted at a scale no smaller than 1 inch equal to 20 feet (1:240) and at a contour interval less than or equal to two (2) feet. Such site plans, at a minimum, shall show:

1. A grading plan showing existing and proposed contour lines reflecting the proposed grading as well as the locations and pertinent elevations of finished floors of all structures, basements, driveways, level areas, septic disposal fields and retaining walls.
2. The locations of all water wells (whether on site or off) within 250 feet of any septic disposal field.
3. All property lines within 100 feet of the building site.
4. Setbacks of cut slopes, fill slopes, retaining walls and structures from property lines.
5. At least one critical cross section oriented through the structural site and drafted at equal horizontal and vertical levels.

- (7) Section 108.3 is amended to read as follows:

**IBC SECTION 108.3. TEMPORARY POWER; IS HEREBY AMENDED TO READ AS FOLLOWS;**

The building official is authorized to give permission to temporarily supply and use power in part of an electrical installation before such installation has been fully completed and the final certificate of completion has been issued. The part covered by the temporary certificate of completion shall comply with the requirements specified for temporary lighting, heat and power in the 2011 NEC.

- (8) Section 109.2 is amended to read as follows:

**109.2. Fee schedule.** The fees shall be as indicated in Section 4-171 of the Nederland Municipal Code.

- (9) **SECTION 109.4 (work commencing before permit issuance)** is hereby amended to read as follows:

**Section 109.4 double fee.** Where a licensed contractor or an individual who starts or proceeds with work for which a permit is required by this code prior to obtaining said permit, the fees specified in section 109.2.

"Schedule of permit fees" of the town of Nederland zoning ordinance shall be doubled. Such fee shall be paid

whether or not such permit is obtained, but the payment of such fee shall not relieve any persons from fully complying with the requirements of this code in the execution of the work, nor from any other penalties prescribed herein.

- (10) Section 109.6 is amended to read as follows:

**109.6 Refunds.** The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

- (11) Chapter 1, Administration, is amended by the addition of a new section 110.7, which shall read as follows:

**110.7 Inspections in hillside or geologic hazard areas.** At the completion of rough grading and/or foundation excavation, and prior to the construction of retaining walls, footings, or bearing caissons, a soil engineer and/or an engineering geologist, within their respective fields of competency, shall inspect the site at the applicant's expense and render opinions, in writing, to the building official concerning the soil and geologic conditions actually encountered and that all known geologic hazards or constraints have been taken into account in the design of the facility.

- (12) Section 111.3 is amended to read as follows:

**111.3 Temporary Occupancy.** The Town may issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions can be occupied safely. The Town shall set a time period during which the temporary certificate of occupancy is valid.

- (13) Section 113.1 is amended to read as follows:

**113.1 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 is hereby created a board of appeals. The board of appeals shall be comprised of the members of the Town Board of Trustees.

- (14) In Chapter 1, Administration, Section 113, Board of Appeals, Section 113.3, Qualifications, is deleted.

- (15) Section 114.4 is hereby amended to read in its entirety as follows:

**114.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (16) Section 115.3 is amended to read as follows:

**115.3 Unlawful continuance.** Any person, who shall continue any work in or about the structure 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 deemed to be in violation of this code.

(17) Reserved.

(18) Section 307.1.1 is amended to read as follows:

Section 307.1.1 Uses other than Group H

Add items:

18. Distilling or brewing of beverages conforming to the requirements of the International Fire Code.

19. The storage of beer, distilled spirits and wines in barrels and casks conforming to the requirements of the International Fire Code.

(19) Section 311.2 is amended to read as follows:

Section 311.2 Moderate-hazard storage, Group S-1

Add to list: Beverages over 16-percent alcohol content

(20) SECTION 3401.3 (compliance with other codes) is amended by deleting international private sewage disposal code.

(c) The International Residential Code for One- and Two-family Dwellings is modified by the following amendments:

(1) Section R101.1 is amended to read as follows:

**R101.1 Title.** These provisions shall be known as the Residential Code for One-and Two-Family Dwellings of the Town of Nederland, and shall be cited as such and will be referred to herein as "this code." The following appendices are also adopted: Appendix F, Radon Control Methods; Appendix H, Patio Covers; Appendix O, Automatic Vehicular Gates; Appendix Q, Tiny Houses; Appendix R, Light Straw-Clay Construction; Appendix S, Strawbale Construction; and Appendix T, Solar-Ready Provisions, detached 1 and 2 family dwellings and townhouses.

(2) SECTION R202. (DEFINITIONS) is amended by addition of the following:

**SLEEPING ROOM** (bedroom) any enclosed habitable space within a dwelling unit, which complies with the minimum room dimension requirements of IRC sections R304 and R305 and contains a closet, an area that is useable as a closet, or an area that is readily convertible for use as a closet. Living rooms, family rooms and other similar habitable areas that are so situated and designed so as to clearly indicate these intended uses, shall not be interpreted as sleeping rooms.

(3) Section R103 is amended to read in its entirety as follows:

**SECTION R103**  
**BUILDING OFFICIAL**

**R103.2 Appointment.** The Town Board of Trustees shall appoint the building official.

**R103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the building official shall have the authority to appoint a deputy building official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

**R103.4 Modifications.** The building official may make modifications to the requirements of this Chapter if it is determined that strict application of the energy amendments to Chapter 11 of this Code:

1. Creates practical difficulties or excessive expense in the upgrade of an existing residential structure.
2. Requires alteration to either a structure greater than 50 years in age or any structure in a historic district or site which would materially alter the historic integrity of that structure or adversely affect the historic integrity of the district or site.
3. Creates practical difficulties in meeting on-site renewable energy requirements due to topographic constraints associated with the lot or location of the structure.

(4) Section R105.1 is amended to read as follows:

**R105.1 Required.** Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the Town and obtain the required permit.

(5) Section R108.5 is amended to read as follows:

**R108.5 Refunds.** The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

(6) Section R109.1.5 Other inspections is amended by the addition of one new subsection R109.1.5.2, which shall read as follows:

**R109.1.5.2 Insulation inspection.** Inspection of the structure shall be made following installation of the wall, ceiling, and floor insulation and exterior windows and before wall coverings are installed.

(7) Section R110.4 is amended to read as follows:

**R110.4 Temporary Occupancy.** The Town may issue a temporary certificate of occupancy before the completion of the entire work covered by the permit, provided that such portion or portions can be occupied safely. The Town shall set a time period during which the temporary certificate of occupancy is valid.

- (8) Section R112.1 is amended to read as follows:

**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 is hereby created a board of appeals. The board of appeals shall be comprised of the members of the Town Board of Trustees.

- (9) In Chapter 1, Administration, Section 112, Board of Appeals, subsection R112.3, Qualifications, is deleted.

- (10) Section R113.4 is hereby amended to read as follows:

**R113.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (11) Section R114.2 is amended to read as follows:

**R114.2 Unlawful continuance.** Any person, who shall continue any work in or about the structure 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 deemed to be in violation of this code.

- (12) Table R301.2 (1) is amended to read as follows:

**"TABLE R301.2(1)**  
**"CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA**

GROUND SNOW LOAD (psf)	WIND SPEED <sup>d</sup> (mph)	SEISMIC DESIGN CATEGORY <sup>f</sup>	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP <sup>e</sup>	ICE BARRIER UNDERLAYMENT REQUIRED <sup>g</sup>	FLOOD HAZARDS <sup>h</sup>	IAR FREEZING INDEX <sup>i</sup>	MEAN ANNUAL TEMP <sup>j</sup>
			Weathering <sup>a</sup>	Frost line depth <sup>b</sup>	Termite <sup>c</sup>					
55	130	B	Severe	48**	Slight to Moderate	1	Yes	Per Town ordinances	1000	45

- (13) Section R313.1 is amended to read as follows:

**R313.1 Townhouse Automatic Fire Sprinkler Systems.** An automatic residential fire sprinkler system shall be installed in townhouses.

**R313.1.1 Additions to existing townhouses.** An automatic residential fire sprinkler system shall be installed throughout existing townhouses with additions when the sum of the total floor area of the addition plus the existing townhouse is increased to 4,800 sq. ft. or greater.

**Exceptions:**

1. One-time additions not exceeding 200 square feet in floor area, and
2. Carport additions which are exempt from the definition of "Residential Floor Area" in Section 18-189D of the Boulder County Land Use Code.

**R313.1.2 Design and installation.** Automatic residential fire sprinkler systems for townhouses shall be designed and installed in accordance with Section P2904 or NFPA 13D. NFPD 13D systems shall be installed with a fire department connection (FDC) and adequate interior notification of the occupants provided to alert

them that the sprinkler system is activated, in accordance with NFPA 72. Additionally, a horn and strobe device shall be installed on the exterior of the building visible from the street side of the building, or above the Fire Department Connection. Residences with attached garages, where the garage may serve as an egress path shall have the garage sprinkled, as determined by the Fire Code Official.

- (14) Section R313.2 is amended to read as follows:

**R313.2 One- and two-family dwellings automatic fire systems.** An automatic residential fire sprinkler system shall be installed in one- and two-family dwellings.

**Exception:** An automatic residential fire sprinkler system shall not be required for federally-certified manufactured dwellings or Colorado Department of Local Affairs, Division of Housing, state-certified factory-built dwellings that are certified to editions of the IRC prior to the 2012 edition. An automatic residential fire sprinkler system shall not be required for one- and two-family dwellings with 400 sq ft. or less.

**R313.2.1 Additions to existing one- and two-family dwellings.** An automatic residential fire sprinkler system shall be installed throughout existing one- and two-family dwellings with additions when the sum of the total floor area of the addition plus the existing one- and two-family dwelling is increased to 4,800 sq. ft. or greater. The floor area of detached structures having floor areas of 120 square feet or greater that are located less than 50 feet from the dwelling shall be included in the floor area calculated for the dwelling.

**Exceptions:**

1. One-time additions not exceeding 200 square feet in floor area, and
2. Carport additions which are exempt from the definition of "Residential Floor Area" in Section 18-189D of the Boulder County Land Use Code.

**R313.2.2 Remodels/renovations to existing one- and two-family dwellings.** An automatic residential fire sprinkler system shall be installed throughout existing one- and two-family dwellings with a floor area of 4,800 sq. ft. or greater where renovations or remodeling work for which a building permit is required takes place in more than 50% of the area within the structure.

**R313.2.3 Design and installation.** Automatic residential fire sprinkler systems shall be designed and installed in accordance with Section P2904 or NFPA 13D. NFPA 13D Systems shall be installed with a fire department connection (FDC) and adequate interior notification of the occupants provided to alert them that the sprinkler system is activated, in accordance with NFPA 72. Additionally, a horn and strobe device shall be installed on the exterior of the building visible from the street side of the building, or above the Fire Department Connection. Residences with attached garages, where the garage may serve as an egress path shall have the garage sprinkled, as determined by the Fire Code Official. Fire Department Connections are not required on residences that are less than 2,000 Sq ft in size.

- (15) A new section R328 is added for Requirements based on locations in wildfire zones.

## SECTION 328

### REQUIREMENTS BASED ON LOCATIONS IN WILDFIRE ZONES

## **R328.1 Requirements based on locations in wildfire zones.**

**R328.1.1 General.** Unless other more restrictive requirements, such as those requiring an approved wildfire mitigation plan imposed through Site Plan Review or other review processes required by the Town of Nederland, apply, this section shall be applicable to all new buildings, additions and repairs, including buildings designed and constructed in accordance with the International Building Code.

Exceptions:

1. One-time additions not exceeding 200 square feet in floor area.
2. Construction involving only new decks or additions or repairs to existing decks need not comply with all of the defensible space requirements of Section R328.4.13, provided that defensible space is provided around the deck in accordance with the defensible space standard and a weed barrier and gravel is provided on all sides of the deck in accordance with Section R328.4.13.1.

**R328.2 Moved Buildings.** Any building or structure moved within or into any wildfire zone shall be made to comply with all the requirements for new buildings in that wildfire zone.

**R328.3 Definitions.** The following words and terms shall, for the purpose of this Section, have the meanings shown herein.

**DEFENSIBLE SPACE.** An area either natural or man-made, where material capable of allowing a fire to spread unchecked has been treated, cleared or modified to slow the rate and intensity of an advancing wildfire and to create an area for fire suppression operations to occur.

**DEFENSIBLE SPACE STANDARD.** The Colorado State Forest Service publication, "Protecting Your Home from Wildfire: Creating Wildfire-Defensible Zones, 2012 Quick Guide" is an approved standard for meeting the defensible space requirements of Section R327.4.13 or for the creation of a wildfire mitigation plan, and can be found online at: <http://csfs.colostate.edu/csfspublications/> under Wildfire Mitigation & Education, Resources for Homeowners & Landowners.

**FIRE-RETARDANT-TREATED WOOD.** Wood meeting the requirements of Section R802.1.5 of the IRC or Section 2303.2 of the IBC.

**HEAVY TIMBER CONSTRUCTION (Type IV, HT).** Construction with wood framing members, columns, flooring and roof decks sized in accordance with IBC Section 602.4.

**IGNITION-RESISTANT BUILDING MATERIAL.** Ignition-resistant building materials shall comply with any one of the following:

1. Extended ASTM E 84 testing. Material shall be tested on all sides with the extended ASTM E 84 (UL 723) test or ASTM E 2768, except panel products shall be permitted to test only the front and back faces. Panel products shall be tested with a ripped or cut longitudinal gap of 1/8 inch (3.2 mm). Materials that, when tested in accordance with the test procedures set forth in ASTM E 84 or UL 723 for a test period of 30 minutes, or with ASTM E 2768, comply with the following:

1.1 Flame spread. Material shall exhibit a flame spread index not exceeding 25 and shall not show evidence of progressive combustion following the extended 30-minute test.

1.2 Flame front. Material shall exhibit a flame front that does not progress more than 10½ feet (3200 mm) beyond the centerline of the burner at any time during the extended 30-minute test.

1.3 Weathering. Ignition-resistant building materials shall maintain their performance in accordance with this Section under conditions of use. Materials shall meet the performance requirements for weathering (including exposure to temperature, moisture and ultraviolet radiation) contained in the following standards, as applicable to the materials and the conditions of use:

1.3.1 Method A "Test Method for Accelerated Weathering of Fire-Retardant-Treated Wood for Fire Testing" in ASTM D 2898, for fire-retardant-treated wood, wood-plastic composite and plastic lumber materials.

1.3.2 ASTM D 7032 for wood-plastic composite materials.

1.3.3 ASTM D 6662 for plastic lumber materials.

1.4 Identification. All materials shall bear identification showing the fire test results.

Exception: Materials comprised of a combustible core and a noncombustible exterior covering, comprised of either aluminum at a minimum 0.019-inch (0.48 mm) thickness or corrosion-resistant steel at a minimum .0149 inch (0.38 mm) thickness shall not be required to be tested with a ripped or cut longitudinal gap.

2. Noncombustible material. Material that complies with the requirements for noncombustible materials in this section.

3. Fire-retardant-treated wood. Fire-retardant-treated wood labeled for exterior use.

4. Fire-retardant-treated wood roof coverings. Roof assemblies containing fire-retardant-treated wood shingles and shakes which comply with the requirements of Section R902 of this code and classified as Class A roof assemblies as required in Section R902 of this code.

5. Materials currently approved by the California Department of Forestry and Fire Protection, Office of the State Fire Marshal.

**LOG WALL CONSTRUCTION.** A type of construction in which exterior walls are constructed of solid wood members and where the smallest horizontal dimension of each solid wood member is at least 6 inches (152 mm).

**NONCOMBUSTIBLE.** As applied to building construction material means a material that, in the form in which it is used, is either one of the following:

1. Material of which no part will ignite and burn when subjected to fire. Any material conforming to ASTM E 136 shall be considered noncombustible within the meaning of this Section.

2. Material having a structural base of noncombustible material as defined in Item 1 above, with a surfacing material not over 1/8 inch (3.2 mm) thick, which has a flame spread index of 50 or less. Flame spread index as used herein refers to a flame spread index obtained according to tests conducted as specified in ASTM E 84 or UL723.

"Noncombustible" does not apply to surface finish materials. Material required to be noncombustible for reduced clearances to flues, heating appliances or other sources of high temperature shall refer to material conforming to Item 1. No material shall be classified as noncombustible that is subject to increase in combustibility or flame spread index, beyond the limits herein established, through the effects of age, moisture or other atmospheric condition.

**WILDFIRE MITIGATION PLAN.** A wildfire mitigation plan addresses the appropriate site location for structures, construction design and the use of ignition-resistant building material, defensible space and fuel reduction around structures, driveway access for emergency vehicles and an emergency water supply for firefighting in accordance with Article 4-804(C.) (12.) of the Boulder County Land Use Code.

**WILDFIRE PARTNERS.** Wildfire Partners is a collaborative Boulder County wildfire hazard mitigation program for homeowners that helps to reduce the risk of damage to homes from wildland fire. In Wildfire Partners, homeowners take personal responsibility for preparing their home and property for wildland fire and actively participate in an on-site assessment with a wildfire mitigation specialist. When participants complete their customized wildfire mitigation plan and pass their follow up inspection, they receive a Wildfire Partners Certificate and may be eligible for financial assistance ([www.wildfirepartners.org](http://www.wildfirepartners.org)).

#### **R328.4 Restrictions in Wildfire Zone**

**R328.4.1 Roof covering.** Roof covering materials shall be listed Class A roof covering materials or be constructed as a Class A roof assembly. For roof coverings where the profile allows a space between the roof covering and roof decking, the space at the eave ends shall be fire stopped to preclude entry of flames or embers, or have one layer of 72-pound (32.4 kg) mineral-surfaced, non-perforated cap sheet complying with ASTM D 3909 installed over the combustible decking.

**R327.4.1.1 Roof valleys.** When provided, valley flashings shall be not less than 0.019-inch (No. 26 galvanized sheet gage) corrosion-resistant metal installed over a minimum 36-inch-wide underlayment consisting of one layer of 72-pound mineral-surfaced, non-perforated cap sheet complying with ASTM D 3909 running the full length of the valley.

**R328.4.2 Gutters and downspouts.** Gutters, and downspouts and gutter covering devices shall be constructed of noncombustible material. Gutters shall be provided with an approved means to prevent the accumulation of leaves, pine needles and debris in the gutter.

Exception: Buildings meeting one of the exceptions to Section R401.3 of this code may be constructed without gutters and downspouts.

**R328.4.3 Spark arrestors.** Chimneys serving fire- places, barbecues, incinerators or decorative heating appliances in which solid or liquid fuel is used shall be protected with a spark arrester. Spark arresters shall be constructed of woven or welded wire screening of 12 USA standard gauge wire (0.1046 inch) (2.66 mm) having openings not exceeding  $\frac{1}{2}$  inch (12.7 mm). The net free area of the spark arrester shall not be less than four times the net free area of the outlet of the chimney.

**R328.4.4 Fences, retaining walls and similar appurtenances.** Fences, retaining walls or other appurtenances that connect to buildings must be constructed of noncombustible materials or ignition-resistant materials for a distance of 3 feet beyond the exterior walls.

**R328.4.5 Protection of eaves.** The leading edge of the roof at the fascia must be finished with a metal drip edge so that no wood sheathing is exposed. Eaves, facias, and soffits, covered decks or covered porch ceilings shall be protected on the enclosed underside by one of the following materials or methods:

1. Noncombustible materials.
2. Ignition-resistant materials.
3. Materials approved for a minimum of 1-hour fire-resistance-rated construction.
4. 2-inch-thick nominal dimension lumber.
5. 1-inch-thick nominal fire-retardant-treated wood.
6.  $\frac{3}{4}$ -inch-thick nominal fire retardant-treated plywood labeled for exterior use.
7. Any materials permitted by this code.

Exceptions:

1. Vinyl or plastic soffits, fascia or trim are not permitted.
2. Rafter tails or roof beam ends may be exposed if they are heavy timber having minimum dimensions not less than 6-inch nominal in width and not less than 8 inches nominal in depth.

**R328.4.6 Exterior walls.** Exterior walls of buildings or structures shall be constructed with one of the following methods:

1. Noncombustible materials approved for a minimum of 1-hour fire-resistance-rated construction on the exterior side.
2. Approved noncombustible materials.
3. Heavy timber or log wall construction.
4. Fire-retardant-treated wood labeled for exterior use on the exterior side.
5. Ignition-resistant materials on the exterior side.

Such material shall extend from the top of the foundation to the underside of the roof sheathing.

Exception: Trim is not required to meet the materials requirements for exterior walls.

**R328.4.7 Unenclosed under floor protection.** Buildings or structures shall have all underfloor areas enclosed to the ground with exterior walls in accordance with Section R328.4.6. For decks, see Section R328.4.8.

Exception: Complete enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams, and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or heavy timber construction or fire-retardant-treated wood labeled for exterior use.

**R328.4.8 Decks, appendages, and projections.** Decks and other unenclosed accessory structures attached to buildings shall be constructed of the following materials:

**R328.4.8.1 Deck surface:** Non-combustible material, approved wood thermoplastic composite lumber with an ASTM E84 flame- spread index no greater than 200, ignition- resistant building materials or any approved Class A roof assembly.

**R328.4.8.2 Deck framing:** Deck framing shall be constructed of one of the following:

1. 1-hour fire resistance-rated construction
2. Heavy timber construction.
3. Approved noncombustible materials.
4. Fire-retardant-treated wood labeled for exterior use.
5. Ignition-resistant building materials.
6. Wood with a minimum nominal thickness of at least 2 inches for joists and 4 inches for beams and columns or posts.

**R328.4.9 Exterior windows and glazing.** Exterior windows, window walls, glazed doors, windows within exterior doors, and skylights shall be tempered glass, multi-layered glazing, glass block, or have a fire protection rating of not less than 20 minutes. Unless they are part of a fire-rated assembly, window frames and sashes may be of any material permitted by this code.

Exception: Windows with unreinforced vinyl frames or sashes are not permitted.

**R328.4.10 Exterior doors.** Exterior doors and garage doors shall be approved noncombustible construction, metal clad, solid core wood not less than 1 3/4 inches in thickness, or have a fire protection rating of not less than 20 minutes. Windows within doors and glazed doors shall be in accordance with Section R328.4.9.

Exception: Vehicle access doors.

**R328.4.11 Vents.** Attic ventilation openings, foundation or under-floor vents, or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches each. Such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/8 inches or shall be designed and approved to prevent flame or ember penetration into the structure. Gable end and dormer vents

shall be located at least 15 feet from property lines and shall be designed and approved to prevent flame or ember penetration into the structure. Underfloor ventilation openings shall be located as close to grade as practical.

**R328.4.12 Detached accessory structures.** Detached accessory structures shall have exterior walls constructed in accordance with Section R328.4.6.

**R328.4.12.1 Underfloor areas.** Where the detached structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground with exterior wall construction in accordance with Section R328.4.6 or underfloor protection in accordance with Section R328.4.7.

Exception: The enclosure shall not be required where the underside of all exposed floors and all exposed structural columns, beams, and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or heavy timber construction or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use.

**R328.4.13 Defensible space.** Individual buildings or structures on a property must be provided with a fuel modification zone in accordance with the defensible space standard. When additions requiring a permit occur, both existing and new structures must be provided with defensible space in accordance with this section. The fuel modification zone must be maintained at all times.

Exceptions:

1. The implementation and completion of an approved wildfire mitigation plan prior to final inspection approval for the project.
2. Participation in the Wildfire Partners program and the issuance of a Wildfire Partners certificate prior to final inspection approval for the project.

**R328.4.13.1 Weed barrier and gravel or crushed rock.** A weed barrier and gravel or crushed rock not less than  $\frac{3}{4}$ -inch in diameter applied at least 2 inches thick must be installed beneath decks, unenclosed floors, and around the perimeter of the building to extend at least 3 feet beyond the exterior walls and at least 2 feet beyond the driplines of decks, bay windows and other eaves and overhangs.

Exception: Noncombustible surfaces, such as poured concrete or asphalt, or other approved noncombustible materials, such as a weed barrier and brick, concrete or stone pavers, may be used to satisfy this requirement.

- (16) Section N1102.1.1 (R402.1.2) Insulation and fenestration criteria is amended to replace Table N1102.1.2 with the following Table N1102.1.2 from the Boulder County Build Smart regulations:

**TABLE N1102.1.2**  
**INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT<sup>a, l, m</sup>**

CLIMATE ZONE	FENESTRATION U-FACTOR <sup>b</sup>	SKYLIGHT <sup>b</sup> U-FACTOR	GLAZED FENESTRATION SHGC <sup>c, d</sup>	CEILING R-VALUE	WOOD FRAME WALL R-VALUE <sup>e</sup>	MASS WALL R-VALUE <sup>f</sup>	FLOOR R-VALUE	BASEMENT WALL R-VALUE	SLAB <sup>g</sup> R-VALUE & DEPTH	CRAWL SPACE <sup>h</sup> WALL R-VALUE
Boulder County (modified 5 & Marine 4)	0.30	0.43	NR	54	19 + 5 <sup>h,k</sup>	18/24	42 <sup>h</sup>	15/20	15, 3 ft	15/20

For SI: 1 foot = 304.8 mm.

a. *R*-values are minimums. *U*-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed *R*-value of the insulation shall not be less than the *R*-value specified in the table.

Exception: An *R*-19 batt installed in a 2 X 6 stud cavity shall be deemed to meet the requirements of this code.

b. The fenestration *U*-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

Exception: Skylights may be excluded from glazed fenestration SHGC requirements in Climate Zones 1 through 3 where the SHGC for such skylights does not exceed 0.30.

c. "15/20" means *R*-15 continuous insulation on the interior or exterior of the home or *R*-20 cavity insulation at the interior of the basement wall. "15/20" shall be permitted to be met with *R*-13 cavity insulation on the interior of the basement wall plus *R*-5 continuous insulation on the interior or exterior of the home.

d. *R*-10 shall be added to the required slab edge *R*-values for heated slabs.

e. Not Used.

f. Not Used.

g. Floors over conditioned space are exempt from this requirement.

h. The first value is cavity insulation, the second value is continuous insulation, so "19+5" means *R*-19 cavity insulation plus *R*-5 continuous insulation.

i. The second *R*-value applies when more than half the insulation is on the interior of the mass wall.

j. For strawbale construction, see Section AS108.

k. To reduce the potential for condensation within the wall assembly, it is recommended that exterior continuous insulation be a minimum of *R*-7.5. See also Table R702.7.1.

l. Overhead doors for garages and shops that contain conditioned floor area must have fully weather stripped overhead doors with a minimum *R*-value of 13. Such doors must be weather stripped at the top, sides and bottom and between the panels.

m. Buildings with glazing to floor area ratios that exceed 18% may not use the prescriptive path.

Exception: Passive solar designs in which 50% or more of the total glazing faces south.

- (17) Section N1102.1.4 (R402.1.4) Equivalent *U*-Factors criteria is amended to replace Table N1102.1.4 with the following Table N1102.1.4 from the Boulder County Build Smart regulations:

TABLE N1102.1.4 EQUIVALENT <i>U</i> -FACTORS <sup>a, b</sup>								
CLIMATE ZONE	FENESTRATION U-FACTOR	SKYLIGHT U-FACTOR	CEILING U-FACTOR	FRAME WALL U-FACTOR	MASS WALL U-FACTOR <sup>b</sup>	FLOOR U-FACTOR	BASEMENT WALL U-FACTOR	CRAWL SPACE WALL U-FACTOR
Boulder County (modified 5 & Marine 4)	0.30	0.43	0.020	0.045	0.056	0.026	0.067/0.05	0.05

a. Nonfenestration *U*-factors shall be obtained from measurement, calculation or an approved source.

b. When more than half the insulation is on the interior, the mass wall *U*-factors shall be a maximum of 0.065.

c. Buildings with glazing to floor area ratios that exceed 18% may not use the prescriptive path.

Exception: Passive solar designs in which 50% or more of the total glazing faces south.

- (18) Section N1106.4 (R406.4) Maximum Energy Rating Index is amended to replace Table N1106.4 with the following Table N1106.4 from the Boulder County Build Smart regulations:

**TABLE N1106.4**  
**MAXIMUM ENERGY RATING INDEX, TABULAR**

CFA, SQ FT <sup>a</sup>	MAXIMUM ERI	CFA, SQ FT <sup>a</sup>	MAXIMUM ERI	CFA, SQ FT <sup>a</sup>	MAXIMUM ERI
1500 or below	60	2700	48	3900	32
1600	59	2800	47	4000	30
1700	58	2900	46	4100	28
1800	57	3000	45	4200	26
1900	56	3100	44	4300	24
2000	55	3200	43	4400	22
2100	54	3300	42	4500	20
2200	53	3400	41	4600	16
2300	52	3500	40	4700	12
2400	51	3600	38	4800	8
2500	50	3700	36	4900	4
2600	49	3800	34	5000 and above	0

<sup>a</sup> Conditioned Floor Area ("CFA") is to be rounded to the nearest 100 square feet.

- (19) Section N1101.17 is added to read as follows:

**N1101.17** Indoor water conservation (Mandatory). New and replacement bathroom sink faucets, shower heads, toilets, and urinals must be labeled as meeting EPA Water Sense ([www.epa.gov/WaterSense/](http://www.epa.gov/WaterSense/)) criteria.

**Exceptions:**

1. Showerheads with a maximum flow of 2.0 gallons per minute (gpm).
2. Urinals with a maximum flush rate of 0.5

- (20) Section E3703.8 is added to read as follows:

**E3703.8 Electric Vehicle Capable.** Electric Vehicle (EV) capable requirement for detached or attached single-family build homes. Each parking space shall have full circuit installation(s) of 208/240-volt 40-ampere (or greater) or wiring raceway large enough to accommodate a 208/240v 40-ampere (or greater) circuit and panel capacity for the same.

- (d) The International Mechanical Code (IMC) is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Mechanical Code of the Town of Nederland, hereinafter referred to as "this code."

- (2) Section 103 is amended to read in its entirety as follows:

**SECTION 103**  
**CODE OFFICIAL (IMC)**

**103.2 Appointment.** The Town Board of Trustees shall appoint the code official.

**103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the code official shall have the authority to appoint a deputy code official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the code official.

- (3) Section 106.5.2 is amended to read as follows:

**106.5.2. Fee schedule.** The fees for mechanical work shall be as indicated in Section 4-171 of the Nederland Municipal Code.

- (4) Section 106.5.3 is amended to read as follows:

**106.5.3 Fee refunds.** The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

- (5) Section 108.4 is amended to read as follows:

**108.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (6) Section 108.5 is amended to read as follows:

**108.5 Stop work orders.** Upon notice from the code official that mechanical 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, or to the owner's agent, or to 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 deemed to be in violation of this code.

- (7) Section 109.2 is amended to read as follows:

**109.2 Membership of board.** The Town Board of Trustees shall act as the board of appeals.

- (8) In Chapter 1, Administration, Section 109, Means of Appeal, Sections 109.2.1 through and including 109.2.6 are hereby deleted.

- (e) The International Plumbing Code (IPC) is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the International Plumbing Code of the Town of Nederland, hereinafter referred to as "this code."

- (2) Section 103 is amended to read in its entirety as follows:

**SECTION 103 (IPC)**  
**CODE OFFICIAL**

**103.2 Appointment.** The Town Board of Trustees shall appoint the code official.

**103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the code official shall have the authority to appoint a deputy code official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the code official.

- (3) Section 106.6.2 is amended to read as follows:

**106.6.2. Fee schedule.** The fees for mechanical work shall be as indicated in Section 4-171 of the Nederland Municipal Code.

- (4) Section 106.6.3 is amended to read as follows:

**106.6.3 Fee refunds.** The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

- (5) Section 108.4 is amended to read as follows:

**108.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (6) Section 108.5 is amended to read as follows:

**108.5 Stop work orders.** Upon notice from the code official that mechanical 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, or to the owner's agent, or to 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 deemed to be in violation of this code.

(7) Section 109.2 is amended to read as follows:

**109.2 Membership of board.** The Town Board of Trustees shall act as the board of appeals.

(8) In Chapter 1, Administration, Section 109, Means of Appeal, Sections 109.2.1 through and including 109.2.6 are hereby deleted.

(9) Section 305.6.1 is amended to read as follows:

**305.6.1 Sewer depth.** Building sewers that connect to private sewage disposal systems shall be a minimum of 12 inches (305 mm) below finished grade at the point of septic tank connection. Building sewers shall be a minimum of 12 inches (305 mm) below grade.

(f) The International Fuel Gas Code (IFGC) is modified by the following amendments:

(1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Fuel Gas Code of the Town of Nederland, hereinafter referred to as "this code."

(2) Section 103 is amended to read in its entirety as follows:

**SECTION 103 (IFGC)**  
**CODE OFFICIAL**

**103.2 Appointment.** The Town Board of Trustees shall appoint the code official.

**103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the code official shall have the authority to appoint a deputy code official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the code official.

(3) Section 106.5.2 is amended to read as follows:

**106.5.2. Fee schedule.** The fees for mechanical work shall be as indicated in Section 4-171 of the Nederland Municipal Code.

(4) Section 106.5.3 is amended to read as follows:

**106.5.3 Fee refunds.** The Town may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The Town may authorize refunding of not more than 80 percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The Town may authorize refunding of not more than 80 percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The Town shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than one hundred eighty (180) days after the date of fee payment.

(5)

Section 108.4 is amended to read as follows:

**108.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (6) Section 108.5 is amended to read as follows:

**108.5 Stop work orders.** Upon notice from the code official that mechanical 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, or to the owner's agent, or to 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 stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to be in violation of this code.

- (7) Section 109.2 is amended to read as follows:

**109.2 Membership of board.** The Town Board of Trustees shall act as the board of appeals.

- (8) **SECTION 406.4.1. (TEST PRESSURE) IS AMENDED BY CHANGING 3 PSIG TO 10 PSIG.**

- (9) In Chapter 1, Administration, Section 109 (IFGC), Means of Appeal, Sections 109.2.1 through and including 109.2.6 are hereby deleted.

- (g) The International Energy Conservation Code is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the International Energy Conservation Code of the Town of Nederland, hereinafter referred to as "this code." For clarification, the commercial and residential provisions are adopted. The following appendices are also adopted: Appendix CA and Appendix RA.

- (h) The International Property Maintenance Code is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Property Maintenance Code of the Town of Nederland, hereinafter referred to as "this code."

- (2) Section 103 is amended to read in its entirety as follows:

**SECTION 103**  
**CODE OFFICIAL**

**103.2 Appointment.** The Town Administrator is hereby appointed as the code official.

**103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the code official shall have the authority to appoint as deputy code officials the building inspector and law enforcement officers of the Town. Such deputies shall have those powers delegated by the code official.

- (3) Section 106.4 is amended to read as follows:

**106.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (4) Section 107.4 is amended to read as follows:

**107.4 Penalties.** Noncompliance with orders and notices shall be deemed to be violations of this code, which shall be governed by Section 18-3 of the Nederland Municipal Code.

- (5) Section 111.2 is amended to read as follows:

**111.2 Membership of board.** The Town Board of Trustees shall act as the board of appeals.

**111.2.1 (ALTERNATE MEMBERS)** is amended by deleting the section in its entirety

**111.2.2 (CHAIRMAN)** is amended by deleting the section in its entirety

**111.2.3 (DISQUALIFICATION OF MEMBER)** is amended by deleting the section in its entirety

**111.2.4 (SECRETARY)** is amended by deleting the section in its entirety

**111.2.5 (COMPENSATION OF MEMBERS)** is amended by deleting the section in its entirety

- (6) **302.4. (WEEDS)**, is amended to insert (12") where indicated.

- (7) Reserved.

- (8) **Section 602.3. (HEAT SUPPLY)**, is amended by the addition of the term November 1<sup>st</sup> to April 30th where indicated.

- (i) The International Existing Building Code is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Existing Building Code of the Town of Nederland, hereinafter referred to as "this code."

- (2) Section 103 is amended to read in its entirety as follows:

**SECTION 103**  
**CODE OFFICIAL**

**103.2 Appointment.** The Town Board of Trustees shall appoint the code official.

**103.3 Deputies.** In accordance with the prescribed procedures of the Town and with the concurrence of the Town Board of Trustees, the code official shall have the authority to appoint a deputy code official, the related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the code official.

- (3) Section 113.4 is amended to read as follows:

**113.4 Violation penalties.** Violations of this code shall be governed by Section 18-3 of the Nederland Municipal Code.

- (4) Section 114.3 is amended to read as follows:

**114.3 Unlawful continuance.** 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 deemed to be in violation of this code.

- (5) Section 1201 is amended to read in its entirety as follows:

**SECTION 1201**  
**GENERAL**

**1201.1 Conformance.** Structures moved into or within the Town shall comply with the provision of this code for new structures.

- (6) All references to the ICC Electrical Code shall be replaced with "the adopted electrical code."  
(j) The International Fire Code is modified by the following amendments:

- (1) Section 101.1 is amended to read as follows:

**101.1 Title.** These regulations shall be known as the Fire Code of the Town of Nederland, hereinafter referred to as "this code". The 2018 International Fire Code is adopted in the form including the sections as amended herein, including the following appendices: Appendix B, Fire-Flow Requirements for Buildings; Appendix C, Fire Hydrant Locations and Distribution; Appendix D, Fire Apparatus Access Roads.

- (2) Section 102.3 is amended to read as follows:

**102.13 Conflicts with Other Adopted Codes.** Where a conflict arises between this Code and the International Building Code and/or the International Residential Code, the more stringent application of the respective codes shall apply.

Exception: When any provision from the respective codes is agreed upon by the Chief Building Official and the Fire Code Official as being applicable and acceptable.

- (3) Section 102.14 is amended to read as follows:

**102.14 Other Adopted Codes.** Where this document refers to other ICC codes, the currently adopted edition for the location under consideration shall apply.

Exception: When any provision from the respective codes is agreed upon by the Chief Building Official and the Fire Code Official as being applicable and acceptable.

- (4) Subsection 103.4 Liability shall be amended by the addition of the following sentence at the end of the section:  
"Nothing herein shall be construed as a waiver of any immunities provided by section C.R.S. 24-10-101, et seq., or by other statutes, or by common law."
- (5) Subsection 104.10 Fire investigations shall be amended by the addition of the following sentence at the end of the section: "The authority of the Chief of the District, or authorize designee, including all fire code officials, to act as peace officers shall extend to the limits as authorized in C.R.S. 16-2.5-109."
- (6) Subsection 104.11 Authority at fires and other emergencies shall be amended by the addition of the following sentence at the end of the section: "the authority of the Chief of the District, or authorized designee, including all fire code officials, to act as peace officers shall extend as far as the authority set forth in C.R.S. Section 32-

- (7) Subsection 105.4.1 is amended to read as follows:

**105.4.1 Submittals.** Construction documents shall be submitted in one or more sets and in such form and detail as required by the fire code official. The construction documents shall be prepared by registered design professional when said documents are submitted in support of an application for a construction permit. When requested, qualifications statements shall be submitted to the fire code official for the registered design professional to demonstrate compliance with appropriate professional qualifications.

- (8) Section 105.6 is repealed and reenacted to read:

**105.6 Required operational permits.** The fire code official may issue an operational permit for the following operations:

- (a) 105.6.14, Explosives
- (b) 105.6.23, Hot Work
- (c) 105.6.30, Mobile food preparation vehicles
- (d) 105.6.32, Open Burning (Recreational fires on private land except)
- (e) 105.6.36, Outdoor assembly events
- (f) 105.6.38, Plant extraction systems
- (g) 105.6.40, Pyrotechnic special effects material
- (h) 105.6.47, Temporary membrane structures and tents

- (9) Subsection 106 is deleted in its entirety and replaced with:

## **106 Fees**

**106.1 Fees.** Fees for services pursuant to the provisions of this code shall be established from time to time by resolution of the Nederland Fire Protection District Board of Directors pursuant to Section 32-1-1002(1)(j) C.R.S. Said fees and charges may include a charge for reimbursement to the fire district of any consultation fees, expenses or costs incurred by the fire district in the performance of inspection related services pursuant to provisions of this code.

**106.2 Payment of fees.** A permit shall not be valid until the fees prescribed by law have been paid; nor shall an amendment to a permit be released until additional fees, if any, has been paid.

**106.3 Operational permit fee.** An inspection fee may be charged for any operational permit required by Section 105.6. The inspection fee shall be based upon the time required to conduct inspections authorized by Section 105.2.2 and associated activities, to determine compliance with this code and other applicable laws and ordinances as required by Section 105.2.4, and to issue the permit as specified in Section 105.3.7.

**106.4 Construction permit fee.** A fee may be charged for any construction permit required by Section 105.7 of this code. The construction permit fee is intended to cover the cost of inspections required or requested in connection with the work for which the permit is granted, and the associated costs of processing the application

**106.5 Other inspection fee.** Fees for re-inspections, for inspections outside normal business hours, or for inspections for which no fee is otherwise established may be charged.

**106.6 Plan review fee.** The plan review fee is intended to cover the significant costs and expenses incurred by the fire district in reviewing materials necessary to perform appropriate inspections of construction, uses, processes, and operations. The fee shall be assessed based on the reasonable, customary, and necessary time associated with reviewing or evaluating site plans; construction documents and calculations; changes, additions, or revisions to approved plans; construction documents resubmitted after the fire code official's issuing a statement explaining the reasons that a previous submittal does not conform to the requirements of this code. When submittal documents are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged. The plan review fee required by this Section 106.6 is separate from the construction permit fee required by Section 106.4.

**106.7 Unauthorized Work Inspection Fee.** Any person or entity that commences any work before obtaining a construction permit required by Section 105.7 shall be subject to an inspection fee in an amount equal to the amount of the construction permit fee. The fee shall be separate from and in addition to a construction permit fee. Payment of the inspection fee shall not relieve any person from compliance with all other provisions of this code or from any penalty prescribed by law. The inspection fee shall be assessed regardless whether or not a construction permit is then or subsequently issued.

EXCEPTION: When approved in writing by the fire code official, work may commence prior to obtaining a construction permit so long as other appropriate permits are in place.

**106.8 Related Fees.** The payment of the fee for construction, uses, processes, or operations authorized by an operational permit or construction permit shall not relieve the applicant or holder of the permit from the payment of other fees that are prescribed by law or required by Section 113.

(9) Subsection 109.1 is repealed in its entirety and reenacted to read as follows:

**109.1 Appeals Procedure-General.** Any person, firm, or corporation who are grieved by an application, interpretation, or order made by fire district personnel, pursuant to any provision of the code for the standards adopted, may file within three days a written notice of appeal with the fire district requesting a hearing before the Fire Chief. All appeals must be made in writing to the Fire Chief at the district's administrative office. The Fire Chief shall establish reasonable rules for such appeal and shall make a record of all proceedings the decision of the Fire Chief shall be considered a final administrative decision.

**109.1.1 Appeals Procedure-Administrative Decisions.** To determine the suitability of alternate materials and types of construction and to provide for reasonable interpretations of the provisions of this code, upon request of an interested party, including the Fire Chief or designee, there shall be, and is hereby created a board of appeals consisting of five members who are qualified by experience and training to pass judgment upon

pertinent matters. The board of appeals shall be appointed by the Town Board of Trustees and shall hold office at its pleasure. The board of appeals shall adopt reasonable rules of procedure for conducting its business, and shall render all interpretations, decisions, and findings in writing to the appellant or requesting party with a duplicate copy to the Fire Chief. All appeals of the Fire Chiefs decision shall be made in writing, within three days of the date of the Fire Chiefs decision, to the Town Board of Trustees by delivery to the district Fire Chief or his representative at the district's administrative office.

- (10) Subsection 110.4 is amended to read as follows:

**110.4 Violation penalties.** Persons who violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall correct install alter repair, or do work in violation of the approved construction documents, or directions of the fire code official, or of a permit or certificate used under the provisions of this code, shall be guilty of a misdemeanor, punishable by a fine of not more than \$250. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

- (11) Subsection 112.4 is amended to read as follows:

**112.4 Failure to comply.** Any person who shall continue any work after having been served a stop work order except such work as that person is directed to perform to remove a violation or unsafe condition shall be liable to a fine and/or imprisonment up to the maximum specified in CRS Section 32-1-1001 and CRS section 32-1-1002. Each day in which such violation occurs shall constitute a separate violation pursuant to CRS Section 32-1-1002 (3) (d).

Section 202, Definitions, Occupancy Classifications:

"Uses other than Group H"

Add items:

18. Distilling or brewing of beverages conforming to the requirements of the International Fire Code.  
19. The storage of beer, distilled spirits and wines in barrels and casks conforming to the requirements of the International Fire Code.

"Moderate-hazard storage, Group S-1"

Add: Beverages over 16-percent alcohol content

- (12) Subsection 903.3.1.3.1 is added to read as follows:

**903.3.1.3.1 Fire Department Connections.** Residential sprinkler systems which are supplied by atmospheric pressure tanks and fire pumps shall be installed with a Fire Department Connection, the size and location of which shall be determined by the Fire Code Official. Fire Department Connections are not required on residences that are less than 400 Sq. ft. in size.

- (13) Subsection 903.3.1.3.2 is added to read as follows:

**903.3.1.3.2 Attached Garage Sprinklers.** Residences with attached garages, where the garage may serve as an egress path or are below living space, shall have the garage sprinkled, as determined by the Fire Code Official.

- (14) Subsection 903.3.1.3.3 is added to read as follows:

**903.3.1.3.3 Interior and Exterior Notification.** Residential sprinkler systems shall have adequate interior notification of the occupants provided to alert them that the sprinkler system is activated, in accordance with NFPA 72. Additionally, a horn and strobe device shall be installed on the exterior of the building visible from the street side of the building, or above the Fire Department Connection noted in Section 903.3.1.3.1 if installed.

- (15) A new Chapter 40 for Storage of Distilled Spirits and Wines is added to read as follows:

## **CHAPTER 40 STORAGE OF DISTILLED SPIRITS AND WINES**

User note:

About this chapter: Chapter 40 provides specific requirements for the storage of distilled spirits and wines. In accordance with Section 307.1.1 of the International Building Code®, these occupancies are not classified as a Group H occupancy. Instead, as listed in Sections 311.2 and 311.3 of the International Building Code, the storage of beverages that contain up to and including 16-percent alcohol are classified as a Group S-2 occupancy, and those that contain over 16-percent alcohol content are classified as a Group S-1 occupancy. Note that those that are classified as a Group S-1 occupancy are required to be provided with an automatic sprinkler system throughout the Group S-1 fire area, regardless of size, in accordance with Section 903.

## **SECTION 4001-GENERAL**

### **4001.1 General.**

The storage of distilled spirits and wines in barrels and casks shall comply with this chapter in addition to other applicable requirements of this code.

#### **4001.1.1 Nonapplicability.**

Chapter 50 and Chapter 57 are not applicable to the storage of distilled spirits and wines in barrels and casks as identified in Section 5001.1, Exception 10, and Section 5701.2, Item 10.

## **SECTION 4002-DEFINITIONS**

### **4002.1 Definitions.**

Words and terms used in this chapter and defined in Chapter 2 shall have the meanings ascribed to them as defined therein.

## **SECTION 4003-PRECAUTIONS AGAINST FIRE**

### **4003.1 Spill control.**

Drainage or containment systems shall be provided by means of curbs, scuppers, special drains or other suitable means to prevent the flow of spills throughout the building.

## **4003.2 Ventilation.**

For rooms and spaces where distilled spirits and wines in barrels and casks are stored, ventilation shall be provided in accordance with the International Mechanical Code and one of the following:

1. The rooms and spaces shall be ventilated at a rate sufficient to maintain the concentration of vapors within the area at or below 25 percent of the lower flammable limit (LFL). This shall be confirmed by sampling the actual vapor concentration under normal operating conditions. The sampling shall be conducted throughout the enclosed storage area, extending to or toward the bottom and the top of the enclosed storage area. The vapor concentration used to determine the required ventilation rate shall be the highest measured concentration during the sampling procedure. The sampling shall be conducted manually or by installation of a continuously monitoring flammable vapor detection system.
2. The rooms and spaces shall be provided exhaust ventilation at a rate of not less than 1 cfm per square foot [0.00508 m<sup>3</sup>/(s x m<sup>2</sup>)] of solid floor area. The exhaust ventilation shall be accomplished by natural or mechanical means, with discharge of the exhaust to a safe location outside the building.

## **4003.3 Sources of ignition.**

Sources of ignition shall be controlled in accordance with Sections 4003.3.1 through 4003.4.

### **4003.3.1 Smoking.**

Smoking shall be prohibited and "No Smoking" signs provided as follows:

1. In rooms or areas where hazardous materials are stored or dispensed or used in open systems in amounts requiring a permit in accordance with Sections 105.5 and 105.6.
2. Within 25 feet (7620 mm) of outdoor storage, dispensing or open-use areas.
3. Facilities or areas within facilities that have been designated as totally "no smoking" shall have "No Smoking" signs placed at all entrances to the facility or area. Designated areas within such facilities where smoking is permitted either permanently or temporarily shall be identified with signs designating that smoking is permitted in these areas only.
4. In rooms or areas where flammable or combustible hazardous materials are stored, dispensed or used.

Signs required by this section shall be in English as a primary language or in symbols allowed by this code and shall comply with Section 310.

### **4003.3.2 Open flame.**

Open flames and high-temperature devices shall not be used in a manner that creates a hazardous condition and shall be listed for use with the hazardous materials stored or used.

### **4003.3.3 Industrial trucks.**

Powered industrial trucks used in areas designated as hazardous (classified) locations in accordance with NFPA 70 shall be listed and labeled for use in the environment intended in accordance with NFPA 505.

### **4003.3.4 Electrical.**

Electrical wiring and equipment shall be installed and maintained in accordance with Section 608 and NFPA 70.

### **4003.4 Lightning.**

Structures containing barrel storage should be protected from lightning. The lightning protection equipment shall be installed in accordance with NFPA 70 and NFPA 780.

## **SECTION 4004**

### **STORAGE**

#### **4004.1 Storage.**

Storage shall be in accordance with this section and Section 315.

#### **4004.2 Empty containers.**

The storage of empty containers previously used for the storage of flammable or combustible liquids, unless free from explosive vapors, shall be stored as required for filled containers.

#### **4004.3 Basement storage.**

Class I liquids shall be allowed to be stored in basements in amounts not exceeding the maximum allowable quantity per control area for use-open systems in Table 5003.1.1(1), provided that automatic suppression and other fire protection are provided in accordance with Chapter 9. Class II and IIIA liquids shall also be allowed to be stored in basements, provided that automatic suppression and other fire protection are provided in accordance with Chapter 9.

#### **4004.4 Bulk beverage storage areas.**

There shall be no storage of combustible materials in the bulk beverage storage areas not related to the beverage storage activities.

## **SECTION 4005**

### **FIRE PROTECTION**

#### **4005.1 Automatic sprinkler system.**

The storage of distilled spirits and wines shall be protected by an approved automatic sprinkler system as required by Chapter 9.

#### **4005.2 Portable fire extinguishers.**

Approved portable fire extinguishers shall be provided in accordance with Section 906.

## **SECTION 4006**

### **SIGNAGE**

## **4006.1 Hazard identification signs.**

Unless otherwise exempted by the fire code official, visible hazard identification signs, as specified in NFPA 704 for the specific material contained, shall be placed on stationary containers and above-ground tanks; at entrances to locations where hazardous materials are stored, dispensed, used or handled in quantities requiring a permit; and at specific entrances and locations designated by the fire code official.

### **4006.1.1 Maintenance and style.**

Signs and markings required by Section 4006.1 shall not be obscured or removed; shall be in English as a primary language or in symbols allowed by this code; shall be durable; and the size, color and lettering shall be approved.

( Ord. 823 §2, 2021)

## **Sec. 18-3. - Violations and penalties.**

Any person doing any act or omission in violation of these codes shall be subject to prosecution in the Municipal Court and subsequent penalty, if any, subject to a maximum fine of two thousand six hundred fifty dollars (\$2,650.00), with each day such violation continues to constitute a separate offense.

( Ord. 823 §2, 2021)

## **Sec. 18-4. - Supplemental building permit requirements.**

In addition to any other requirements for a building permit provided in this Code or by any applicable law, all of the following is required prior to issuance of any building permit for construction of any new buildings in excess of seven hundred fifty (750) square feet, and for alteration, enlargement or improvement of any existing building that increases the footprint of the existing building by more than twenty percent (20%).

- (1) Design standards review certificate pursuant to this Chapter;
- (2) A recent survey of the property, dated within five (5) years of the date of application, including:
  - a. Existing utility facilities;
  - b. Existing drainage ditches, including culverts; and
  - c. Existing stream courses, both annual and perennial.
- (3) A site development plan (may be a separate map or imposed upon the area map) including:
  - a. For residential uses:
    1. Building plan showing layout of existing and proposed buildings, noting zoning and densities allowed, number and type of dwelling units proposed, decks and patios.
    2. Building elevations showing front, side and rear views.
    3. Location of off-street parking.
    4. Locations of ingress and egress with the directions of traffic flow into, out of and within parking and loading areas, turning and maneuvering areas and emergency vehicle access lanes.

5. Site grading and drainage plan, stamped by a land surveyor, including disposition of surface drainage on and off the site to maintain historical flows, snow removal and storage areas. Best management techniques are to be used including, but not limited to, detention areas. If historical drainage flows cannot be maintained on site, off-site improvements shall be required, at the property owner's expense, and approved by the Town.
  6. A wildfire mitigation plan approved by the Town and the Nederland Fire Protection District for all areas of the Town outside of the Nederland Urban Fire Mitigation Area. This requirement shall not apply until the boundaries of the Nederland Urban Fire Mitigation Area and the requirements for the fire mitigation are adopted by ordinance. All construction and landscaping shall reasonably minimize fire danger to improvements and inhabitants and reasonably enhance the ability to fight fires on the property.
  7. A landscape plan which shall encourage the use of native plant species.
  8. A signed consultant fee agreement in the form approved by the Town.
- b. For all nonresidential uses:
1. All requirements listed above for residential uses, and the building plan shall include existing and proposed canopies, fences, signs, service areas, storage facilities, walks and driveways, off-street parking and loading facilities, trash storage and removal facilities, and percent of lot coverage.
  2. A plan depicting landscaping and screening of off-street parking and loading areas.
  3. A statement regarding expected excavating requirements and compliance with the Town excavating ordinance.
  4. A special review certificate for all nonresidential uses of more than three thousand (3,000) square feet.
  5. Payment of all fees due to the Town.
  6. A signed consultant fee agreement in the form approved by the Town.

(Ord. 823 §2, 2021)

#### Sec. 18-5. - Relocation of structures.

- (a) It shall be unlawful for any person or entity to relocate any existing structure from a location within or outside the Town into the Town.
- (b) For purposes of this Section, an existing structure which cannot be relocated in the Town includes any structure constructed or erected with a fixed location, regardless of whether it is on a permanent foundation, including but not limited to dwelling units, manufactured homes, sheds, garages and principal and accessory buildings, but does not include poles, lines, cables or other transmission or other distribution facilities of public utilities, and does not include structures that are one hundred twenty (120) square feet or less and structures that do not require a building permit.
- (c) This Section shall not apply if both of the following occur:
  - (1) A person or entity seeks to move a structure that has been designated as an historical landmark in the State, or the person or entity applies to the Board of Trustees for a determination that the structure would enhance the Town; and
  - (2)

The Board of Trustees determines at a public hearing that the structure would enhance the Town, and the Board of Trustees and the applicant enter into an agreement specifying the terms under which the applicant is permitted to move the structure. Such agreement shall include but need not be limited to:

- a. A detailed description of the structure.
- b. The property, and location on the property, on which the structure will be placed.
- c. Any other conditions the Board of Trustees deems appropriate.

(Ord. 823 §2, 2021)

Sec. 18-6. - Fees.

Where any code adopted by this Article requires a fee, said fee shall be as set forth in Section 4-171 of this Code.

(Ord. 823 §2, 2021)

Secs. 18-7—18-20. - Reserved.

ARTICLE II - Reserved

Secs. 18-21—18-40. - Reserved.

ARTICLE III - Reserved

Secs. 18-41—18-60. - Reserved.

ARTICLE IV - Reserved

Secs. 18-61—18-80. - Reserved.

ARTICLE V - Signs

Sec. 18-81. - Purpose.

The intent of this Article shall be to define the types of signs which will be permitted in the various zoning districts and those which will be prohibited, the manner in which sign areas and dimensions will be measured, and exempting certain types of signs from this Article. It is further the intent of this Article to: promote and protect the public safety by ensuring that signs do not create a hazard by confusing or distracting motorists or impairing drivers' ability to see pedestrians, obstacles, other vehicles or signs; promote the efficient communication of messages and minimize the potential that signs overwhelm

residents and visitors with the number of messages presented; encourage signs that are attractive and compatible with adjacent properties; minimize the potential of signs to create nuisance conditions in the form of glare, brightness, bulk, reflectivity or height; assist in wayfinding; and establish an equitable and consistent permitting and enforcement process.

(Ord. 348 §102, 1992; Ord. 749 §1, 2017)

Sec. 18-82. - Enforcement.

The Zoning Administrator is hereby authorized and directed to enforce all provisions of this Article. He or she shall appear for and on behalf of the Town in all matters regarding the interpretation and application of this Article, and shall resist and oppose any deviations from the provisions of this Article and in accordance with other provisions of the law. Upon presentation of proper credentials and upon reasonable notice, the Zoning Administrator may enter at reasonable times any building, structure or premises in the Town to perform any duty imposed by this Article, consistent with all other applicable legal requirements.

(Ord. 348 §103, 1992; Ord. 749 §1, 2017)

Sec. 18-83. - Definitions.

The words and terms used, defined, interpreted or further described in this Article shall be construed as follows:

*Accessory* means subordinate or incidental to a principal use, and on the same lot or on a contiguous lot in the same ownership and zone as the principal use.

*Architectural projection* means any projection which is not intended for occupancy and which extends beyond the face of an exterior wall of a building, including arcades, roof overhangs, mansards, unenclosed exterior balconies, marquees, canopies, pilasters, fascias and the like, but not including signs.

*Attention-getting device* means any sign, banner, pennant, valance, awning, or canopy, including those constructed of cloth, canvas, fabric or other light material, with or without frames, which may or may not be permanently fixed to a supporting structure.

*Awning* means a movable shelter supported entirely from the exterior wall of a building and of a type which can be retracted, folded or collapsed against the face of the supporting building.

*Canopy* means a permanently roofed shelter covering a sidewalk, driveway or other similar area, which may be wholly supported by a building or may be wholly or partially supported by columns, poles or braces extended from the ground.

*Development complex sign* means a freestanding sign located upon a multiple-occupancy development, such as a shopping center or planned industrial park, or the individual business in the complex, which is controlled by a single owner or landlord.

*Electric signs* means any sign containing electrical wiring, but not including signs illuminated by exterior light sources.

*Externally illuminated sign* means lighting by means of a light source which is directed at the reflective surface of a sign, or a light source which is primarily designed to illuminate the entire building facade upon which a sign is displayed.

*Flashing or moving sign* means a sign which flashes, rotates, moves or animates with moving lights or signs which create the illusion or movement.

*Freestanding sign* means a sign which is supported by one (1) or more columns, uprights, braces or movable bases, upon the ground and also includes a monument sign and pole sign, but does not include a sign attached to a structure.

*Frontage, building* means the horizontal, linear dimension of that side of a building which abuts a street, a parking area, a mall or other circulation area open to the general public, and having either a main window display of the enterprise or a public entrance to the building. (In industrial districts, a building side with an entrance open to Industrial employees shall also qualify as a building frontage.) Where more than one (1) use occupies a building, each such use having a public entrance or main window display for its exclusive use shall be considered to have its own building frontage, which shall be the front width of the portion of the building occupied by that use.

*Frontage, street* means the linear frontage of a lot or parcel abutting on a private or public street which provides principal access to, or visibility of, the premises.

*Height of sign* means the vertical distance from average ground level at the base of or below the sign to the highest element of the sign to the uppermost point on the sign or sign structure.

*Illumination, direct* means light by means of a light source which is effectively visible as a part of the sign, where light travels directly from the source to the viewer's eye.

*Illumination, indirect* means lighting by means of a light source which is directed at a reflecting surface in such a way as to illuminate the sign from the front, or a light source which is primarily designed to illuminate the entire building facade upon which a sign is displayed.

*Illumination, internal* means lighting by means of a light source which is within a sign having a translucent background, silhouetting opaque letters or designs which are themselves made of a translucent material.

*Interim sign* means a sign designed to be utilized only while awaiting installation or reconstruction of a permanent sign.

*Light source* includes fluorescent or similar tube lighting, the incandescent bulb (including the light-producing elements therein) and any reflecting surface which, by reason of its construction and/or placement, becomes in effect the light source.

*Lot* means a portion or parcel of land, whether part of a platted subdivision or otherwise, occupied or intended to be occupied by a building or use of its accessories, together with such yards as are required under the provisions of Chapter 16 of this Code. A lot must be an integral unit of land held under unified ownership in fee or in co-tenancy, or under legal contract.

*Maintenance* means the replacing, repairing or repainting of a sign or a portion of the sign structure; periodic changing of bulletin board panels; or renewing of copy which has been made unusable by ordinary wear and tear, weather or accident.

*Marquee* means a permanently roofed structure attached to and supported by a building and projecting from the building.

*Multi-tenant building* means any building which has separate units for the purposes of separating multiple uses of businesses.

*Multi-tenant nonresidential building* means a building under the same ownership which contains or has the potential to contain more than one (1) business and/or enterprise and which does not primarily serve as a residence.

*Mural* means a pictorial design, containing no text, applied directly on an exterior wall, fence, awning, window (either inside or outside) or other structure, which is visible from any public right-of-way.

*Obsolete sign* means a sign that is located on the premises of a non-operational business more than thirty (30) days after the business ceases operations. Development complex signs and multi-tenant building signs shall not be considered obsolete signs by virtue of one tenant ceasing operations, provided, however, that any such tenant's individual sign is removed from the development complex sign or multi-tenant building sign within the time period set forth above.

*Owner* means a person recorded as such on the records of the County Clerk and Recorder, including a duly authorized agent or attorney, a purchaser, devisee, fiduciary or person having a vested or contingent interest in the property in question.

*Permanent sign* means, except where otherwise noted within this Article, all signs attached in any manner on the exterior of or adjacent to any building, lot or property.

*Projecting sign* means a double-faced sign which projects more than twelve (12) inches over private property, and which uses a building wall as its main source of support.

*Roof* means the cover of any building, including the eaves and similar projections.

*Roof line* means the highest point on any building where an exterior wall encloses usable floor space, including floor area for housing mechanical equipment. The term roof line shall also include the highest point on any parapet wall, provided that said parapet wall extends around the entire perimeter of the building.

*Roof sign* means a sign erected upon or above a roof of a building and which is wholly or partially supported by said building.

*Sign* means any writing, pictorial representation, decoration (including any material used to differentiate sign copy from its background), form, emblem, trademark, flag, banner or any other figure of similar character which:

- a. Is a structure or any part thereof (including the roof or wall of a building); or
- b. Is written, printed, projected, painted, constructed or otherwise placed or displayed upon or designed into a building, board, plate, canopy, awning, vehicle or upon any material object or device whatsoever; and
- c. Which by reason of its form, color, wording, symbol, design, illumination, motion or otherwise, attracts or is designed to attract attention to its content.

*Sign Administrator* means the officer(s) or person(s) authorized by the Zoning Administrator to administer and enforce this Article. There may be more than one Sign Administrator designated by the Zoning Administrator at any one time.

*Sign face* means the surface of a sign upon, against or through which the message is displayed or illustrated.

*Sign, illegal nonconforming* means a sign which was in violation of any of the laws of the Town, governing the erection or construction of such sign at the time of its erection, and which sign has never been erected or displayed in conformance with all such laws, including this Article, and which shall include signs which are pasted, nailed, painted on or otherwise unlawfully displayed upon structures, utility poles, trees, fences and other signs.

*Sign, legal nonconforming* means any sign which was lawfully erected and maintained prior to the enactment of this Article and any amendments thereto, and which does not conform to all the applicable regulations and restrictions of this Article, this shall include those signs granted a legal variance to this Article.

*Sign site plan* means a drawing required from a sign applicant prior to issuance of a sign permit, which contains location and dimensions of existing and proposed signs, as well as elevation, lettering and illumination of proposed signs.

*Structure* means anything constructed or erected with a fixed location on the ground above grade, but not including poles, lines, cables or other transmission or distribution facilities of public utilities.

*Subdivision*, for the purposes of this Article, shall include a subdivision as defined in Chapter 17 of this Code.

*Suspended sign* means a sign suspended from the ceiling of an arcade, marquee or canopy.

*Temporary sign* means a sign, banner or similar device or display which is intended and displayed for a temporary period of time, as further described under Section 18-97 of this Article.

*Total surface area* includes all finished sign faces and that portion of a sign structure that is an integral part of the sign or background of the sign except as otherwise noted. For the purposes of this Article, if both faces of a sign are finished, only one (1) face will be used to determine total square footage.

*Variance* means a legal modification of applicable sign code regulations granted due to the peculiar conditions existing within a single circumstance.

*Variance criteria* means conditions which the Board of Zoning Adjustment must address in order to grant a variance to the sign code to an applicant who was denied a sign permit due to the requirements or restrictions of this Article.

*Vehicular sign* means a sign painted or mounted on a vehicle which is not being parked or operated in the normal course of business.

*Vision clearance area* means a triangular area on a lot at the intersection of two (2) streets or a street and a railroad, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in the regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines and intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection.

*Wall sign* means a sign which is in any manner affixed to any exterior wall, building or structure.

*Zoning Administrator* means the person holding the office created by Section 16-271 of this Code, and his or her designee.

(Ord. 348 Art. IV, 1992; Ord. 435 §1, 1996; Ord. 639 §1, 2007; Ord. 749 §1, 2017)

Sec. 18-84. - Permits.

It is unlawful to display, erect, modify, change, alter or relocate a sign without first filing with the Zoning Administrator an application in writing and obtaining a sign permit. When a sign permit has been issued, it shall be unlawful to modify, change, alter or otherwise deviate from the terms or conditions of said permit without prior approval of the Zoning Administrator. A written record of such approval will be entered upon the original application form and maintained in the files of the Zoning

Administrator. The Zoning Administrator may submit the permit application for an advisory opinion of any disputed or ambiguous term of this Article. This submission shall not alter the finality of the decision of the Zoning Administrator, Building Inspector or the process of appeal stated herein.

(Ord. 348 §201, 1992; Ord. 639 §2, 2007)

Sec. 18-85. - Application requirements.

An application for a sign permit shall be submitted to the Zoning Administrator and shall be accompanied by the following plans and specifications:

- (1) The name, address and telephone number of the owner or person entitled to possession of the sign and of the sign contractor or erector.
- (2) The location by street address of the proposed sign structure.
- (3) A site plan, drawn to scale, showing the location of existing or proposed buildings or other structures on the lot, the location of existing signs and proposed signs on the premises, the location of public rights-of-way on or adjacent to the property, and the location of vehicular entrances and exits on the property, unless otherwise approved by the Zoning Administrator.
- (4) Elevation drawings of the proposed sign, drawn to scale, showing major dimensions of the proposed sign, including height, clearance above sidewalks and distance of projection from the building and proposed sign copy.
- (5) Nature, layout and dimension of lettering.
- (6) Type and location of proposed illumination.
- (7) Any additional information which the applicant feels may support the request.
- (8) A permit fee as set forth in Section 4-151 to cover processing and inspection costs.

(Ord. 348 §202, 1992; Ord. 435 §1, 1996)

Sec. 18-86. - Processing of application.

The applicant shall submit the complete application to the Zoning Administrator.

- (1) Upon finding the application complete and in compliance with this Article, the Zoning Administrator shall issue a sign permit.
- (2) In the event the application is found not to be in compliance with this Article, the Zoning Administrator shall so inform the applicant. The applicant shall either revise the application so that it meets the requirements of this Article or request a variance.
- (3) Should the applicant request a variance, the variance application shall include the following:
  - a. The complete application;
  - b. A hardship statement explaining the reasons for the variance request; and
  - c. A variance application fee as set forth in Section 4-151 to cover processing and publication costs.
- (4)

After receiving the application, the Board of Zoning Adjustment shall set a reasonable hearing date, and a public notice of the variance request shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing.

- (5) Within a reasonable time from the hearing, the Board of Zoning Adjustment shall render its written decision.
- (6) An approved variance shall not be conducted until the Zoning Administrator has issued a variance certificate.

(Ord. 348 §203, 1992; Ord. 435 §1, 1996)

#### Sec. 18-87. - Variance criteria and conditions.

In every case in which a request for a variance from the requirements of the sign code has been filed, the Board of Zoning Adjustment shall not grant a variance unless it specifically finds that each of the following conditions exist:

- (1) There are special circumstances or conditions such as the existence of buildings, topography, sign structures or other matters on adjacent lots or within the adjacent public right-of-way which would substantially restrict the effectiveness of the sign in question. Such special circumstance or conditions, however, must be peculiar to the particular property or occupancy.
- (2) The variance would be in general harmony with the purposes of this Article and would not be injurious to the neighborhood in which the property or occupancy is located.
- (3) The variance is the minimum one necessary to permit the effectiveness of the sign.

(Ord. 348 §204, 1992; Ord. 749 §1, 2017)

#### Sec. 18-88. - Inspections required.

All signs shall be subject to inspections by the Zoning Administrator, and in some cases the Building Inspector, to determine compliance with all aspects of this Article. The owner or authorized agent shall inform the Zoning Administrator when the sign is complete and ready for final inspection. All freestanding signs are further required to have footing inspections. Electrical inspections are required on all illuminated signs.

(Ord. 348 §205, 1992)

#### Sec. 18-89. - Interim signs.

Following the issuance of a sign permit, the applicant may request approval of an interim sign by the Zoning Administrator. Upon finding the requested interim sign in compliance with this Article, the Zoning Administrator shall authorize installation or reconstruction of the interim sign for a period of thirty (30) days, or until the permanent sign is installed, whichever occurs first. A thirty-day extension may be requested in writing and approved by the Zoning Administrator.

(Ord. 348 §206, 1992)

#### Sec. 18-90. - Revocation of permits for nonuse and abandonment.

- (a) If actual work, either on or off the site, is not commenced under any permit issued within sixty (60) days of issuance of such permit, the permit shall automatically expire.
- (b)

Delays which are not the result of a willful act or neglect of the contractor, owner or person obtaining the permit shall be excluded from the terms of Subsection (a) above, and the Zoning Administrator may grant an extension of time in which to start or resume operations. All requests for extensions shall be in writing.

- (c) Obsolete signs are prohibited in all zone districts. A sign shall also be deemed to be abandoned and shall be removed if it has ceased to be used for display of sign copy. The provisions of this Subsection shall not apply to signs officially designated as landmarks or to permanent signs accessory to businesses which are open only on a seasonal basis, provided that there is a clear intent to continue operation of the business. After thirty (30) days' written notice and order of removal to the permit holder of any obsolete or abandoned sign, a sign may be removed by the Town after obtaining a court order to enter the property and remove the same, and the costs of such action and removal, including attorneys' fees, may be assessed against and collected from the permittee by any means authorized by law, including but not limited to certification to the County Treasurer to be collected in the same manner as taxes pursuant to C.R.S. § 31-20-105. Any order of removal issued under this subsection (c) may be appealed to the Board of Adjustment no later than the expiration of the removal period specified in the order and the Board shall process such an appeal in accordance with Section 16-233 of this Code.

(Ord. 348 §207, 1992; Ord. 624 §1, 2006; Ord. 749 §1, 2017)

Sec. 18-91. - General measurement requirements.

- (a) Measurement of the total surface area per wall sign or other attention-getting device shall include:
- (1) All finished sign faces and that portion of a sign structure that is an integral part of the sign or background of the sign.
  - (2) For computing the area of any wall sign which consists of letters mounted or painted on a wall, that area deemed to be the smallest rectangular figure which can encompass all of the letters shall be included.
- (b) The total surface area of a freestanding, projecting or suspended sign shall include:
- (1) Only one (1) finished sign face shall be measured against the total allowed surface area, provided that both sign faces are finished.
  - (2) All other applicable sign faces and that portion of a sign structure that is an integral part of the sign or background of the sign.

(Ord. 348 §301, 1992)

Sec. 18-92. - Total sign surface area.

- (a) The total surface area of all signs accessory to a commercial building shall not exceed one (1) square foot per lineal foot of building frontage of the principal access.
- (b) The total surface of a sign accessory to a residential building shall not exceed eight (8) square feet except that a residential subdivision, project, complex or other such overall area shall be permitted a total of two (2) signs at entrance location(s), each of which shall not exceed thirty-two (32) square feet.

(Ord. 348 §302, 1992; Ord. 639 §3, 2007; Ord. 749 §1, 2017)

Sec. 18-93. - Sign size.

No single sign shall exceed the following maximum size restrictions per zoning district:

- (1) F, NC: twenty-four (24) square feet.
- (2) MR, LDR, MDR and HDR:
  - a. Individual unit: eight (8) square feet.
  - b. Entrance sign: thirty-two (32) square feet.
- (3) CBD, GC and I: thirty-two (32) square feet.
  - a. Wall signs. The maximum allowed size of a wall sign shall be determined by measuring the linear feet of the applicant's building frontage. No wall sign shall project more than twelve (12) inches from the building and shall not project above the eaves or building facade.
  - b. Projecting, freestanding or suspended signs. If both sides of a projecting or suspended sign are visible, all sign faces must be finished.
    1. Only one (1) face of a sign shall be measured and counted against the applicant's sign number, size or surface area.
    2. No projecting or suspended sign shall be larger than twenty-four (24) square feet.
    3. Not more than one (1) such sign shall be permitted per single tenant building face adjacent to a street.
    4. If the end panel of such a sign is more than one (1) foot in width, it shall be included in the measurable area of said sign.
    5. Projecting or suspended signs shall have a minimum clearance of eight (8) feet above ground.
    6. Freestanding signs shall be allowed a height of no greater than fifteen (15) feet.
    7. Any owner or lessee desiring to locate a sign that extends into or over any street or sidewalk abutting the owner's or lessee's property shall file an encroachment permit application with the Town Clerk. The application shall be accompanied by an application fee in an amount set forth in the fee schedule adopted by the Board of Trustees from time to time. The application shall be on a form prepared by the Town Clerk, and shall contain the following information:
      - (A) The applicant's name, address, telephone contact number(s) and email address.
      - (B) The location of the street or sidewalk affected, a legal description of the property abutting the affected street or sidewalk, and the name and address of the owner of the property.
      - (C) A detailed description, elevation view and site plan of the sign and any associated and supporting structure(s), including length, width, height, placement and location on the affected property, lighting, illumination and type of construction.
      - (D) Evidence of comprehensive general liability insurance with limits at least equal to the maximum liability limits of the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S., which policy includes the Town as an additional insured.
      - (E) Written indemnification agreement or language in a form approved by the Town Attorney.
      - (F) Such additional information as reasonably required by the City Clerk.

Before issuing a permit under this Section, the Fire Department, the Police Department, the City Engineer and the Public Works Department shall review the application to determine whether the application meets the requirements of this Code. The Town Clerk may issue a permit upon a finding that the placement of the proposed item or items complies with the requirements of this Section and the ordinances of the Town, would not constitute a safety hazard and does not impair or obstruct the use of public property. The Town Clerk may impose reasonable conditions in the permit to assure that the use of public property is not impaired or obstructed and to protect the public health, safety and welfare.

Signs located pursuant to an encroachment permit shall be constructed and placed in a manner consistent with the site plan and other materials submitted with the application, shall remain the property of the lessee or owner of the building or property to which they are attached or associated, and shall be maintained to prevent deterioration or safety hazard due to weather, use, or any other cause affecting the physical condition of the permitted items.

The term of the permit shall be no longer than one (1) year from the date of issuance. Any permit issued under this Section shall be revocable by the Town at any time and without cause, and shall not preclude the Town from revoking said permit at any time without liability to the Town. Whenever a permit is revoked, the Town Clerk shall notify the permittee to remove the formerly permitted sign within such time that the Town Clerk deems reasonable under the circumstances.

If the permittee fails to comply with the order to remove the formerly permitted sign, the Town Clerk may cause the same to be removed and charge the costs thereof to the permittee. In addition to any other remedy available to the Town, if the permittee fails or refuses to pay when due any charge imposed under this subsection, the charge shall constitute a lien upon and against the lot, tract or parcel of land in connection with which the sign is placed and any such lien may be certified as an assessment against the property for collection in the same manner as the real estate taxes upon the property.

- c. Window signs. All signs on the interior of a window, whether temporary or permanent in nature, shall be exempt from the requirements of this Article, provided that not more than twenty-five percent (25%) of the display window is covered by signs.

(Ord. 348 §303, 1992; Ord. 639 §4, 2007; Ord. 725 §20, 2013; Ord. 749 §1, 2017)

Sec. 18-94. - Reserved.

**Editor's note—** Ord. 749 § 1, adopted March 7, 2017, repealed § 18-94 which pertained to number of signs, and derived from Ord. 348 § 304, adopted in 1992.

Sec. 18-95. - General requirements.

- (a) All signs must conform to the regulations and design standards of the Building Code of the Town and all other applicable codes. Wiring of all electrical signs must conform to the State Electrical Code.
- (b)

All signs, both currently existing and those constructed in the future, and all parts thereof, shall be maintained in a safe condition and the owner or lessee of any sign shall take all reasonable actions so that any sign will be maintained in like-new condition.

- (c) The supporting members of a sign shall appear to be free of any extra bracing angle iron, guy wires, cables, etc. The supports shall appear to be an architectural and integral part of the building and/or sign. Supporting columns of record, square or shaped steel members may be erected if required bracing, visible to the public, is minimized or covered.
- (d) No sign shall be attached to a tree or utility pole, whether on public or private property.
- (e) No sign shall be maintained at any location where by reason of its position, size, shape or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with, any traffic control sign, signal or device, nor may it interfere with, mislead or confuse traffic.
- (f) No portion of any sign located in a vision clearance area shall be lower than ten (10) feet from the average ground level, and supporting members of such signs shall not obscure views of pedestrians or vehicles.
- (g) Signs shall be permitted only on the same lot or lots owned, occupied or otherwise controlled by the sign permit holder, and only as an accessory use of such lot(s).
- (h) Development complex signs. Every multiple-occupancy development complex shall be entitled to one (1) freestanding sign upon which each tenant or occupancy may locate an individual sign which individual signs shall be no greater than fifteen (15) inches by seventy (70) inches. An anchor tenant or occupant shall be entitled to a sign that is thirty (30) inches by seventy (70) inches.

(Ord. 348 §305, 1992; Ord. 639 §5, 2007; Ord. 749 §1, 2017)

Sec. 18-96. - Requirements for specific types of signs.

- (a) Externally lighted signs shall be lit with downcast lighting to avoid casting bright light upon property located in any residential district or area or upon any public street, park, public facility or hospital facility.
- (b) Internally illuminated signs must avoid concentration of illumination. The maximum wattage for sign illumination shall be 10w per square foot of sign area distributed evenly over the surface of the sign or a maximum of 240w. Illumination of signs shall be arranged in such a manner as to be reflected away from residential properties and motorists' vision. Internally illuminated signs shall be restricted to the Neighborhood-Commercial, General Commercial and Central-Business Districts.
- (c) Neon signs shall be allowed only inside buildings in the NC, GC or CBD districts. Businesses shall be allowed more than one (1) neon sign as long as the total square footage of all signs does not exceed six (6) square feet.
- (d) Flashing or moving signs. No flashing, rotating, moving or animated signs, signs with moving lights or signs which create the illusion of movement shall be permitted.
- (e) Freestanding signs. No portion of any freestanding sign shall be located closer than ten (10) feet to any property line, and shall be designed and constructed to withstand wind pressures and receive dead loads as required.
- (f) Roof signs shall not be allowed in any district.
- (g)

Signs for sexually oriented businesses. In addition to complying with all other sign regulations of this Code, a sexually oriented business shall display a sign, clearly visible and legible at the entrance to the business, that gives notice of the adult nature of the sexually oriented business and of the fact that the premises are off-limits to minors or those under the age of twenty-one (21) years, as the case may be. No sign for a sexually oriented business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities.

- (h) Signs for retail marijuana stores and medical marijuana dispensaries. In addition to complying with all other sign regulations of this Code, retail marijuana stores and medical marijuana dispensaries shall display a six-inch by six-inch sign, purchased from the Town, clearly visible and legible at the entrance to the business, that gives notice that it is a retail marijuana store or medical marijuana dispensary, and of the fact that the premises are off-limits to minors or those under the age of twenty-one (21) years for retail stores, eighteen (18) years for dispensaries, as the case may be. No sign for a marijuana establishment business shall be lit with flashing lights or advertise marijuana or pictorial representations of marijuana other than the one provided by the Town.

(Ord. 348 §306, 1992; Ord. 639 §6, 2007; Ord. 720 §4, 2013; Ord. 749 §1, 2017)

#### Sec. 18-97. - Temporary signs.

The following temporary signs are permitted in all zoning districts without a sign permit, subject to the following specific requirements:

- (1) Construction site signs. A sign located on the same site as a project under active construction: provided however, that no site may display more than two (2) site development signs at one time, each of which may not exceed six (6) square feet in area and must be removed prior to issuance of a Certificate of Occupancy.
- (2) Project signs. One sign, which does not exceed six (6) square feet in area, may be located at the entrance of any subdivision in which more than twenty percent (20%) of the lots and/or houses in the subdivision are actively listed for sale.
- (3) No earlier than two (2) months prior to, and no later than two (2) weeks after, each election in which Town electors may participate, each property in every zone district may display temporary signs that measure no greater than four (4) square feet in size. Such signs must comply with all height and locational restrictions in the zone district in which they are located.
- (4) Temporary signs shall be allowed to be displayed a maximum of thirty (30) consecutive days from the date installed, provided that such signs are taken down no later than one (1) week after the conclusion of the event for which the sign is displayed.

(Ord. 348 §307, 1992; Ord. 505 §1, 1999; Ord. 725 §21, 2013; Ord. 749 §1, 2017)

#### Sec. 18-98. - Exemptions.

- (a) The following signs shall be exempt from the requirements of this Article, except for requirements relative to public safety:
  - (1) Flags displayed on private property, as long as such flag does not exceed sixty (60) square feet.
  - (2)

Signs posted by or on the order of a public employee in the performance of his or her duty and signs required by local, state or federal law.

- (3) Signs in athletic stadiums.
- (4) One (1) sign may be placed on each street frontage of property actively being offered for sale, lease or rent, provided that no sign exceeds six (6) square feet in area. Property with an area of five (5) acres or greater that is actively being offered for sale, lease or rent may locate two (2) signs, each of which may not exceed six (6) square feet, along each street frontage in excess of four hundred (400) feet. Signs must be removed from the premises within thirty (30) days after the close of the sale of the property or the full execution of the lease or rental agreement.

- (5) Murals.

- (b) The following signs are exempt from the requirement of obtaining a permit, but shall comply with all other regulations imposed by this Article:
  - (1) Signs not exceeding ten (10) square feet in gross surface area accessory to a church, school, public or nonprofit institution.

(Ord. 348 §308, 1992; Ord. 725 §22, 2013; Ord. 749 §1, 2017)

#### Sec. 18-99. - Nonconforming signs.

- (a) Whenever one (1) or more of the following conditions occur, all signs which are nonconforming to the regulations of this Article shall be brought into conformance or shall terminate:
  - (1) Whenever there is a change in ownership of the property on which the nonconforming sign is located.
  - (2) Whenever there is a change in business or use to which the sign pertains.
  - (3) Whenever there is a change in the copy on a sign, other than on reader panels.
  - (4) Whenever a request is made for a permit to change the sign.
  - (5) If any such sign or nonconforming portion thereof is destroyed by any means to an extent of more than fifty percent (50%) of its appraised value for tax purposes at the time of said destruction, it shall be reconstructed only in conformity with this Article.
  - (6) Whenever the location of the sign is moved or altered.
- (b) All signs, except those that have been granted a variance by the Board of Zoning Adjustment must conform to the regulations of this Article five (5) years from the adoption date of the ordinance codified herein.
- (c) Any business or establishment which has existed in the Town longer than ten (10) years and believes that its sign is of historical or landmark significance may request the Board of Zoning Adjustment to grant a "grandfather variance." Such proof of significance shall reside with the business or establishment. A grandfather variance shall not supersede any other requirement of this Article except the compliance deadline.

(Ord. 348 §309, 1992)

#### Sec. 18-100. - Violation.

It shall be a violation of this Article for any person to perform or order the performance of any act which is contrary to the provisions of this Article or fail to perform an act which is required by the provisions of this Article. In the case of a continuing violation, each twenty-four-hour period in which the violation exists shall constitute a separate violation.

(Ord. 348 §104, 1992)

#### Sec. 18-101. - Penalties.

The following penalties, set forth in full herein, shall apply to this Article:

- (1) It is unlawful for any person to violate any of the provisions stated or adopted in this Article.
- (2) Every person convicted of a violation of any provision stated or adopted in this Article shall be punished by a fine as set forth in Section 1-72 of this Code.

(Ord. 348 §§105, II, 1992; Ord. 435 §1, 1996)

#### Sec. 18-102. - Liability for damage.

This Article shall not be construed to hold the Town responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or by reason of issuing a sign permit as herein provided.

(Ord. 348 §106, 1992)

#### Sec. 18-103. - Application.

This Article shall apply to all property within the corporate limits of the Town, the use of which the Town has jurisdiction and authority to regulate.

(Ord. 348 §III, 1992)

#### Sec. 18-104. - Property address signs required.

It shall be unlawful for any residence in the Town to fail to have the numerical address of the property posted on the property in compliance with the requirements of this Section at any time after June 30, 1998. Address signs shall meet the following requirements:

- (1) Specifications and location of address signs.
  - a. Property address signs shall be located on the residence, or on a separate pole not more than ten (10) feet from the driveway to the residence and not more than ten (10) feet from the street which the driveway accesses. The signs shall be at least four (4) feet above the grade of the street, but not more than six (6) feet above such grade. The address signs shall be placed in such a manner as to be clearly visible at the driveway entrance independent of vehicle approach via the public street.
  - b. Property address signs shall consist of the numbers of the address in reflective material visible during the day and at night with each letter at least one (1) inch high.
  - c.

The numbers used for the address sign shall be the numbers of the address for the property on record with the Town. The addressing system used by the Town shall be that adopted by the Nederland Volunteer Fire Department.

- (2) Town posting of address signs. Unless the property owner advises the Town that the property owner desires to post its own signs, the Town shall post all of such signs at the expense of the Town.
- (3) Property owner posting of address sign. In the event the property owner desires to post the address sign, the owner must submit a request to the Town for approval.

(Ord. 475 §1, 1998; Ord. 514 §1, 1999; Ord. 639 §7, 2007; Ord. 648 §6, 2008)

Secs. 18-105—18-120. - Reserved.

## ARTICLE VI - Design Standards

Sec. 18-121. - Definitions.

The words and terms used, defined, interpreted or further described in this Article shall be construed as follows: The phrase used for includes arranged for, designed for, intended for, maintained for and occupied for.

(Ord. 355 Art. IX, 1993; Ord. 435 §1, 1996; Ord. 476 §1, 1998)

Sec. 18-122. - Interpretation and application.

- (a) No construction of any new nonresidential buildings or multifamily residential buildings in excess of seven hundred fifty (750) square feet, or alteration, enlargement or improvement of any existing nonresidential building or multifamily residential building that increases the square footage or footprint of the existing building by more than twenty percent (20%) or change in the exterior of any existing nonresidential building or multifamily residential building or removal or demolition of any existing nonresidential building or multifamily residential building shall occur without first obtaining a design review certificate in accordance with the procedures and requirements of this Article, unless exempted from the certificate requirements under this Article. Nothing in this Article shall be construed to require a certificate for the ordinary maintenance, painting or repair of any building, structure or sign which does not require a building permit; nor the alteration or remodeling of the interior of a building where no exterior changes will occur; nor for the demolition of any structure which the Building Inspector certifies in writing is required for public safety because of an unsafe or dangerous condition.
- (b) When a design review certificate is required for improvement of a building, nothing in this Article shall be used to require conformance with this Article for any portion of the building not integral to such improvement.

(Ord. 355 Art. I, 1993; Ord. 476 §1, 1998; Ord. 533 §1, 2000; Ord. 541 §1, 2001)

Sec. 18-123. - Application procedures.

- (a) The application for a design review certificate shall be submitted on forms provided by the Town, along with the application of the building permit.
- (b) The application shall be granted by the Zoning Administrator if it complies with all requirements of this Article.

- (c) In the event of a denial of an application, the Zoning Administrator will notify the applicant in writing of the reasons for such denial, and the applicant will be provided an opportunity to submit a supplemental application within thirty (30) days of such denial which may address or correct the deficiencies set forth in the letter of denial.
- (d) Any material or substantial change in the plans of a project for which a certificate has been issued shall require a supplemental application.
- (e) The application shall include the following items:
  - (1) Any statements or reports describing or in support of the project.
  - (2) A complete list of exterior materials and colors proposed.
  - (3) At least two (2) copies of all plans shall be submitted at the time of application.
- (f) Demolition bond.
  - (1) In the case of building permits for new commercial purposes of over one hundred thousand dollars (\$100,000.00), no certificate shall be issued until a demolition bond and a landscaping bond have been posted in form acceptable to the Town.
  - (2) If a demolition bond is required, it shall be equal in value to the estimated cost of demolishing the proposed improvement and restoring the site to its previous condition. The bond may be paid in cash to the Town or, in lieu of cash, adequate security therefor, including a letter of credit or a corporate performance bond. The form of the letter of credit or performance bond shall be subject to approval by the Town. Release of the bond shall not be made until a certificate of occupancy for said improvement has been issued, or in some cases where a schedule for proposed improvement has been submitted to the Town, portions of the bond may be released upon completion of specific stages of construction. Any interest earned on a cash deposit shall be paid to the permit holder. If demolition and restoration costs exceed the amount posted in the bond, the excess, together with interest at the Norwest prime interest rate plus two percent (2%) per annum shall be a lien against the property and may be collected by civil suit or may be certified to the Town Treasurer to be collected in the same manner as delinquent ad valorem taxes levied against such property.

(Ord. 355 Art. II, 1993; Ord. 476 §1, 1998)

#### Sec. 18-124. - Establishment of areas/design standards.

For the purposes of this Article, the Town shall be divided into three (3) areas.

- (1) First Street - Central Business District. This area shall include the entire lots fronting on both sides of First Street between Snyder and Jackson Streets, and for purposes of this Article, this area will be referred to as the "First Street District."
- (2) Neighborhood Commercial District (NC), General Commercial (GC) and the remainder of Central Business District (CBD). This Section shall include all of the NC district and that part of the CBD district as shown in Chapter 16 of this Code, which is not part of the First Street District described in Paragraph (1) above. For purposes of this Article, this area will be referred to as the "Business District."
- (3) Industrial District. This shall include Industrial (I) district as shown in Chapter 16 of this Code. For purposes of this Article, this area will be referred to as the "Industrial District."

Sec. 18-125. - Applicability of Nederland design standards and guidelines.

No certificates shall be issued unless the proposed construction complies with the standards set forth in the Nederland Design Standards and Guidelines as currently adopted and subsequently amended by the Town, copies of which area available at the Town Hall.

(Ord. 533 §1, 2000)

Secs. 18-126—18-128. - Reserved.

Sec. 18-129. - Exceptions.

- (a) Nothing in this Article shall be construed to prevent the ordinary maintenance, painting or repair of any building, structure or sign which does not require a building permit; nor to prevent the alteration or remodeling of the interior of a building or structure where no exterior changes will occur; nor to prevent the demolition of any structure which has been appropriately certified as a health or safety nuisance because of an unsafe or dangerous condition.
- (b) In addition to those exceptions listed in Subsection (a) above, the following listed items are exempted from the application, review and certificate provisions of this Article:
  - (1) Replacement of exterior materials and repainting of structures with like materials and colors if the structure is in conformity with all applicable statutes, ordinances and regulations on the date of the ordinance codified herein.
  - (2) Replacement of plant materials existing on the date of the ordinance codified herein, including trees, shrubs, plants, grasses and sod.

(Ord. 355 Art. V, 1993; Ord. 370, 1994; Ord. 533 §1, 2000)

Sec. 18-130. - Preexisting nonconforming structures.

In the event a structure in existence at the time of the passage of the ordinance codified herein does not comply with the provisions of this Article, it shall not be required to comply, unless and until the structure is rebuilt, modified or reconstructed in such a manner that the proposed construction affects forty percent (40%) of the building value as established by the County Assessor for property tax purposes at the beginning of the construction. In any such event, the construction shall be required to comply with the provisions of this Article.

(Ord. 355 Art. VI, 1993; Ord. 435 §1, 1996)

Sec. 18-131. - Design regulations.

After public hearing within at least fourteen (14) days' notice, the Board of Zoning Adjustment may adopt design rules and regulations to further define, illustrate and promote the purposes of this Article. Any such design rules and regulations shall be consistent with this Article.

Sec. 18-132. - Appeals.

In the event an applicant is dissatisfied with the decision of the Building Inspector or Zoning Administrator or the standards, rules or regulations, the applicant may appeal to the Board of Zoning Adjustment by making written application to appeal the decision of the Zoning Administrator or Building Inspector, stating specifically the action requested on appeal and the reasons the applicant believes the decision was in error. The appeal shall be held before the Board of Zoning Adjustment which shall have the discretion not to hear the appeal based upon the application for appeal submitted.

(Ord. 355 Art. VIII, 1993; Ord. 370, 1994)

Sec. 18-133. - Violations.

Any person violating the provisions of this Article shall be subject to prosecution in the Municipal Court and may be fined as set forth in Section 1-72 of this Code. In addition, the Board of Zoning Adjustment may initiate a civil action in the District Court against any person violating this Article for a restraining order and other injunctive relief against the violator. The Town shall not be required to post a bond to secure injunctive relief.

(Ord. 355 Art. X, 1993; Ord. 435 §1, 1996)

Sec. 18-134. - Applicability.

- (a) This Article shall apply to all buildings, structures, improvements and land within the corporate limits of the Town now or hereafter established.
- (b) All existing trash receptacles including grease traps shall be screened from view within eighteen (18) months of the adoption of the ordinance codified herein.
- (c) This Article shall not annul or abrogate any lawful permit issued prior to the effective date of the ordinance codified herein. Any use lawfully established prior to the effective date of the ordinance codified herein shall be allowed to continue as a nonconforming use, subject to the provisions of this Article.

(Ord. 355 Art. XII, 1993; Ord. 533 §1, 2000)

Secs. 18-135—18-150. - Reserved.

**ARTICLE VII - Floodplain Regulations**

Sec. 18-151. - 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;
- (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.

(Ord. 712 §1, 2012)

#### Sec. 18-152. - Methods of reducing flood loss.

In order to accomplish its purposes, this Article uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. 712 §1, 2012)

#### Sec. 18-153. - 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 (1-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 two-tenths-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 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.

*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/AI-A30, AR/AH, AR/AO, VI-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 sides.

*Basement* means any area of a building having its floor sub-grade (below ground level) on all sides.

*Channel* means the physical confine of 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 Section 18-170 of this Article, 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 Section 18-170 of this Article.

*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 nonbasement building: (i) built, in the case of a building in Zones AI-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.

*FEMA* means the Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

*Flood orflooding* 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 Town Administrator, or his or her designee.

*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 floodplain management 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 (½) 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.

*Freeboard* means the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood, such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

*Functionally dependent use* means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

*Historic structure* means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior; or
  2. Directly by the Secretary of the Interior in states without approved programs.

*Letter of Map Revision (LOMR)* means FEMA's official revision of an effective Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA).

*Letter of Map Revision Based on Fill (LOMR-F)* means FEMA's modification of the special flood hazard area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

*Levee* means a man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

*Levee system* means a flood protection system which consists of a levee or levees and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use, such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood-resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

*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 the 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).

*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 (SFHA)* 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 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 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.

*Town* means the Town of Nederland, Colorado.

*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.

Sec. 18-154. - 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 Town.

(Ord. 712 §1, 2012)

Sec. 18-155. - Basis for establishing 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 Boulder County, Colorado and Incorporated Areas," dated December 18, 2012, with accompanying Flood Insurance Rate Maps (FIRMs) and any revisions thereto, are hereby adopted by reference and declared to be a part of this Article. These special flood hazard areas identified by the FIS and attendant mapping are the minimum area of applicability of this Article and may be supplemented by studies designated and approved by the Board of Trustees. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs and FIRMs on file and available for public inspection.

(Ord. 712 §1, 2012)

Sec. 18-156. - Establishment of floodplain development permit.

A floodplain development permit shall be required to ensure conformance with the provisions of this Article.

(Ord. 712 §1, 2012)

Sec. 18-157. - Penalties for noncompliance.

No structure shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this Article and other applicable regulations. Violation of the provisions of this Article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a civil infraction. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, be fined as set forth in Section 1-72 of this Code and, in addition, shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. 712 §1, 2012; Ord. 803 §18, 2019)

Sec. 18-158. - 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.

## Sec. 18-159. - Interpretation.

In the interpretation and application of this Article, all provisions shall be considered as minimum requirements; liberally construed in favor of the governing body; and deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 712 §1, 2012)

## Sec. 18-160. - 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.

(Ord. 712 §1, 2012)

## Sec. 18-161. - 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 Section 18-162 below.
- (2) Review, approve or deny all applications for floodplain development permits required by this Article.
- (3) Review floodplain development permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Inspect all developments at appropriate times during the period of construction to ensure compliance with all provisions of this Article, including proper elevation of the structure.
- (6) Where interpretation is needed as to the exact location of the boundaries of the special flood hazard area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make the necessary interpretation.
- (7) When base flood elevation data has not been provided in accordance with Section 18-155 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 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 AI-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 (½) 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 Zones AI-30, AE and AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one-half (½) 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.

(Ord. 712 §1, 2012)

#### Sec. 18-162. - Permit procedures.

- (a) 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 areas. Additionally, the following information is required:
  - (1) Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures;
  - (2) Elevation, in relation to mean sea level, to which any nonresidential structure shall be floodproofed;
  - (3) A certificate from a registered Colorado professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 18-165 below; and
  - (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (b) Approval or denial of a floodplain development permit by the Floodplain Administrator shall be based on all of the provisions of this Article and the following relevant factors:
  - (1) The danger to life and property due to flooding or erosion damage;
  - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (3) The danger that materials may be swept onto other lands to the injury of others;
  - (4) The compatibility of the proposed use with existing and anticipated development;
  - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (6) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable;
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use; and
- (10) The relationship of the proposed use to the comprehensive plan for that area.

(Ord. 712 §1, 2012)

Sec. 18-163. - Variance procedures.

- (a) The Board of Zoning Adjustment shall hear and render judgment on requests for variances from the requirements of this Article.
- (b) The Board of Zoning Adjustment 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.
- (c) Any person aggrieved by the decision of the Board of Zoning Adjustment may appeal such decision in a court of competent jurisdiction.
- (d) 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.
- (e) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the relevant factors in Section 8-162 above have been fully considered. As the lot size increases beyond the one-half (½) acre, the technical justification required for issuing the variance increases.
- (f) Upon consideration of the factors noted above and the intent of this Article, the Board of Zoning Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Article.
- (g) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (h) 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.
- (i) Prerequisites for granting variances:
  - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (2) Variances shall only be issued upon:
    - a. Showing a good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    - c.

A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

- (3) 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.
- (j) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
  - (1) The criteria outlined in Subsections (a) through (h) of this Section are met; and
  - (2) 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.

(Ord. 712 §1, 2012)

#### Sec. 18-164. - General standards.

In all special flood hazard areas, the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
- (8) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

## Sec. 18-165. - Specific standards.

In all special flood hazard areas where base flood elevation data has been provided as set forth in: (i) Section 18-155; (ii) Paragraph 18-161(7); or (iii) Section 18-170 of this Article, 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 Section 18-171 below, new construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) 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 Section 18-162 above.
- (3) Enclosures.
  - a. 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:
    1. 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.
    2. The bottom of all openings shall be no higher than one (1) foot above grade.
    3. 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.
  - a. 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 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 is 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.

- b. 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 community's FIRM that are not subject to the provisions of Subparagraph a. above, shall be elevated so that either:
  1. The lowest floor of the manufactured home is one (1) foot above the base flood elevation; or
  2. 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 be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(5) Recreational vehicles.

- a. All recreational vehicles placed on sites within Zones A1-30, AH and AE on the community's FIRM shall either:
  1. Be on the site for fewer than one hundred eighty (180) consecutive days;
  2. Be fully licensed and ready for highway use; or
  3. Meet the permit requirements of Section 18-162 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.

(Ord. 712 §1, 2012)

Sec. 18-166. - 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 the definition of *floodway* in Section 18-153 of this Article). Located within special flood hazard areas established in Section 18-155 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 Sections 18-164 through 18-171 of this Article, inclusive.
- (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

(Ord. 712 §1, 2012)

## Sec. 18-167. - Alteration of 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 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 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 Paragraph (3) above.
- (7) Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

(Ord. 712 §1, 2012)

## Sec. 18-168. - 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.
- (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 effects of buoyancy.

(Ord. 712 §1, 2012)

Sec. 18-169. - Standards for subdivision proposals.

- (a) 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.
- (b) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet floodplain development permit requirements of Sections 18-156 and 18-162 and the provisions of Sections 18-164 through 18-171 of this Article, inclusive, as applicable.
- (c) 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 Section 18-155 or Section 18-161 of this Article.
- (d) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards.
- (e) 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.

(Ord. 712 §1, 2012)

Sec. 18-170. - Standards for critical facilities.

- (a) 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.
- (b) Classification of critical facilities. Critical facilities are classified under the following categories: essential services; hazardous materials; at-risk populations; and vital to restoring normal services.
  - (1) Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities and transportation lifelines. 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);

- 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. Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Board of Trustees 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 Board of Trustees on an as-needed basis upon request.
- (3) Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials. 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.
- (4) 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 CFR Section 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 Health and Environment. OSHA requirements for MSDS can be found in 29 CFR Section 1910 (2010). The Environmental Protection Agency (EPA) regulation "Designation, Reportable Quantities, and Notification," 40 CFR Section 302 (2010) and OSHA regulation "Occupational Safety and Health Standards," 29 CFR Section 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this Article, but exclude later amendments to or editions of the regulations. Specific exemptions to this category include:

- 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 Board of Trustees 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.

These exemptions shall not apply to buildings or other structures that also function as critical facilities under another category outlined in this Section.

- (5) At-risk population facilities include medical care, congregate care and schools. These facilities consist of:
  - a. Elder care (nursing homes);
  - b. Congregate care serving twelve (12) or more individuals (day care and assisted living); and
  - c. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving twelve (12) or more children.
- (6) Facilities vital to restoring normal services, including government operations.
  - a. 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); and
    2. Essential structures for public colleges and universities (dormitories, offices and classrooms only).
  - b. These facilities may be exempted if it is demonstrated to the Board of Trustees 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 Board of Trustees on an as-needed basis upon request.
- (c) 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 Section, protection shall include one (1) of the following:
  - (1) Location outside the special flood hazard area; or
  - (2) Elevation or floodproofing of the structure to at least two (2) feet above the base flood elevation.
- (d) Ingress and egress for new critical facilities. New critical facilities shall, when practicable as determined by the Board of Trustees, have continuous noninundated access (ingress and egress for evacuation and emergency services) during a one-hundred-year flood event.

(Ord. 712 §1, 2012)

## DISPOSITION OF ORDINANCES TABLE

<u>Ord. No.</u>	<u>Year</u>	<u>Subject</u>	<u>Section</u>	<u>Disposition</u>
16	1908	Fiscal year	1	<u>4-1</u>
84	1948	Nuisances	1	<u>7-1</u>
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			4	<u>7-34</u>
98	1964	Mobile homes	1	<u>16-121</u>
			2	<u>16-122</u>
			3	<u>16-124</u>
107	1968	Alcoholic beverages	1	<u>6-31</u>
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			4	<u>4-101</u>
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118	1971	General offenses	1-8	<u>10-182</u>
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			1-14	<u>10-42</u>
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124	1973	Offenses against police officers	1 <u>10-226</u>
			2 <u>10-227</u>
			3 <u>10-228</u>
			4 <u>10-226</u>
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138	1975	Occupational tax	1 <u>4-101</u>
140	1976	Planning Commission	<u>2-273</u>
141	1976	Rental property licensing	1 <u>6-91</u>
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148	1977	Mobile home location	1	<u>16-121</u>
			2	<u>16-123&gt;</u>
			4	<u>16-124</u>
164	1979	Excavations	1	<u>11-41</u>
			2	<u>11-42</u>
			3	<u>11-43</u>
			4	<u>11-44</u>
			5	<u>11-45</u>
			6	<u>11-46</u>
			7	<u>11-47</u>
170	1979	Telephone occupation tax	1	<u>4-121</u>
			2	<u>4-122</u>
			3	<u>4-123</u>
			4	<u>4-124</u>
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174	1980	Excavations	1	<u>11-42</u>
			2	<u>11-41, 11-43—11-46</u>
177	1980	Board of Trustees	1	<u>2-21</u>
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178	1980	Town officials	5	2-180
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179	1980	Municipal Judge, Municipal Court	1	<u>2-222</u>
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186	1980	Model Traffic Code	1	<u>8-1</u>
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189	1980	General code provisions	1	<u>1-21</u>
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195	1981	Nuisances	1	<u>7-1</u>
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196	1981	General offenses	2	<u>10-182</u>
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197	1981	Public assembly	1	<u>6-71</u>
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201	1981	Street construction	1	<u>11-21</u>
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231	1982	Open fires and camping	1	<u>11-81</u>
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238	1983	Subdivision regulations	1	<u>17-1—17-7,</u>
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244	1983	Trailers	1	<u>16-122</u>
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246	1983	Zoning	1	<u>16-31</u>
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383	1994	Explosives	1	<u>6-133</u>
385	1994	Utility rates	1	<u>13-3</u>
386	1994	Zoning Board of Adjustment	1	<u>16-231</u>

387	1994	Planning Commission	1	<u>2-273</u>
393	1994	Alcoholic beverage license fees	1	<u>6-34</u>
402	1995	Delinquent utility accounts	1	<u>13-58</u>
			2	<u>13-28</u>
404	1995	Flood plain regulations	1	<u>18-155</u>
405	1995	Planning Commission	1	<u>2-273</u>
406	1995	Zoning Board of Adjustment	1	<u>16-231</u>
413	1995	Board of Trustees	1.1	<u>2-51</u>
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			8.5		2-135
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			9.1		2-93
			9.2		2-32
418	1996	Theft under \$400.00	1	Added	<u>10-61</u>
			2	Added	<u>10-62</u>
			3	Added	<u>10-63</u>
			4	Added	<u>10-64</u>
			5	Added	<u>10-65</u>
			6	Added	<u>10-66</u>
			7	Added	<u>10-67</u>
			8	Added	<u>10-68</u>
420	1996	Building codes, adoption and amendments	1—3	Added	<u>18-1</u>
			4	Added	18-21
			5	Added	18-61
			6	Added	18-41
			7	Added	<u>18-2, 18-22, 18-41,</u> 18-42, 18-62
			8	Added	<u>18-4, 18-24, 18-44,</u>

			9	Added	<u>18-3, 18-23, 18-43,</u>
					18-63
421	1996	Regular meetings for Board of Trustees	1		<u>2-51</u>
422	1996	Off-street parking requirements	1—3		<u>16-201</u>
			4—6		<u>16-6</u>
			7		<u>16-202</u>
			8		<u>16-211</u>
423	1996	Planning Commission membership	1		<u>2-273</u>

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437	1996	Snow emergency routes	1—8	Added	8-41—8-48
442	1997	Building regulations		Added	18-181—18-186

444	1997	Annexation procedures	1		15-5
446	1996	Study/work sessions	1		2-56
447	1997	Business license fee	1		<u>4-151</u>
448	1997	Subdivisions, interior lot lines	1	Added	<u>17-73</u>
			2		17-29
450	1997	Study/work sessions	1		2-56
451	1997	Motor vehicle registration requirements	1	Added	<u>8-6</u>
		Motor vehicle emission requirements	2	Added	<u>8-7</u>
452	1997	Write-in candidate affidavit	1	Added	2-7
		Cancellation of elections		Added	2-8
453	1997	Zoning, definitions	1		<u>16-6</u>
		Wireless facilities	2	Added	<u>16-90—16-92</u>
454	1997	Zoning, home occupations	1		<u>16-76</u>
455	1997	Zoning, definitions	1		<u>16-6</u>
		Nonconforming uses or structures	2		<u>16-181</u>
			3		<u>16-182</u>
		Nonconforming lots, structures on	4	Added	<u>16-185, 16-186</u>
457	1997	Alcoholic beverage occupational tax	1		<u>4-101</u>
		Fees	2		<u>4-151</u>
		Safety sensitive zones	1	Added	<u>8-61</u>
458	2000	Public road and private driveway standards	1	Added	<u>11-61—11-70</u>

459	1997	Building design standards	1—4		<u>18-124—18-127</u>
460	1997	Model Traffic Code amendment	1		<u>8-2</u>
461	1997	Processing of land use applications	1	Added	<u>1-151—1-153</u>
464	1997	Residency requirements	1		<u>2-174</u>
465	1997	Excavations	1	Rpld	<u>11-41—11-47</u>
				Added	<u>11-41—11-53</u>
466	1997	Sales tax	1		<u>4-52</u>
			2		<u>4-57</u>
			3		<u>4-59</u>
467	1997	Cable television system franchise			<u>5-1—5-40</u>
472	1998	Model Traffic Code amendment	1		<u>8-2</u>
473	1998	Excavations, security required	1		<u>11-46</u>
474	1998	Zoning, lot splits	1	Added	<u>16-93</u>
475	1998	Property address signs	1	Added	<u>18-104</u>
		Building numbering	2	Rpld	<u>11-61—11-65</u>
476	1998	Building design standards	1		<u>18-121—18-128</u>
477	1998	Board of Zoning Adjustment, alternate members	1	Added	<u>16-234</u>
482	1998	Zoning, variances for lot splits	1	Added	<u>16-94</u>
483	1998	Supplemental building permit requirements	1		<u>18-5</u>
484	1998	Excavations, security required	1		<u>11-46</u>

487	1998	Land use applications	1		<u>1-152</u>
490	1998	Sales tax use of revenue	1		<u>4-57</u>
492	1998	Community Center special events permits	1	Added	<u>6-38</u>
499	1999	Purchases under \$2,000 by department heads	1	Added	<u>4-171</u>
500	1999	Public property generally	1		<u>10-41</u>
		Theft generally	2		<u>10-61</u>
		Bad checks	3		<u>10-62</u>
		Theft of rental property	4		<u>10-63</u>
		Shoplifting	5		<u>10-65</u>
		Price switching	6		<u>10-66</u>
		Theft by receiving	7		<u>10-67</u>
501	1999	Board of Trustees order of business	1		<u>2-82</u>
502	1999	Infected trees	1	Added	<u>7-36</u>
503	1999	Subdivisions, dissolution of interior lot lines	1		<u>17-73</u>
504	1999	Noise offenses	1	Added	<u>10-263—10-269</u>
		Nuisances	2		<u>7-35</u>
		Permits for amplified music	3	Added	<u>6-161</u>
505	1999	Temporary signs	1		<u>18-97</u>
506	1999	Rental property	1		<u>6-91—6-98</u>
507	1999	Zoning definitions	1		<u>16-6</u>

508	1999	Animals running at large	1		<u>7-95</u>
509	1999	Code definitions	1		<u>1-21</u>
510	1999	Harassment	1		<u>10-127</u>
511	1999	Water service plant investment fees	1		<u>4-151</u>
		Sewer service plant investment fees	2		<u>4-151</u>
512	1999	Relocation of structures	1	Added	<u>18-6</u>
513	1999	Uniform Building Code amendments	1		<u>18-2</u>
514	1999	Property address signs	1		<u>18-104</u>
520	2000	National Electrical Code, 1999 edition	1	Added	18-201
521	2000	Cable television franchise	1—5	Added	5-2.5
528	2000	Community Center special events permits	1—3		<u>6-38</u>
530	2000	Prohibition of Jake brakes	1	Added	<u>10-270</u>
532	2000	Burying of construction and organic materials	1	Added	<u>11-53</u>
			2	Rnbd	<u>11-53</u>
				as	<u>11-54</u>
533	2000	Design Standards and Guidelines	1	Rpld	<u>18-125</u> — <u>18-128</u>
				Rnctd	<u>18-125</u>
539	2001	Sewer and water service lines	1		<u>13-25</u>
			2		<u>13-55</u>
540	2000	Annual business license fee	1		<u>4-151</u>

			2		<u>6-4</u>
541	2001	Design Standards and Guidelines	1		18-22
542	2001	Sewer and water service outside Town limits	1		<u>13-28</u>
			2		<u>13-58</u>
543	2001	Installation of water and sewer taps	1	Added	<u>13-137</u>
544	2001	Sale of water for private use	1	Added	<u>13-70</u>
545	2001	Commercial resale of water provided by Town	1	Added	<u>13-69</u>
546	2001	Water service application	1		<u>13-54</u>
548	2001	Variances	1		<u>16-232</u>
552	2001	Fees and charges regarding land use applications	1		<u>4-151</u>
			2		<u>16-154</u>
			3		<u>16-52</u>
553	2002	Colorado Liquor Code adoption	1	Added	<u>6-39</u>
558	2002	Fireworks prohibited	1	Added	<u>10-243</u>
564	2002	Water and sewer service lines	1		<u>13-22</u>
			2		<u>13-52</u>
565	2003	Parking prohibited	1		<u>8-21</u>
566	2003	Parking cars with "for sale" signs prohibited	1	Added	<u>8-26</u>
567	2003	Possession of drug paraphernalia prohibited	1	Added	10-246
569	2003	Mixed uses	1		<u>16-32</u>

			2		<u>16-202</u>
570	2003	Use groups	1		<u>16-32</u>
571	2003	Meeting dates	1		<u>2-51</u>
573	2003	Use of restricted roadways prohibited	1	Added	<u>8-8</u>
575	2003	Violations of special review use agreements	1	Added	<u>16-61</u>
577	2003	Electric and gaseous fuel franchise	1		<u>5-61</u>
578	2003	General subdivision regulations	1—3		<u>17-5</u>
582	2003	Nonpayment of water and sewer service	1, 2		<u>4-151</u>
			3		<u>13-28</u>
			4		<u>13-58</u>
			5		<u>13-59</u>
583	2003	General subdivision regulations	1—3		<u>17-5</u>
584	2003	Primary codes	1		<u>18-1, 18-2</u>
		Rpld/Rnctd			
			Rpld		<u>18-7—18-60</u>
590	2004	Appointed officials	1		<u>2-94</u>
591	2004	Violation of special permit terms	16-61		
593	2004	Parking	1		<u>8-21</u>
597	2003	Cross-connection and backflow protection	1	Added	<u>Ch. 13, Art. V</u>
600	2005	Fence height	1		<u>16-89</u>
601	2005	Town Administrator residency	1		<u>2-174</u>

602	2005	Spending limits	1		<u>4-171</u>
<u>603</u>	2005	Amending the electric and gaseous fuel franchise	1		<u>5-61</u>
604	2005	Wildlife	1	Added	<u>10-87</u>
605	2005	Relocation of structures	1		<u>18-6</u>
610	2006	Board of Trustees meetings	1		<u>2-82</u>
618	2006	Connection to Town's sewer system	1		<u>13-23</u>
620	2006	Removal of dog excrement	1		<u>7-99</u>
621	2006	Mixed uses	1		<u>16-32</u>
622	2006	Commercial uses on East First Street	16-95		
623	2006	Mayor	1		<u>2-23</u>
624	2006	Abandoned signs	1		<u>18-90</u>
629	2007	Connection to Town's sewer system	1		<u>13-23</u>
630	2007	Appointment of Town officers	1		<u>2-171</u>
632	2007	Sexually oriented businesses	1	Added	<u>Ch. 16, Art. XII</u>
633	2007	Sexually oriented business licensing	1	Added	<u>Ch. 6, Art. IX</u>
634	2007	Sexually oriented businesses	1		<u>16-297</u>
			2		<u>6-189</u>
			3		<u>16-32</u>
637	2007	Animals	1		<u>10-261</u>
638	2007	Theft and related offenses	1		<u>10-61</u>

			2	<u>10-62</u>
			3	<u>10-63</u>
			4	<u>10-65</u>
			5	<u>10-66</u>
			6	<u>10-67</u>
639	2007	Signs	1	<u>18-83</u>
			2	<u>18-84</u>
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			5	<u>18-95</u>
			6	<u>18-96</u>
			7	<u>18-104</u>
641	2007	Fee schedule	1	<u>4-151</u>
		Building regulations	2	Added <u>18-7</u>
644	2007	Building regulations	1	<u>18-1</u>
			Rpld/Rnctd	
			2	<u>18-2</u>
			Rpld/Rnctd	
			3	Rpld <u>Ch. 18, Art. VIII</u>
			4	Rpld <u>Ch. 18, Art. IV</u>
645	2008	Zoning	1, 2	<u>16-6</u>
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21		<u>16-158</u>
22	Added	<u>16-200</u>
23		<u>16-201</u>

			24	<u>16-202</u>
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		25	Rpld	<u>16-204</u>
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		27	Rpld	<u>16-211</u>
		28		<u>16-231</u>
		29		<u>16-233</u>
646	2008	Local Liquor Licensing Authority	1	<u>2-177</u>
		2		<u>4-151</u>
		3		<u>6-34</u>
		4	Rpld	<u>6-38</u>
		5	Added	<u>6-40</u>
647	2008	Camping on public property	1	<u>11-82</u>
648	2008	Codification corrections	1	<u>13-191—13-205</u>
		2	Rnbd	<u>10-86</u>
		as		<u>10-87</u>
		3		<u>2-82</u>
		4		<u>16-291—16-303</u>
		5		<u>Ch. 6, Art. IX</u>
		6		<u>18-104</u>
		7		<u>4-151</u>

			8		<u>16-6</u>
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				Rnbd	<u>6-41</u>
				as	<u>6-40</u>
			10		<u>1-50</u>
650	2008	Zoning	1		<u>16-31</u>
			2		<u>16-32</u>
			3A		<u>16-33</u>
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651	2008	Energy Conservation Code	1		<u>18-2</u>
652	2008	Liquor tastings	1	Added	<u>6-41</u>
653	2008	Utilities rate reduction program	1		<u>13-3</u>
654	2008	Water and sewer service fees	1		<u>4-151</u>
			2		<u>13-28</u>
			3		<u>13-58</u>
658	2008	Building permit fees	1		<u>4-151</u>
659	2008	Nathan Lazarus Skate Park	1	Added	<u>11-84</u>
			2	Rnbd	<u>11-82</u>
				as	<u>11-83</u>
				Rnbd	<u>11-83</u>
				as	<u>11-82</u>

660	2008	Fee schedule	1		<u>Ch. 4, Art. VIII</u>
661	2008	Annexations	1		<u>15-5</u>
662	2008	Licenses and permits	1		<u>6-40</u>
664	2008	Trustee duties	1	Rpld	<u>2-24</u>
665	2008	Fees	1		<u>6-4</u>
			2		<u>11-43</u>
			3		<u>16-233</u>
			4		<u>17-73</u>
666	2008	Commercial Parking Fund	1	Added	<u>4-34</u>
			2		<u>16-201</u>
			3		<u>16-211</u>
670	2009	Water meters	1		<u>13-54</u>
			2		<u>13-58</u>
671	2009	Water and sewer fees	1		<u>13-28</u>
			Rpld/Rnctd		
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			3		<u>13-58</u>
			Rpld/Rnctd		
677	2009	Sales tax vendor's fees	1		<u>4-54</u>
679	2010	Water Conservation Program	1	Added	<u>13-71—13-74</u>
680	2010	Small wind turbines	2		<u>16-6</u>
			3		<u>16-32</u>

			4	Added	<u>16-96</u>
681	2010	Board of Trustees meetings	1		2-83
682	2010	Utility rate reduction program	1		<u>13-1—13-3</u>
687	2011	Sales tax revenues	2		<u>4-57</u>
688	2011	Public assembly and special event permits	1		<u>Ch. 6</u> , Art. IV
689	2011	Business licenses	1		<u>Ch. 6</u> , Art. I
690	2011	Medical marijuana businesses licensing	1	Added	<u>Ch. 6</u> , Art. X
691	2011	Cable television franchise	3	Rpld	<u>Ch. 5</u> , Art. I
692	2011	Sidewalk display permitting process	1		<u>6-111</u>
					<u>6-112(3), (6)</u>
					<u>6-113</u>
					<u>6-115—6-117</u>
693	2011	Noise	1		<u>Ch. 10</u> , Art. XIV
					Rpld/Rnctd
694	2011	Chicken hens	1		<u>7-91</u>
			2	Added	<u>16-97</u>
			3	Added	<u>6-162</u>
695	2011	Special event permits	2, 3		<u>6-40</u>
697	2011	Board of Zoning Adjustment	1		<u>16-234</u>
698	2011	Parking lots	1		<u>16-210</u>
703	2012	Sales tax revenues	3		<u>4-52, 4-57</u>

			5		<u>4-57</u>
706	2012	Board of Zoning Adjustment	1		<u>16-232</u>
708	2012	Fire bans	1	Added	<u>10-88</u>
709	2012	Nonconforming uses, structures and lots	1		<u>Ch. 16, Art. VII</u>
710	2012	Sales tax revenues	1		<u>4-57</u>
712	2012	Floodplain regulations	1		<u>Ch. 18, Art. VII</u>
			Rpld/Rnctd		
714	2013	Administration	1		<u>Ch. 2, Art. I</u>
			2		<u>Ch. 2, Art. II</u>
			3		<u>Ch. 2, Art. III</u>
			4	Rpld	<u>Ch. 2, Art IV</u>
			5	Rpld	<u>Ch. 2, Art V</u>
			6	Rpld	<u>Ch. 2, Art VI</u>
			7	Rpld	2-180
			8	Rpld	2-181
			9	Rpld	<u>Ch. 2, Art VIII</u>
717	2013	Model Traffic Code	2		<u>8-1</u>
			3		<u>8-2</u>
			4	Rpld	<u>8-5</u>
720	2013	Regulation of marijuana	1	Added	<u>Ch. 6, Art. XI</u>
			2		<u>Ch. 7, Arts. I, II</u>

			3	<u>16-32, 16-78,</u>
				16-304
			4	<u>18-96</u>
721	2013	Regulation of marijuana	1	<u>6-275</u>
			2	<u>6-277</u>
			3	<u>6-278</u>
			4, 5	<u>6-279</u>
			6	<u>6-280</u>
			7	<u>6-281</u>
			8	<u>6-282</u>
			9, 10	<u>6-284</u>
			11, 12	<u>6-287</u>
722	2013	Club uses	1	<u>16-6</u>
			2	<u>16-32</u>
725	2013	Planning Commission	1	<u>2-273</u>
		Business licenses and regulations	2	<u>6-9</u>
			3	<u>6-31</u>
		Streets, sidewalks and public property	4	<u>11-21</u>
			5	<u>11-24</u>
		Municipal utilities	6	<u>13-28</u>
			7	<u>13-58</u>

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		11	<u>16-54</u>		
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		21	<u>18-97</u>		
		22	<u>18-98</u>		
726	2013	Public assembly, specification permits	1		<u>Ch. 6, Art. IV</u>
727	2014	Marijuana	1		<u>6-286</u>
728	2014	Mayor and Trustee compensation	2	Added	<u>2-25</u>
730	2014	Emergency telephone surcharge	1		<u>5-81</u>
731	2014	False alarm service charges	1		<u>10-222(e)</u>
732	2014	Planning Commission membership	1		<u>2-273(a)</u>

733	2014	Inoperable vehicles	1		<u>7-1</u>
			2		<u>7-35(i)</u>
736	2015	Noxious weeds	1		<u>7-1</u>
			2, 3		<u>7-73, 7-74</u>
737	2015	Waste minimization	1	Added	<u>7-141—7-154</u>
<u>739</u>	2016	Marijuana cultivation and testing facilities	2		<u>6-284</u>
			3		<u>6-286(10)</u>
			4		<u>16-32(c)</u>
<u>742</u>	2016	Loitering	1	Rpld	<u>10-123</u>
<u>743</u>	2016	Sewer fees and waiver requests	1	Added	<u>13-28(a)(6)</u>
<u>744</u>	2016	Adoption of 2012 codes	1, 2		<u>18-1, 18-2</u>
			3		<u>18-4</u>
<u>746</u>	2017	Zoning	1		<u>16-32(c)</u>
			2		<u>16-152(a)</u>
<u>749</u>	2017	Signs	1		<u>18-81—18-83</u>
					<u>18-87</u>
					<u>18-90</u>
					<u>18-92(b)</u>
				Added	<u>18-93(3)b.7.</u>
				Rpld	<u>18-94</u>
					<u>18-95(g), (h)</u>

<u>750</u>	2017	Marijuana transporters	2		<u>6-273</u>
			3	Added	<u>6-291</u>
			4		<u>16-32(c)</u>
<u>751</u>	2017	Small cell commercial mobile radio service (CMRS) facilities	1		<u>16-6</u>
			2		<u>16-90</u>
			3	Added	<u>16-92A</u>
<u>752</u>	2017	Gravity knives and switchblades	1		<u>10-162(b)</u>
<u>753</u>	2017	Installation of culverts under existing driveways	1		<u>11-22</u>
<u>755</u>	2018	Sales tax rate	2		<u>4-52(a)</u>
<u>755A</u>	2018	Residency requirements for Town Marshal and designated Deputy	1		<u>2-174(b)</u>
<u>777</u>	2018	Water and sewer fee delinquencies, penalties and collection	1		<u>13-28(d)</u>
			2		<u>13-58(d)</u>
<u>780</u>	2018	Sales tax rate	2		<u>4-52(a)</u>
<u>784</u>	2018	Zoning	1		<u>16-6</u>
			2		<u>16-32(c)</u>
			3		<u>16-60(a)</u>
<u>785</u>	2018	Zoning	1	Added	<u>16-98</u>

			2	<u>16-32(c)</u>
<u>787</u>	2018	Planning Commission membership	1	<u>2-273(a)</u>
<u>791</u>	2018	In-home child care	1	<u>16-6</u>
			2	<u>16-32</u>
<u>793</u>	2018	Preliminary and final applications for the approval of PUDs	1	<u>16-156(b)</u>
			2	<u>16-157(c), (e)</u>
<u>794</u>	2018	Preliminary and final applications for the approval of PUDs	1	<u>16-154(a)</u>
			2	<u>16-155(a)</u>
<u>795</u>	2019	Municipal court and violations	1	<u>1-72(a)</u>
			2	<u>16-89(h)</u>
			3	<u>10-202(b)</u>
<u>798</u>	2019	Business licensing, short-term rental licensing	2	Rpld <u>6-91—6-98</u>
				Added <u>6-91—6-103</u>
			3	Rpld <u>16-82</u>
				Added <u>16-82</u>
<u>801</u>	2019	Public assembly and special events permits	2	<u>6-71</u>
			3	Added <u>6-72(5)</u>
				Rnbd <u>6-72(5)</u>
				as <u>6-72(6)</u>

			4	<u>6-73</u>
			5	<u>6-79</u>
<u>803</u>	2019	Increasing the maximum fine for ordinance violations	3	<u>1-72(a)</u>
			4	<u>6-142(a)</u>
			5	<u>6-264(d)</u>
			6	<u>6-286(15)</u>
			7	<u>7-154(c)</u>
			8	<u>10-145(b)</u>
			9	<u>10-202(d)</u>
			10	<u>10-243(b)</u>
			11	<u>11-54(a)</u>
			12	<u>13-34</u>
			13	<u>13-57(d), (e)</u>
			14	<u>13-63</u>
			15	<u>13-67</u>
			16	<u>16-89(h)</u>
			17	<u>18-4</u>
			18	<u>18-157</u>
<u>804</u>	2020	Accessory dwelling units	2	<u>16-6</u>
			3	<u>16-32</u>

			4	<u>16-72</u>
			5	<u>16-76(a)(1), (9)</u>
			Added	<u>16-76(a)(11)</u>
			6 Rpld	<u>16-82</u>
			7 Rpld	<u>16-98</u>
			Added	<u>16-98</u>
<u>805</u>	2020	Business licensing of short-term rentals	1, 2	<u>6-95(b), (f)</u>
			3	<u>6-96(a)(2)</u>
			4, 5	<u>6-101(c), (d)(1)–(3)</u>
			6	<u>6-102(c)</u>
<u>806</u>	2020	Licensing of the distribution and sale of alcoholic beverages	1	<u>6-31</u>
			2	<u>6-33</u>
			3	<u>6-34(a), (c)</u>
			4 Rpld	<u>6-39</u>
			Added	<u>6-39</u>
			5	<u>6-40(c), (h)</u>
			6	<u>6-41(a), (g)(1), (h)(12)</u>
<u>807</u>	2020	2020 edition of the Model Traffic Code	1 Rpld	<u>8-1—8-8</u>
			Added	<u>8-1—8-4,</u>
				<u>8-6—8-8</u>

<u>808</u>	2020	Lodging occupation tax	2	Added	<u>4-151—4-166</u>
			3	Rnbd	<u>4-171</u>
				as	<u>4-191</u>
			4	Rnbd	<u>4-151</u>
				as	<u>4-171</u>
			5		<u>6-92</u>
<u>813</u>	2020	Medical marijuana and retail marijuana stores	1		<u>6-235(a)</u>
			2		<u>6-240(7)</u>
			3		<u>6-250(f)</u>
			4		<u>6-255(b)</u>
			5		<u>6-256</u>
			6		<u>6-279</u>
<u>2021-06</u> <u>(Res.)</u>	2021	Correcting Zoning Ordinance 645	1, 2		<u>16-6</u>
			3		<u>16-11</u>
			4		<u>16-31(6)</u>
			5		<u>16-32(c)</u>
			6		<u>16-33(fn.4)</u>
			7		<u>16-51</u>
			8		<u>16-52(a)(1)a., k., (d)</u>
				Added	<u>16-52(a)(3)</u>

Rnbd

16-52(a)(3)

as

16-52(a)(4)

9

16-53

10

16-54(a)

11 Rpld

16-56,

16-58

12 Added

16-57(b)

13

16-60(a)

14

16-76(a)(1), (b)

15

16-79(1)

16

16-85

17

16-88

18 Rnbd

16-95

as

16-34

16-34

19

16-122(a), (b)(4)

20

16-123(a), (b)(3), (4)

21

16-152

22

16-154(d)

23

16-155(b)

24

16-156(c), (d)

		25	Rpld	<u>16-158(a)(4)</u>
		26	Added	<u>16-200</u>
		27	Added	<u>16-201(e), (f), (i)</u>
		28		<u>16-202</u>
		30		<u>16-207</u>
		31		<u>16-211</u>
		32		<u>16-231(c)</u>
		33		<u>16-233(3)</u>
		34		<u>16-252(b)(6)</u>
<u>817</u>	2021	Adoption of primary codes	1	<u>18-1(a)(6)</u>
<u>818</u>	2021	Amendments to primary codes	1	Rpld <u>18-2(b)(17)</u>
			2	Added <u>18-2(c)(20)</u>
<u>819</u>	2021	Requirements on certain marijuana establishments	1	<u>6-284</u>
			2	Rpld <u>16-31(1)</u>
				Rnbd <u>16-31(2)–(10)</u>
				as <u>16-31(1)–(9)</u>
			3	<u>16-32</u>
<u>820</u>	2021	Subdivision regulations	1	Rpld <u>17-1–17-7,</u>
				<u>17-21–17-30,</u>
				<u>17-51–17-59,</u>

17-71—17-73,

17-91—17-95

Added 17-1—17-10,

17-21,

17-31—17-37,

17-40—17-58,

17-61—17-68,

17-71—17-79,

17-81—17-89,

17-91—17-99,

17-101, 17-102,

17-104, 17-105,

17-107—17-116,

17-121

821 2021 Payment plans for delinquent sewer and 1 13-28(d)(5)  
water fees

2 13-58(d)(5)

822 2021 Distance requirements on certain marijuana 1 6-255  
establishments

823 2021 Building regulations primary codes 1 Rpld 18-1—18-7

2 Added 18-1—18-6

<u>824</u>	2021	Clarifying how utility base fees are assessed	1		<u>13-28(a)(1)</u>
			2		<u>13-58(a)(1)</u>
			3		<u>13-59(a)</u>
<u>827</u>	2022	Park rules and regulations and penalties for violations	1	Added	<u>11-100—11-110</u>
<u>831</u>	2022	Increase sales tax	2		<u>4-52</u>
					<u>4-57</u>
<u>832</u>	2022	Increase occupation tax on short-term lodging	2		<u>4-153</u>
<u>833</u>	2022	Implement special retail marijuana sales tax and provide penalties for the violation thereof	2	Added	<u>4-201—4-213</u>
<u>834</u>	2022	Annexation petitions	2	Rpld	<u>15-1—15-6</u>
				Added	<u>15-10—15-32</u>